

ORDINANCE NO. 06-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER IX OF TITLE 2 OF THE COSTA MESA MUNICIPAL CODE RELATING TO APPEAL, REHEARING AND REVIEW PROCEDURES

WHEREAS, the City Council of the City of Costa Mesa previously adopted procedures intended to govern appeal, rehearing and review of decisions of persons and bodies who make decisions regarding permits, zoning and land use decisions, and ordinances; and

WHEREAS, the City Council of the City of Costa Mesa wishes to clarify the applicability and procedural rules relating to appeal, rehearing and review of such decisions; and

WHEREAS, the City Council wishes to clarify in particular that decisions of the City Council on matters of policy and purely legislative judgment not affecting only one applicant, property, permit or entitlement, are not subject to the rules concerning rehearing set forth in Chapter IX of Title 2, but may be considered or reconsidered by the City Council without a showing of new or different facts or failure to proceed in a manner required by law, subject only to such reasonable limitations as may be established from time to time by the City Council.

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

Section 1. Chapter IX of Title 2 of the Costa Mesa Municipal Code is hereby amended to read as follows:

Chapter IX

APPEAL, REHEARING AND REVIEW PROCEDURE

Sec. 2-300. Purpose.

The purpose of this chapter is to provide an orderly and fair method of appeal, rehearing and review of decisions of the staff, committees, commissions and council of the city.

Sec. 2-301. Definitions.

As used in this chapter, the following terms shall have the meanings set forth herein below:

- (1) *Affected person* means any person, including the applicant, any city staff member, committee, or commission who has an interest in the matter at issue or whose health, safety, or welfare may be affected by the decision.
- (2) *Appeal* means reconsideration, by a higher authority, of the specific facts and circumstances of any final decision made by the city, any of its employees, committees or commissions or by the redevelopment agency.

- (3) *Applicant* means the person who applied for or requested the decision or action which is the subject of the appeal, rehearing or review.
- (4) *Council* means the Costa Mesa City Council.
- (5) *Decision* means any final decision, finding, ruling, order or action.
- (6) *Permit*, as used in section 2-306, means anything referred to elsewhere in this Code as being a "permit" or "license."
- (7) *Person* shall have the meaning attributed in section 1-21 of this Code.
- (8) *Rehearing* means reconsideration of a decision by the person or body having made the decision.
- (9) *Review* means reconsideration of the decision of any city employee, committee, or commission requested by the city council, on its own motion, or upon request of any council member, in order to consider the decision and any broad legislative and policy factors involved.

Sec. 2-302. City council review requests.

Within the time limits set forth in section 2-305, the city council or any council member may request that a decision of any city employee, committee, or commission be reviewed by filing an application with the city clerk stating the reasons for the requested review. Said review will be conducted according to the procedures specified in section 2-303 and 2-309. The person or body to hear the review will be designated in the application by the person or body seeking such review and shall be as specified in section 2-309, unless the Council as a whole specifies a higher level of review in the first instance.

Sec. 2-303. Procedure for appeal.

- (1) Any affected person may, within the time limits set forth in section 2-305, file an application for appeal with the city clerk. Said application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting an appeal.
- (2) If the appeal is to be heard by a person or body which conducts regularly scheduled meetings, the appeal shall be considered at the first regular meeting which follows receipt of the application by ten (10) or more days, and which allows sufficient time for the giving of notice as required by section 2-308.
- (3) If the appeal is to be heard by an individual or body which does not conduct regularly scheduled meetings, the appeal shall be considered not more than ten (10) days following receipt of the application; provided that the time period may be extended if necessary to allow the giving of notice as required by section 2-308.
- (4) An appeal hearing shall consist of a new (i.e., de novo) hearing on the matter by the person or body specified in section 2-309. The appeal hearing shall be based on the following evidence:
 - (a) Any relevant evidence, including staff reports, etc., submitted at the time of the prior decision and at the appeal hearing, and
 - (b) Findings, if any, and decision of the person or body whose decision is being appealed.
- (5) Notwithstanding the provisions of this chapter, there shall be no right of appeal to the city council from a decision by a public officer designated by City Council Policy No. 100-7 on an application for a waiver of fees for use of a city owned public facility or show wagon. A decision pursuant to City Council Policy No. 100-7 shall be subject to California Code of Civil Procedure section 1094.6.
- (6) If the original decision being appealed involved issuance of any permit, license, or other entitlement or approval or requested some action by the city, the applicant for the

original decision shall have the burden of proof to support the granting of the requested issuance, approval, or action at the appeal.

Sec. 2-304. Procedure for rehearing.

(1) Any affected person, or the city council or any council member, may within the time limits set forth in section 2-305 file an application for rehearing with the city clerk. The application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting a rehearing.

(2) The application shall be considered at the first regular meeting which follows filing of the application by ten (10) or more days, or shall be considered within ten (10) days if the person or body to whom the application is made does not hold regular meetings.

(3) To justify a rehearing the applicant must show in the application that there is new, relevant evidence which, in the exercise of reasonable diligence, could not have been produced, or which was improperly excluded, at the earlier hearing, or that the person or body failed to comply with the law, which contention was not asserted at the earlier hearing. The person or body may in its discretion decide whether to hear additional evidence than what is contained in the application. The decision whether to grant the rehearing is final and may not be appealed or reheard.

(4) If the person or body concludes the applicant has met the burden of justifying the rehearing, the rehearing will be scheduled for the next regular meeting which allows sufficient time for the giving of notice as required by section 2-308.

(5) No application for rehearing is required to be filed by any member of the city council or the redevelopment agency to allow the council or agency to take any new or different action on an item of city policy, agency policy, or a purely legislative function or decision, which does not involve a specific property owner, application, license or permit. The city council or redevelopment agency, respectively, may establish reasonable rules to restrict the number of times a particular policy or legislative decision may be considered by the city council or the redevelopment agency.

Sec. 2-305. Time limitations for appeals, rehearings, and reviews.

All applications for appeals, rehearings, and reviews must be filed, in writing, during regular business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, and within the time limits hereinafter set forth:

(1) For all matters relating to the approval, disapproval or extension of tentative and parcel maps, within ten (10) days from the date of the final decision subject to appeal, rehearing or review.

(2) For all other items, within seven (7) days from the date of the final decision subject to appeal, rehearing or review.

(3) For all matters requiring approval by the city, its employees, committees, commissions or council and by the redevelopment agency, the time limits for all applications shall begin on the date of the later of the following:

(a) Final decision by the city, its employees, committees, commissions or council; or

(b) Final decision by the redevelopment agency.

If the final day for filing an application for appeal, rehearing or review falls on a holiday or weekend day when City Hall is closed, the application shall be filed no later than the next business day.

Sec. 2-306. Time limitation for issuance of permits.

Where a permit is sought and its issuance is contingent upon obtaining a prerequisite permit, the permit sought shall not be issued until the expiration of the time limit for seeking an appeal, rehearing, or review specified in section 2-305 applied to the prerequisite permit. Provided, however, that if an application for appeal, rehearing, or review of the prerequisite permit is filed within the specified time limits, the permit sought shall not be issued until seven (7) days following the final decision on the appeal, rehearing, or review. Any permit issued in violation of the provisions of this section shall be void.

Sec. 2-307. Fees.

Each application for appeal or rehearing shall be accompanied by a processing fee in an amount determined by resolution of the city council.

Sec. 2-308. Notice of appeal, rehearing or review.

Notice of the hearing for the appeal, rehearing, or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal, rehearing, or review was made. In all cases for the hearing for an appeal, rehearing, or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal or rehearing regarding the same matter, and for appeals and rehearsings the person requesting the current appeal or rehearing.

Sec. 2-309. Person or body to hear an appeal or review a decision.

The person or body to hear an appeal or review a decision shall be the following:

- (1) From a decision of the city staff to the department head; except that an appeal from a decision of the transportation services engineer regarding traffic matters pursuant to Title 10 of this Code, shall be made to the planning commission;
- (2) From a decision of the department head to the city manager; except that (a) an appeal from a decision of the development services director on planning matters pursuant to Title 13 of this Code shall be made to the planning commission, and (b) an appeal from a decision of the building official on building matters pursuant to Title 5 of this Code shall be to the access, building, fire and housing board of appeals as required by section 5-3 of this Code;
- (3) From a decision of the city manager to the city council;
- (4) From a decision of any city committee or commission to the city council.

Sec. 2-310. Exhaustion of administrative remedies.

Unless appealed, reheard, or reviewed as provided herein, any decision becomes final for all purposes when made. To constitute the exhaustion of administrative remedies and as a condition precedent to filing any court action thereon, there must be filed and considered an application for rehearing of the council action in any case where any of the factors set forth in section 2-304(3) are contended to exist. If an application for rehearing a council decision is filed, the council's decision becomes final when either (1) the application is denied, or (2) a decision is made at the rehearing.

Sec. 2-311. Exclusive procedures.

The procedures set forth in this Chapter are the exclusive methods by which appeals, rehearsings and reviews may be pursued and none of the steps set forth herein may be waived or omitted.

Sec. 2-312. Accrual of certain claims.

No claim for violation of constitutional rights for deprivation of economic use of property shall arise until and unless a claimant has secured a final decision on a permit application for a plan of development and on a request for a variance or similar relief from the zone or other development standard for a plan of development as specified in Title 13 of this Code.

Sec. 2-313. Limitations on judicial review.

Notwithstanding any provision in this Code to the contrary, no court action or proceeding to attack, review, set aside, void or annul any decision or procedure of the City of Costa Mesa, its council, commissions, boards or officers, which has become administratively final shall be maintained by any aggrieved person unless duly commenced in a court of competent jurisdiction within ninety (90) days, as provided in California Code of Civil Procedure, Section 1094.6, incorporated herein by reference, and/or as provided in California Government Code section 65009, or any shorter statute of limitations provided by law.

Sec. 2-314. Severability.

If any provision of this Chapter is found to be invalid or unconstitutional by interpretation or application to any person or circumstances, such invalidity or unconstitutionality shall not affect the other provisions or applications thereof which can be given valid effect

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 effect 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. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30

days after its final passage.

PASSED AND ADOPTED this ____ day of _____, 2006.

Mayor

APPROVED AS TO FORM:

City Attorney

ATTEST:

Deputy City Clerk of the
City of Costa Mesa

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. 06-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2006, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2006, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2006.

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