



Meeting Date: 6/14/11

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Julie Doi, Deputy City Attorney

Agenda Item No. **I-1**

Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Other (Specify) _____

DATE: June 3, 2011

TO: City Council

FROM: Julie Doi, Deputy City Attorney
City Attorney's Office

SUBJECT: Ordinance Regarding Administrative Hearings

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance amending the title of Article II of Chapter 1 of the Oxnard City Code ("OCC") and adding Article V to Chapter 1 of the OCC concerning administrative hearings.

DISCUSSION

An applicant for a City issued permit is entitled to due process if the permit application is denied. Similarly, a holder of a City permit is entitled to due process if City personnel determine that the permit should be suspended, modified, or revoked. Due process includes adequate notice of the denial, suspension, modification, or revocation of the permit, an opportunity to be heard at an administrative hearing by an impartial fact-finder, and an adequate explanation of the reasons justifying the denial, suspension, modification, or revocation of the permit.

The proposed ordinance sets forth administrative hearing procedures to be followed for the denial, suspension, modification, or revocation of a permit applied for or held pursuant to provisions of the OCC if the denial, suspension, modification, or revocation of the permit involves the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of the OCC or any rules, regulations, policies, or procedures adopted by the City Council or the City Manager. As the OCC already contains administrative hearing procedures for some City issued permits, the proposed ordinance would apply to those City issued permits for which administrative hearing procedures have not been adopted. In addition, the proposed ordinance would apply to any newly created City issued permits.

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FINANCIAL IMPACT

No financial impact.

JD

Attachment #1 - Ordinance

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. __

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD AMENDING
THE TITLE OF ARTICLE II OF CHAPTER 1 OF THE OXNARD CITY CODE AND
ADDING ARTICLE V TO CHAPTER 1 OF THE OXNARD CITY CODE
CONCERNING ADMINISTRATIVE HEARINGS

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The City Council of the City of Oxnard does ordain as follows:

Part 1. The title of Article II of Chapter 1 of the Oxnard City Code is hereby amended to read as follows:

**“ARTICLE II. UTILITY BILLING HEARINGS;
CRIMINAL VIOLATIONS OF CODE”**

Part 2. Article V is hereby added to Chapter 1 of the Oxnard City Code to read as follows:

“ARTICLE V. ADMINISTRATIVE HEARINGS

“SEC. 1-55. ADMINISTRATIVE HEARINGS.

Unless otherwise specifically set forth in this code, the procedures set forth in sections 1-55 through 1-61 of this code shall be followed for the denial, suspension, modification, or revocation of a permit applied for or held pursuant to any provision of this code if the denial, suspension, modification, or revocation of such permit involves the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this code or any rules, regulations, policies, or procedures adopted by the city council or the city manager.

SEC. 1-56. RULES AND REGULATIONS.

The city manager may adopt written rules, regulations, policies, and procedures that are consistent with the intent or provisions of this article, as may be necessary or desirable to aid in the administration or enforcement of the provisions of this code.

SEC. 1-57. HEARING OFFICER.

The city manager shall appoint persons to serve as administrative hearing officers.

SEC. 1-58. APPEAL PROCEDURE.

(A) City staff shall mail notice of a proposed denial, suspension, modification, or revocation of any permit applied for or held to the applicant or permittee, stating the reasons for the denial, suspension, modification, or revocation of any permit applied for or held. The notice shall inform the applicant or permittee that the permit will be denied, suspended, modified, or revoked and the applicant or permittee will be deemed to concur with such action if the applicant or permittee does not make a written request for a hearing as provided in subsection (B) of this section.

(B) The applicant or permittee may make a written request for a hearing. The request must be received by the party who signed the notice within 14 days of the date of the notice and be accompanied by the hearing fee set by resolution of the city council. A copy of the notice shall be attached to the request for hearing, and the request for hearing shall state the reasons that the permit should not be denied, suspended, modified, or revoked.

(C) If a timely request for hearing, accompanied by the hearing fee, is received by the party who signed the notice, the hearing shall be conducted as set forth in section 1-59 of this code. If such a request is not so received, the party who signed the notice shall mail to the applicant or permittee a notice that the permit is denied, suspended, modified, or revoked.

(D) The party who receives the request for hearing shall send the request to the hearing officer, and the hearing officer shall set the matter for hearing. At least ten days before the hearing, the hearing officer shall mail written notice of the date, time, and place of the hearing to the applicant or permittee.

(E) Unless otherwise provided by this code, the filing of a request for hearing shall stay all proceedings in furtherance of the notice appealed from until the determination of the appeal as provided herein.

SEC. 1-59. CONDUCT OF HEARING.

(A) At the hearing officer's discretion or upon good cause shown, the hearing officer may continue the hearing by written notice before the scheduled hearing date or orally at or during the hearing.

(B) The hearing shall be open to the public.

(C) A representative of the city shall first present evidence to justify the proposed denial, suspension, modification, or revocation of a permit. Thereafter, the applicant or permittee may present evidence. The burden of proof to justify the denial, suspension, modification, or revocation is on the city.

(D) The hearing officer shall conduct the hearing in an informal fashion and shall not be bound by the technical rules of evidence.

(E) The hearing officer may continue any hearing to request additional information from city staff, the applicant, or the permittee prior to issuing a written decision. The hearing officer is not required to continue the hearing on the date the administrative hearing is held. A hearing is not concluded until the hearing officer receives any additional information requested pursuant to this subdivision.

(F) Unless otherwise provided in this code, if the applicant or permittee fails to appear for the hearing at the time and place noticed, the hearing officer in his or her discretion may conduct the hearing to a conclusion or may dismiss the appeal. If the appeal is dismissed, the notice appealed from shall become final and effective on the date of the hearing. Upon a showing of good cause, the hearing officer may set aside his or her decision or dismissal upon the applicant's or the permittee's failure to appear and may reschedule the appeal for hearing.

SEC. 1-60. HEARING OFFICER AUTHORITY.

(A) At the request of the city, applicant, or permittee, the hearing officer shall, on behalf of the city, issue subpoenas for attendance of witnesses at the hearing.

(B) At the request of the city, applicant, or permittee, the hearing officer shall, on behalf of the city, issue orders for the production of documents on a date certain. In no event shall the date for the production of documents be less than 15 days after the date the order was issued.

(C) The hearing officer may affirm or reverse the notice appealed from.

(D) The hearing officer shall not have authority to waive any requirements of this code or any other law, rule, or regulation.

SEC. 1-61. DECISION.

(A) Within 15 days of the conclusion of the hearing, the hearing officer shall issue and mail to the applicant or permittee a written decision containing a statement of the reasons on which the decision is based and which decision shall be final and effective on the date issued. Within the decision, the hearing officer shall include a statement that the time in which judicial review may be sought is governed by Cal. Code of Civil Procedure section 1094.6. The hearing officer shall give such decision to appropriate city staff, who shall keep the decision with the notice of proposed denial, suspension, modification, or revocation of any permit applied for or held.

(B) The applicant or permittee may seek judicial review of the decision of the hearing officer in accordance with Cal. Code of Civil Procedure, sections 1094.5 and 1094.6.”

Part 3. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. ___ was first read on _____, 20__ and finally adopted on _____, 20__ to become effective thirty days thereafter.

AYES:

NOES:

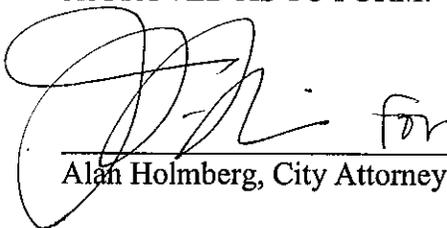
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

APPROVED AS TO FORM:

Daniel Martinez, City Clerk

 for

Alan Holmberg, City Attorney 6.2.11