



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 20, 2015

ITEM NUMBER: **NB-1**

SUBJECT: DISCUSSION OF CITY'S APPEAL FEES AND PROCEDURES

FROM: DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

PRESENTATION BY: STEPHANIE ROXAS, ASSOCIATE PLANNER

DATE: OCTOBER 8, 2015

**FOR FURTHER INFORMATION CONTACT: STEPHANIE ROXAS, AICP (714) 754-5667
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RECOMMENDATION:

Approve Council Policy regarding nonrefundable appeal fees and processing procedures.

BACKGROUND:

Pursuant to Title 2, Chapter IX, of the Municipal Code, decisions of the Zoning Administrator and Planning staff may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council. Appeals may be filed by any interested person with submittal of an appeal application and required fee. The following fees are currently in effect:

- Appeal of Zoning Administrator Decision \$690.00
- Appeal of Planning Commission Decision \$1,220.00

In addition, decisions may be called up for review by either the Planning Commission or the City Council and no fee is charged. The review may be called for review because of a specific concern by the City Official or if an interested party (i.e., residents, businesses, property owners, applicant, etc.) contacts a Councilmember or Commissioner to request an appeal of the project on their behalf. The appeal/review period is 7 days after a decision is rendered. The following table summarizes the number of appeals filed in recent years.

Appeal Body	Total Appeals	Appeals by Year					
		2015	2014	2013	2012	2011	2010
City Council	14	7	1	1	1	2	2
Planning Commission	7	4	2	1	0	0	0

On September 1, 2015, the City Council considered two requests for the refund of appeal fees for two different planning applications (ZA-15-01 and PA-14-41). A motion to refund half of the appeal fees to the appellants failed due to a tie vote, and consequently no action was taken. At the City Council meeting of September 15, 2015, Councilmember Foley requested that staff return with a discussion of the City's appeal fees and procedures, including a survey of other cities' policies as it relates to refunding appeal fees.

DISCUSSION

Current Policy for Appeal Fees:

As noted, the cost to appeal a decision to the Planning Commission or City Council is \$690 and \$1,220 respectively. These costs are intended to be "revenue neutral" in that the fees are meant to cover the cost of City resources expended while preparing the item for review by the respective body. Costs include, but are not limited to, staff time required to research and prepare reports, noticing the public hearing in the newspaper, mailing public notices, and attending the public hearing. These costs are borne irrespective of the outcome of the appeal. Moreover, in most cases, the fee does not cover the actual staff time required to prepare the appeal.

Currently, requests to refund appeal fees or waive the appeal filing fee are considered by the City Council on a case-by-case basis. The City does not have an adopted Council Policy related to refunding appeal fees. During the past few years, there have been two incidents that the fee was refunded to the appellant.

On August 6, 2013, the City Council authorized a refund in the amount of \$1,220 to Catalina Shorts Homeowners Association pertaining to the appeal of Planning Application No. PA-13-04, a request to construct a 14-unit condominium development at 2157-2159 Tustin Avenue. The report and minutes are available online:

Report: <http://www.costamesaca.gov/ftp/council/agenda/2013/2013-08-06/CC-6.pdf>

Minutes: <http://www.costamesaca.gov/modules/showdocument.aspx?documentid=12586>

On January 17, 2012, the City Council authorized a waiver to Al Morelli from the required \$1,220 appeal fee pertaining to the appeal of Development Review No. DR-99-22 A2, a request to modify the winter holiday hours for Target Costa Mesa. The report and minutes are available online:

Report: <http://www.costamesaca.gov/ftp/council/agenda/2012/2012-01-17/CC011712AppealFeeWaiverTargetfinal.pdf>

Minutes: <http://www.costamesaca.gov/modules/showdocument.aspx?documentid=12008>

Survey of Orange County Cities:

Staff surveyed select Orange County cities regarding appeal fees and requirements. The survey results are detailed below. In addition, staff contacted all cities in Orange County to review refund policies relating to appeal fees. The survey results are provided as Attachment 1; the City's appeal fee is among the lowest in the county. A total of 24 jurisdictions responded to the survey, and 87.5% of the respondents reported that the jurisdiction has not issued a full or partial refund of their appeal fees in the past two years or more. For the few cities that have issued a refund, the basis for the refunds included:

- The city requires a deposit for appeals, which are billed to the appellant on a timely basis. The deposit was not used in its entirety, so the remaining amount was refunded to the appellant.
- The appellant withdrew the appeal.
- The City Council called up the item in addition to the public so the appeal monies were returned to the member of the public.

Based on the survey results, cities have not refunded fees incurred during the processing of an appeal. For example, no other city has refunded appeal fees due to the decision of the lower body being overturned.

Survey of Select Orange County Cities				
City	Appeal Filing Fees		Other Requirements	
	Appeal to Planning Commission ("PC")	Appeal to City Council ("CC")	# of CC / PC members needed to call up an item for review	Appeal/Review Period
Newport Beach	\$4,575	\$4,289	1	14 Days (10 Days for subdivisions)
Santa Ana	Applicants \$3,841 Non-applicants \$382	Applicants \$3,841 Non-applicants \$382	Majority vote of CC	10 Days
Huntington Beach	\$2,501	\$3,383	1	10 Days
Anaheim	Same fee as permit being appealed	Initial Fee \$350 Minimum deposit: \$2,300 Billed at \$181/hour	2	10 Days
Orange	\$1,000 Initial Deposit Billed at hourly rate	\$1,000 Initial Deposit Billed at hourly rate	1	15
Irvine	\$245 Initial Deposit Billed at \$128/hour	\$245 Initial Deposit Billed at \$128/hour	1	15 Days
Mission Viejo	\$2,000 (Single-family dwelling \$1500)	\$2,000 (Single-family dwelling \$1500)	1	15 Days (10 Days for subdivisions)
Costa Mesa	\$690	\$1,220	1	7 days
Laguna Beach	Appeals are reviewed by CC only.	\$650*	1 (CC only)	14 Days

*In Laguna Beach, only applicants or property owners within 300 ft. of the project site may file an appeal.

ANALYSIS

To develop a clear procedure relative to requests for refunding appeal fees, staff recommends the City Council adopt a written policy on appeal fees. After reviewing other cities' appeal procedures, the following conclusions were drawn:

- No other city in Orange County refunds appeal fees.
- Most cities require a fee that reimburses the city for expenses incurred during the processing of an appeal. Accordingly, appeals are either: 1) Billed against a deposit at an hourly rate; or 2) The fee is set at an amount commensurate with the average appeal processing time.

Staff evaluated the constraints of Costa Mesa's current informal policy on appeal fees and drafted a policy that strives to establish an orderly, efficient, and fair method for processing appeal fees. The draft Council Policy is provided as Attachment 2. The recommended policy establishes that appeal fees are non-refundable, and it clarifies other aspects of the appeal fee procedures to ensure a timely processing.

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Associate Planner

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Economic Development & Development
Services Director / Deputy CEO

Attachment: 1. [City Survey of Appeal Fee Refund Policies](#)
 2. [Draft Council Policy](#)

cc: Chief Executive Officer
 Assistant Chief Executive Officer
 Economic Development & Development Services Director / Deputy
 CEO
 City Attorney
 Public Services Director
 Transportation Svs. Mgr.
 City Engineer
 City Clerk (9)
 Staff (7)
 File (2)