



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 20, 2009

ITEM NO: **VIII-2**

SUBJECT: REQUEST FOR A REHEARING REGARDING THE DECLARATION OF A PUBLIC NUISANCE AT 2258 ORANGE AVENUE (APN 426-073-27)

DATE: JANUARY 15, 2009

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: KHANH NGUYEN, BUILDING OFFICIAL
DONALD D. LAMM, DIRECTOR

FOR FURTHER INFORMATION CONTACT: KHANH NGUYEN (714) 754-5277

RECOMMENDATION:

Approve or deny the request for rehearing.

BACKGROUND:

On January 13, 2009, Council Member Foley, on behalf of the property owner, filed a request for a rehearing regarding City Council's declaration of public nuisance at 2258 Orange Avenue. Attachment 1 contains the property owner's request, and Attachment 2 contains Council Resolution 09-5.

Since the public hearing on the abatement of the public nuisance conditions at 2258 Orange Avenue is also on Council's January 20, 2009 agenda, Council would need to act on this rehearing request prior to conducting the public hearing on the proposed public nuisance abatement.

ANALYSIS:

Pursuant to the Municipal Code, 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 Council failed to comply with the law, which contention was not asserted at the earlier hearing. The Council 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.

ALTERNATIVES:

Alternative 1: If Council determines the applicant has met the burden of justifying the rehearing, the rehearing will be scheduled for February 3, 2009, which allows

sufficient time for staff to provide appropriate public notice as required by Municipal Code Section 2-308. Council may also need to continue the public hearing on the public nuisance abatement hearing to the same meeting or to a later time.

Alternative 2: If Council denies the rehearing request, Council may proceed with the public hearing on the public nuisance abatement.


KHANH NGUYEN, CBP
Building Official


DONALD D. LAMM, AICP
Deputy City Mgr. – Dev. Svs. Director

Attachments:

1. Rehearing Application
2. Council Resolution 09-5

Distribution:

- City Manager
- Assistant City Manager
- City Attorney
- Assistant Development Svs. Dir.
- Police Chief
- Public Services Director
- Chief of Code Enforcement
- Chief of Inspection
- City Clerk (2)
- Staff (4)
- File (2)

Mr. Michael P. Keeler
2260 Orange Avenue
Costa Mesa CA 92627

File:	Date:	Time:
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APPLICATION FOR REVIEW, APPEAL OR REHEARING 2009 JAN 13 PM 4:40

Applicant Name Michael Keeler CITY OF COSTA MESA CITY OF COSTA MESA
Address 2260 ORANGE AVE BY _____ BY _____
Phone 949-228-5352 Representing* _____

REQUEST FOR: REVIEW** APPEAL REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) JAN 6th 2009

RESOLUTION NO 09-5
2258 ORANGE AVE TO BE A PUBLIC NUISANCE

Council Decision by: CITY
Reasons for requesting review, appeal or rehearing: _____

PLEASE SEE ATTACHED
NOTICE 4 PAGES

REQUEST FOR WAIVER

SEC 1-44 ORD NO 97-27 & 39297
ORD NO CO-12 & 1,716-00

Date: 1-13-2009 Signature: Michael Keeler

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
** Review may be requested only by City Council or City Council Member
Costa Mesa/Forms1/Application for Review-Appeal-Rehearing

ON JAN 6 2009 CITY COUNCIL
DECLARED 2258 CRANE AVE
A PUBLIC NUISANCE 5+0.

THIS RESOLUTION WAS BASED
ON THE FACTS THAT KHANH NGUYEN
AND DAVID LAMM SUBMITTED IN
THE JAN 6 CITY COUNCIL AGENDA
REPORT. THIS REPORT WAS ISSUED TO
PROPERTY OWNER MIKE FEJER BY CERT
MAIL, ON 1-8-2009. THIS REPORT
COULD NOT BE FURTHER FROM THE
TRUTH.

MAKE YOUR DECISION ON THE
TRUTH NOT LIES.

WITHIN THE TITLE "CONSTRUCTION HISTORY"
THERE ARE 5 OUT OF 7 TOPICS THAT
REQUIRE TO BE REVIEWED & CORRECTED
WITHIN THE TITLE "CODE ENFORCEMENT HISTORY"
THERE ARE 3 OUT OF 8 TOPICS THAT
REQUIRE TO BE REVIEWED & CORRECTED
WITHIN THE TITLE "ANALYSIS"
THERE ARE 3 OUT OF 4 TOPICS
THAT REQUIRE TO BE REVIEWED & CORRECTED

②

LAST BUT NOT LEAST THE BUILDING PERMITS FOR BOTH 2256 & 2258 WERE REINSTATED BY BUILDING OFFICIAL KHANH IN AUG 2008 THE PERMITS WERE REINSTATED FOR AN ADDITIONAL 6 MONTHS & TO EXPIRE IN FEB 2009.

I WOULD LIKE TO BRING TO CITY COUNCIL'S ATTENTION THE MEETING HELD BY KHANH AT THE FIRST FLOOR OF CITY HALL CONFERENCE ROOM.

THE PEOPLE WHO ATTENDED WERE PROPERTY OWNER, NEIGHBORS, CODE ENFORCEMENT BUILDING OFFICIALS, BUILDING INSPECTORS AND COSTA MESA POLICEMEN.

THIS MEETING WAS RECORDED AND AT NO TIME WAS I DIRECTED TO CONVERT 2258 BACK TO A VACANT DIRT LOT. I WAS NOT TOLD THAT 2258 WAS A PUBLIC NUISANCE.

THIS MEETING WILL PROVE AND CONFIRM SOME OF LIES THAT ARE BEING APPLIED TO THESE HEARINGS.

AFTER THIS MEETING A STOP WORK ORDER WAS LIFTED AFTER SOME 40 DAYS OF BEING INSTATED.

IF MY PERMITS WERE EXPIRED IN JUNE OF 2008 LIKE KHANI STATES. How could work be allowed to continue per schedule. I submitted at this meeting in August of 2008.

I HAVE REQUESTED A COPY OF THE STOP WORK ORDER AND FOR ITS ORIGINAL REASON. I REQUESTED IT BY PHONE, FAX AND IN PERSON AT THE COUNTER I STILL DO NOT KNOW WHY OR DO I HAVE ANY PAPERWORK ON THIS STOP WORK ORDER.

DUE TO THE LENGTH OF THIS STOP WORK ORDER, THE LENDER OF THE CONSTRUCTION LOAN HELD BACK FINAL DRAW TO THIS DAY.

THE COST OF THIS STOP WORK ORDER WAS 13,500 IN INTEREST ALONE.

AS STATES IN AGENDA REPORT PROPERTY OWNER STATES FINANCIAL INCAPABILITY THIS IS VERY MUCH THE TRUTH AND CAN BE BACKED UP WITH DOCUMENTATION. I REQUEST A WAIVER OF FINE DEPOSIT TO ALLOW SOME OF THE TRUTH TO BE HEARD ORD NO 00-12 & 1,7-16-00 SEE 1-44 ORD NO 97-27 & 39-297

4

THANK YOU FOR YOUR
CONSIDERATION IN THIS
MATTER

PROPERTY OWNER
Michael Keeler
Michael Keeler

1-13-2009

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AGENDA REPORT

WRONGFUL FACTS STATED

* THE AGENDA REPORT FOR MEETING
DATE OF 1-6-2009 WAS MAILED
CERTIFIED TO Michael Keeler ON
1-8-2009.

Construction History

- #2 info stated in #2 are incorrect
- The entire basement was not poured until the
end of December 05.
- #3 no corrections were made to the basement
& we informed the city about the defects.
- #5 States that the revised plans were approved
& built accordingly. (problem fixed)
- We did submit plans but no work was
done to correct problem due to litigation
- #6 We are not using 2258 as a staging
~~area~~ area. (cheap plot)

#7 states that there was no request to reinstate permits

- We had inspections from the Gas Co., Edison & Sanitation Dept which automatically reinstate our permits for 6 months.

Code Enforcement History

#1 The only vehicles towed from our house were AAA towing our car to the shop.
NO NOTICE AT ALL ON MUSIC OR LIGHT

47 police calls - we were never giving a citation. Anytime police came they were so nice & stated no construction noise was heard. We were mailed \$500.00 tickets for taking our trash out on Tues. after 8PM

Jan 11-11-08

#2 CITATIONS ALL MAILED CITY ATTORNEY
AT COUNCIL MEETING STATED NOT VALID
UNLESS CONFIRMED BY COP OR CODE

#3 AT MEETING WORKING AFTER 8:00
WAS DECLARED OKAY NO FINE FROM
SUDENAKIC

#8 THE Building Division INFORMED US
IN JAN OF 2009 TO REMOVE ALL
MATERIAL & equipment, REMOVE Basement
& RESTORE TO VACANT LOT NOT AS OF
JUNE 2008

ANALYSIS

#1. Since 2005, A NEGATIVE IMPACT,
IMPROPER COMPLAINTS FROM TODD MARSH
(SEE POLICE REPORT)
NO-Glare IMPACT NOTICES

#2. THE BASEMENT IS NOT 9 FEET DEEP
IT IS 8 FEET. THE PROPERTY HAS
BEEN FENCED AND ENFORCED BY CODE
ENFORCEMENT.

#3 THE OWNER HAS NOT IGNORED STAFF
DIRECTION TO RESTORE TO VACANT, BECAUSE
STAFF NEVER DIRECTED ME TO DO
SO UNTIL THIS COUNCIL MEETING 1-6-09

#4 YES FINANCIAL PROBLEMS, BUT NEVER
STATED NO INTENTION OF RESTORING
TO VACANT LOT

#5 AT PUBLIC HEARING CITY ATTORNEY STATED NO CITATIONS ARE MAILED OUT WITHOUT CONFIRMATION OF VIOLATION - STAFF DIRECTED TO SET UP A MEDIATION MEETING TO RESOLVE OUTSTANDING ISSUES - THIS MEDIATION MEETING NEVER WAS SCHEDULED OR DID IT HAPPEN.

#6 THIS MEETING DID OCCURE BUT NOT IN AUGUST 2007, BUT AUGUST 2008 - AT THIS TIME A STOP WORK ORDER WAS IN AFFECT FOR OVER 45 DAYS CAUSING THE LENDER OF CONSTRUCTION LOAN TO HOLD BACK FINAL DRAW TO ALLOW COMPLETION OF PROJECT.

#8 WE WERE NOT NOTIFIED OF EXPIRED PERMITS UNTIL JAN 2009. ~~WE~~ SINCE 2008 OF JUNE - GAS CO, EDISON, AT&T, CABLE AND SANITATION HOTEL MADE MANY INSPECTIONS ALLOWING PERMITS TO BE LEGAL

RESOLUTION NO. 09- 5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, DECLARING CONDITIONS AT THE PROPERTY KNOWN AS 2258 ORANGE AVENUE, COSTA MESA, TO BE A PUBLIC NUISANCE SUBJECT TO ABATEMENT.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the City Council has considered information submitted by City staff concerning certain conditions extant at the property known as 2258 Orange Avenue (APN 426-073-27), Costa Mesa; and

WHEREAS, the City Council has also afforded both the property owner and nearby neighbors an opportunity to be heard concerning the conditions extant at this property; and

WHEREAS, since 2005, the owner has negatively impacted the surrounding residential neighborhood with excessive noise after 8 p.m. associated with on-site construction-related activities and light and glare impacts from improperly placed security lighting, despite numerous complaints to the owner and to City staff from neighbors, and despite numerous violation notices and citations from Code Enforcement; and

WHEREAS, the large basement is 9-feet deep by 40-feet wide by 40-feet long, and is an attractive nuisance and hazard even in dry conditions, but all the more so with the recent onset of seasonal rains falling into a large hole in the ground which has no natural or man-made drainage, thus allowing water to accumulate to potentially the nine-foot depth of the basement; and, notwithstanding that it is temporarily secured by fencing, the long-term remedy is to remove the basement walls and floor and fill in the remaining hole with appropriately compacted soil; and,

WHEREAS, the owner has ignored staff's direction to restore this property to a vacant lot, and it has been used as a storage yard since June 2008; and,

WHEREAS, in addition to building materials and equipment, household goods and rubbish have also accumulated on the property, which contributes further to the visual blight impacts to the surrounding neighborhood; and,

WHEREAS, the owner has indicated that he lacks the resources to complete the construction of the house and that he has no intention of performing any more work; including restoration of the site to a vacant lot; and,

WHEREAS, it is, pursuant to Chapter 1, Article 5 of the Costa Mesa Municipal Code, both the duty and the right of the City of Costa Mesa, through its City Council, to take action where appropriate to cause and authorize the abatement of nuisance conditions which endanger the peace and safety of the citizens of Costa Mesa;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Costa Mesa, does hereby declares as follows:

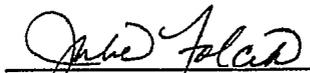
1. Conditions at the property known as 2258 Orange Avenue, Costa Mesa, and in particular the open basement structure and the related storage and accumulation of materials, implements and vehicles on this property, constitute a nuisance within the meaning of §§ 20-3 and 20-4 of the City of Costa Mesa Municipal Code.
2. City staff is hereby directed to take all steps lawful and necessary to abate said nuisance conditions, and to restore this property to a safe, quiet and orderly condition.
3. City staff is hereby further directed to report back to the City Council within thirty (30) days of this resolution concerning the completion of such abatement or the progress toward completion of abatement, and to continue such reports each thirty (30) days thereafter until such time as the abatement of this nuisance has been completed.
4. City staff is hereby furthermore directed to provide written notice of this Resolution to the property owner, together with written notice of his/her/their right under § 20-14(e) and Title 2, Chapter IX (Appeal, Rehearing and Review Procedure) of the City of Costa Mesa Municipal Code to appeal this determination.

PASSED AND ADOPTED this 6th day of January, 2009.



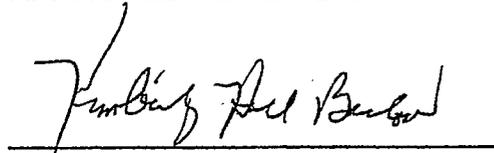
Allan R. Mansoor, Mayor

ATTEST:



Julie Folcik, City Clerk

APPROVED AS TO FORM:



Kimberly Hall Barlow, City Attorney

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

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 09-5 and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 6th day of January, 2009, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: MANSOOR, LEECE, BEVER, FOLEY, MONAHAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 7th day of January, 2009.



JULIE FOLCIK, CITY CLERK

(SEAL)