



**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney SS

Finance [Signature]

# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: June 12, 2018

**Department:** City Attorney  
**Prepared By:** Scott C. Smith, City Attorney

**Subject:** RESOLUTION ESTABLISHING FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS

**Fiscal Impact:** If this time and materials recovery fee is adopted, the City will be able to recover the costs associated with conducting administrative hearings and appeals in those cases where the City prevails in the proceeding.

**Summary:** Staff recommends that the City Council conduct a public hearing, as duly noticed pursuant to Government Code Sections 66016 and 66018, and adopt a resolution establishing reasonable hearing fees.

**Background:** The City Manager requested that an ordinance be prepared to allow the City to recover the costs associated with conducting administrative hearings and appeals in those cases where the City prevails in the proceeding. That ordinance was adopted on May 15, 2018, as Ordinance No. 18-1655, and will become effective on June 14, 2018. The next step is for the Council to hold a public hearing and adopt a resolution establishing the fees applicable to administrative hearings and administrative appeals if the City prevails in any part of the hearing or appeal.

**Discussion:** Ordinance No. 18-1655 enacted new Chapter 1.22 which provides, in part, that any person seeking an administrative hearing or filing an administrative appeal under any provision of the Municipal Code shall be required to pay the costs associated with the hearing, and deposit those costs with the request for hearing/notice of appeal, unless such person prevails in the hearing/appeal. In the event that a person seeking the hearing or appeal prevails on some of the claims, it shall be responsible for only 1/2 of the costs. Section 1.22.020A. authorizes the City Council to establish those fees by resolution.

In order to comply with Government Code Sections 66016 and 66018, staff duly noticed a public hearing to be held before the City Council to adopt, by resolution, the new fees for the administrative hearings and administrative appeals. The proposed resolution establishes those fees, which are to be determined on a time and materials recovery basis, including, but not limited to staff time to notice the hearing and prepare an analysis of the matter which is the subject of the hearing or appeal, the preparation of any records or documents used in the hearing, including the formal documents upholding or denying the administrative hearing or administrative appeal, attendance at the hearing or appeal by City staff, consultants, and attorneys, and the full fees and costs of the hearing officer retained by the City to conduct the administrative hearing or administrative appeal.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council conduct a public hearing pursuant to Government Code Sections 66016 and 66018, and, thereafter, adopt the attached resolution to establish reasonable fees for administrative hearings and administrative appeals.

**Attachments:** 1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ESTABLISHING FEES FOR ADMINISTRATIVE HEARINGS AND ADMINISTRATIVE APPEALS;

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RESOLUTION NO. 2018-\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE, CALIFORNIA, ENACTING A FEE FOR  
APPEALS UNDER CHAPTER 1.22 OF THE SAN CLEMENTE  
MUNICIPAL CODE

WHEREAS, the City of San Clemente ("City") is authorized to conduct administrative hearings and appeals pursuant to various Chapters of the San Clemente Municipal Code ("SCMC"); and

WHEREAS, SCMC section 1.22.020 authorizes the City Council to establish, by resolution, payment of any fee for an administrative hearing or appeal; and

WHEREAS, because the City has not established an administrative hearing and appeal fee, the City currently bears the burden of processing and conducting administrative hearings and appeals, which costs may include, without limitation, the cost to notice the hearing or the appeal, staff analysis of the hearing or the appeal, preparation of the record, the hearing, and preparation of formal documents upholding or denying the hearing or appeal; and

WHEREAS, administrative hearings and appeals are typically initiated by persons or appellants other than the City, and therefore, those persons or appellants should bear the costs to process and conduct administrative hearings and appeals in the event the hearing or appeal is unsuccessful; and

WHEREAS, City staff has provided adequate data substantiating the costs of conducting administrative hearings and appeals that are to be covered by the proposed fee and made the data available for public review; and

WHEREAS, pursuant to Government Code Section 66000, et seq., the City is empowered to impose fees covering up to 100 percent of the actual costs of providing these services; and

WHEREAS, Government Code Sections 66016 and 66018 require that the City adopt new fees only after providing notice and holding a public hearing; and

WHEREAS, the City Council has duly noticed and conducted a public hearing on June 12, 2018, at which time the public was invited to make oral and written presentations as part of the regularly scheduled meeting prior to the adoption of this Resolution; and

WHEREAS, at least ten (10) days prior to the first public hearing referenced above, the City made available for public inspection information required under Government Code Section 66000, et. seq.; and

WHEREAS, the City published notice of the public hearing as described above in accordance with Government Code Sections 6062a and 66018 for the proposed fees; and

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WHEREAS, pursuant to Gov. Code § 66019(b), the City has mailed notice of the meeting time and place, a general explanation of the proposed fee, and a statement that data regarding the fee is available, at least 14 days prior to the meeting to any interested party who has filed a written request with the City for mailed notice of meetings on new or increased fees or charges; and

WHEREAS, accordingly, the City desires to enact an appeals fee so that appellants are required to pay for the exact cost of actual time and materials of the appeal hearing except in cases where the appeal is successful; and

WHEREAS, the City Council finds that enacting an appeals fee is in keeping with prevailing practice of cities in the County and in the best interest of the City to promote its continued financial stability; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

Section 2. Amount of Appeals Fee. The appellant of an administrative decision in the City of San Clemente or any person requesting an administrative hearing shall pay for the actual time and materials cost of the administrative appeal or administrative hearing, except where the appellant prevails in the administrative appeal or administrative hearing. The appellant or person requesting an administrative hearing shall pay a deposit against time and material costs, based on City staff's estimate of the costs of the appeal and complexity of the hearing. Within ten (10) business days of the receipt of a request for a hearing or appeal, the City shall notify the person requesting the hearing or appeal of the hearing fee. The person requesting the hearing or appeal shall deposit the hearing fee to the City Clerk no later than fifteen (15) business days from the date of the City's notice of the hearing fee amount. In the event that the actual time and material costs of the hearing are less than the deposit paid, the City shall refund any remaining balance of the deposit to the appellant. If the appellant prevails in the appeal, the City shall return the appellant's entire deposit.

Section 3. Accounting of Costs. City staff shall maintain an account of actual costs of time and materials associated with each appeal hearing. In the event actual costs to the City are less than the deposit paid, the City shall refund any excess costs to the appellant. In the event the actual costs exceed the deposit paid, and the appellant or person requesting the administrative hearing is unsuccessful, the additional costs shall be due and payable to the City as set forth in SCMC section 1.22.030.B.

Section 4. CEQA. The City Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378)

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of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

Section 6. Effective Date. This Resolution shall take effect 60 days after its adoption.

Section 7. Certification. The Mayor shall sign this Resolution and the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this 12th day of June, 2018.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

Resolution No. \_\_\_\_\_

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) §  
CITY OF SAN CLEMENTE    )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. \_\_\_\_\_ was adopted at a regular meeting of the City Council of the City of San Clemente held on the 12th day of June, 2018, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 12th day of June, 2018.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney