



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 15, 2004

ITEM NUMBER:

SUBJECT: CLARIFICATION OF MEMBERSHIP COMPOSITION AND REQUIREMENTS FOR THE "ACCESS, BUILDING, FIRE, AND HOUSING BOARD OF APPEALS"

DATE: NOVEMBER 3, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: DONALD D. LAMM, DEPUTY CITY MGR./DEV. SVS. DIRECTOR

FOR FURTHER INFORMATION CONTACT: DON LAMM (714) 754-5270

RECOMMENDATION:

Staff recommends City Council:

- 1) Adopt a resolution clarifying the membership composition and requirements for the "Access, Building, Fire, and Housing Board of Appeals"; and,
- 2) Conduct the first reading of an ordinance amending the Costa Mesa Municipal Code Section 5-3, of Title 5, Chapter 1 regarding "Appeals."

BACKGROUND:

State mandated Building, Fire, Housing, and Disabled Access laws require an appeals process for decisions made by a city Building Official or Fire Marshal. An appeals board authority is limited to "determinations and orders", but not interpretations of law or the granting of variances or waivers from the law. Additionally, decisions of the appeals board are final and cannot be appealed to City Council. Due to the similarity of issues addressed by each of the prior appeals boards, on November 6, 2000, City Council consolidated the former "Building, Fire, and Housing Codes Appeals Board" with the "Access Appeals Board", into the subject Board of Appeals.

ANALYSIS:

When the consolidated "Access, Building, Fire, and Housing Board of Appeals" was created in 2000, membership composition was not addressed. As such, while each prior Board had five members, the current Board in theory has ten. However, since the City has only received one appeal since Board consolidation in 2000, the Board does not regularly meet and continued membership interest is unknown.

To be certain we provide the highest quality of timely customer service, staff proposes Board membership and qualifications be redefined by Council, a completely new membership be appointed, and the Board convened to be trained and ready should an appeal be received by the Building Official or Fire Marshal.

The attached resolution simply proposes that the Board's membership be reduced to a manageable five members and two alternates. The five members should consist of at least two members who are "physically handicapped persons", as defined in the

California Code of Regulations Title 24 (disabled access laws), two members who are persons experienced in construction, and one member who is a public member. The Building Official would serve as the Board's Secretary, but may not vote on appeals.

The proposed ordinance would simply reflect and codify Council's policy on the new Board membership size and requirements.

Due to the unknown status of many current Board members, and to avoid confusion over which five members would serve on the "new" Board, staff proposes Council appoint, or re-appoint, a completely new Board to ensure membership meets qualification requirements. Should City Council concur, the City Manager's Office is prepared to immediately commence recruitment for Board members and present Council with a list of qualified candidates at your January 3, 2005 meeting.

ALTERNATIVES CONSIDERED:

State building, disabled access, and fire codes mandate an appeals process for decisions of our Building Official and Fire Marshal. Due to the infrequent number of appeals, Costa Mesa has one appeals Board to hear appeals relative to the Uniform Building Code, Uniform Fire Code, Uniform Housing Code, and California Code of Regulations Title 24 Disabled Access codes. As such, there are two logical alternatives to staff's recommendation:

- 1) Keep current Board membership at ten, but confirm the number of physically handicapped members is at least four, and those experienced in construction also four or more, or;
- 2) Disband the consolidated single board and create three appeals boards with membership focused on each specific expertise. Specifically, create a "Building and Housing Code Appeals Board", a "Fire Code Appeals Board", and a "Disabled Access Appeals Board." Each board could then have full membership expertise in those areas of law.

While the two alternatives would keep the City in full compliance with applicable State laws, alternative two is probably excessive considering the lack of appeals. Also, staff in the Building Division and Fire Prevention Bureau are proud that our community appreciates their high quality customer service, and management believes this quality service is reflected in the virtual absence of any customer appeals.

FISCAL REVIEW:

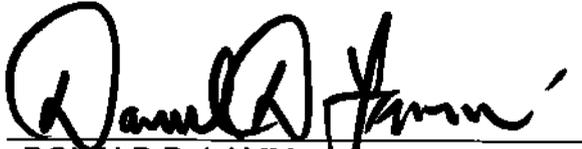
Members of the Appeals Board are volunteers and not compensated. Direct expenses are minimal and consist of report production costs. However, when the two prior Appeals Boards regularly met, they generally did so in the evening, which resulted in personnel overtime expenses. Since the Appeals Board only convenes when an appeal has been filed, overtime expenses occur based on the number of board meetings, not the number of appeal boards.

LEGAL REVIEW:

The City Attorney's Office prepared the attached resolution and ordinance.

CONCLUSION:

State laws mandate the City must have at least one construction related appeals board. Our present "Access, Building, Fire, and Housing Board of Appeals" consists of ten members and has met only once since its creation four years ago. Staff recommends membership be reduced to five members, and that you appoint or re-appoint all five based on membership requirements in the attached resolution. From a practical perspective, the City must have a standing appeals board on-call to review appeals of the Building Official and Fire Marshall. In reality, the Appeals Board is virtually not needed since City personnel provide excellent customer service, are problem solvers, and make every attempt to meet our customers' needs



DONALD D. LAMM
Deputy City Mgr./Dev Svs. Director



JAMES M. ELLIS
Fire Chief

DISTRIBUTION: City Manager
Asst. City Manager
City Attorney
Asst. City Attorney
Fire Marshall
City Clerk (2)
Staff (4)
File (2)

ATTACHMENTS: 1 City Council resolution
2 Ordinance No. 04-____

File: 111504BldgBoardofAppeals

Date: 110304

Time: 400p.m.

ORDINANCE NO. 04-__

**AN ORDINANCE OF THE CITY OF COSTA MESA, CALIFORNIA,
AMENDING SECTION 5-3 OF THE COSTA MESA MUNICIPAL
CODE REGARDING APPEALS FROM DETERMINATIONS AND
ORDERS BY THE BUILDING OFFICIAL AND FIRE MARSHAL**

WHEREAS, the City of Costa Mesa is required by the Uniform Building Code and the Uniform Administrative Code to provide a board of appeals to hear and decide appeals of orders, decisions, or determinations made by the Building Official with regard to applications and interpretations of the City's building code; and,

WHEREAS, the City of Costa Mesa is allowed, but not required, by State Law to provide a board of appeals to hear and decide appeals of orders, decisions or determinations made by the Building Official with regard to applications and interpretations of the City's building code with regard to physically handicapped access issues; and,

WHEREAS, the City Council of the City of Costa Mesa had created a board designated as the Building, Fire and Housing Board of Appeal to conduct hearings on appeal from orders, decisions or determinations made by the Building Official and/or the Fire Marshal with regard to applications and interpretations of the City's building and fire codes; and,

WHEREAS, the City Council of the City of Costa Mesa had also created a board designated as the Access Appeals Board to conduct hearings on appeal from orders, decisions or determinations made by the Building Official with regard to applications and interpretations of the City's building code with regard to physically handicapped access issues; and,

WHEREAS, because of the similarity of issues addressed by each of the two boards, the City Council consolidated the two boards pursuant to a motion passed on November 6, 2000, which board is now known as the "Access, Building, Fire and Housing Board of Appeal"; and,

WHEREAS, the City Council of the City of Costa Mesa hereby wishes to amend the Costa Mesa Municipal Code to reflect the consolidation of these boards.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA
DOES ORDAIN AS FOLLOWS:**

Section 1. Section 5-3 of Title 5, Chapter I of the Costa Mesa Municipal Code is hereby amended to read as follows:

Sec. 5-3. Appeals.

(a) Notwithstanding the provisions of sections 1-33(d) and 5-1, all appeals from determinations and orders by the Building Official and/or the Fire Marshall shall be to

the Access, Building, Fire and Housing Board of Appeals (the "Board"). The Board may adopt reasonable rules and regulations for conducting its investigations and shall render its decisions and findings on contested matters in writing to the Building Official or the Fire Marshal, as applicable, with a duplicate copy thereof to any appellant or contestant affected by a decision or findings of the Board.

(b) Appeals shall be filed with the Building Official or Fire Marshal, as applicable, on application forms established by the Board and consistent with the Uniform Codes adopted in section 5-1. Each appeal application shall be accompanied by a non-refundable filing fee, established by separate resolution of the City Council. Notice of the appeal and appeal hearing shall comply with the Uniform Codes adopted in section 5-1.

(c) The decision by the Board shall be final on the date made and not subject to further appeal to city council.

(d) The decision by the Board shall be final on the date made and the provisions of California Code of Civil Procedure Section 1094.6 shall apply to such decision.

(e) Where a notice and order of the Building Official or Fire Marshal, or decision of the Board becomes final and a violation of this title has been determined to exist, the City Attorney is hereby authorized to commence civil or criminal proceedings to abate the violation of the provisions of this title. A violation of any provision of this title shall constitute a public nuisance and costs for abatement, including attorney's fees and court costs, shall be subject to reimbursement from the property owner to the City pursuant to the Uniform Codes adopted in section 5-1.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15)

days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of _____ 2004.

Mayor

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 04-___ was introduced and considered section by section at a regular meeting of said City Council held on the ___ day of _____, 2004, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ___ day of _____, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2004.

Deputy City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa

RESOLUTION NO. 04-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, REGARDING CONSOLIDATION OF ACCESS APPEALS BOARD AND BUILDING, FIRE, AND HOUSING BOARD OF APPEALS

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY
RESOLVE AS FOLLOWS:

WHEREAS, the City of Costa Mesa is required by the California Building Code and the California Administrative Code to provide a board of appeals to hear and decide appeals of orders, decisions, or determinations made by the Building Official with regard to applications and interpretations of the City's building code; and,

WHEREAS, the City of Costa Mesa is allowed, but not required, by California state law to provide a board of appeals to hear and decide appeals of orders, decisions or determinations made by the Building Official with regard to applications and interpretations of the City's building code with regard to physically handicapped access issues; and,

WHEREAS, the City Council of the City of Costa Mesa had created a board designated as the Building, Fire and Housing Board of Appeals to conduct hearings on appeals from orders, decisions or determinations made by the Building Official and/or the Fire Marshall with regard to applications and interpretations of the City's building and fire codes; and,

WHEREAS, City Council of the City of Costa Mesa had created a board designated as the Access Appeals Board to conduct hearings on appeal from orders, decisions or determinations made by the Building Official with regard to applications and interpretations of the City's building code with regard to physically handicapped access issues; and,

WHEREAS, because of the similarity of issues addressed by each of the two boards, the City Council consolidated the two boards pursuant to a motion passed on November 6, 2000, which board is now known as the "Access, Building, Fire and Housing Board of Appeal"; and

WHEREAS, the City Council of the City of Costa Mesa hereby wishes to clarify the membership composition and requirements of the Access, Building, Fire, and Housing Board of Appeal.

NOW, THEREFORE, BE IT RESOLVED that, the Access, Building, Fire, and Housing Board of Appeal shall consist of five members and two alternatives; and,

RESOLVED FURTHER that the Access, Building, Fire, and Housing Board of Appeal shall include two members who are physically handicapped persons, two members who are persons experienced in construction, and one member who is a public member; and,

RESOLVED FURTHER that, the Access, Building, Fire, and Housing Board of Appeal shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the City of Costa Mesa; and

RESOLVED FURTHER that, the Building Official shall act as Secretary to the Access, Building, Fire, and Housing Board of Appeal but shall have no vote on any matter before the Board.

PASSED AND ADOPTED this ____ day of _____, 2004.

ATTEST:

Deputy City Clerk of the
City of Costa Mesa

Mayor of the City of Costa Mesa

APPROVED AS TO FORM

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Resolution No. 04-____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of _____, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Costa Mesa this ____ day of _____, 2004.

Deputy City Clerk and ex-officio Clerk of
the City Council of the City of Costa Mesa