



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: OCTOBER 18, 2005

ITEM NUMBER:

**SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES.**

**DATE: OCTOBER 5, 2005**

**FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION**

**PRESENTATION BY: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER**

**FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT (714) 754-5604**

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## **RECOMMENDATION:**

The Planning Commission recommends retention of the City's existing zoning provisions for churches and other places of religious assembly.

## **BACKGROUND/ANALYSIS:**

Presently, the Zoning Code requires a conditional use permit for churches and other places of religious assembly in all zones except the I&R (Institutional and Recreational) district. In the I&R zone, a master plan approval by the Planning Commission is required.

On August 22, 2005, and September 26, 2005, the Planning Commission considered the attached ordinance, which would allow churches/places of religious assembly to be "permitted" land uses in the C1 and C2 commercial zones, provided that they are located a minimum of 200 feet away from any residential zone and comply with all other applicable code standards including parking. On a 3-2 vote (Egan and Garlich voting no), the Commission recommended to Council that the City's existing zoning regulations be retained for this land use.

For additional background information, please see the Planning Commission meeting minutes and staff minutes included in Attachment 2. Attachment 3 contains correspondence on the ordinance.

## **ALTERNATIVES CONSIDERED:**

As an alternative to Commission's recommendation, Council may choose to:

1. Give first reading to the ordinance; or
2. Modify the ordinance in terms of any of the recommended modifications to the Zoning Code.

**FISCAL REVIEW:**

This ordinance does not require any fiscal review.

**LEGAL REVIEW:**

The City Attorney's Office has reviewed the ordinance and approved it as to form.

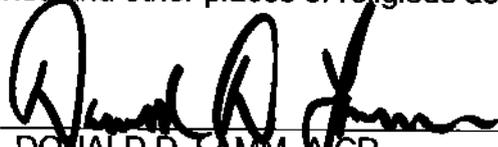
**ENVIRONMENTAL DETERMINATION**

This code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

**CONCLUSION:**

The Planning Commission recommends that no change be made to the City's Zoning Code in respect to the permitting requirements for churches and other places of religious assembly.

  
KIMBERLY BRANDT, AICP  
Principal Planner

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

- DISTRIBUTION:
- City Manager
  - Assistant City Manager
  - City Attorney
  - Deputy City Manager – Dev. Svs. Director.
  - Public Services Director
  - Building Official
  - Chief Code Enforcement Officer
  - City Clerk (2)
  - Staff (4)
  - File (2)

- ATTACHMENTS:
- 1 Ordinance
  - 2 Planning Commission meeting minutes and staff report
  - 3 Correspondence

File Name: 101805Churches	Date: 092805	Time: 10:00 a.m.
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# **ATTACHMENT 1**

## **ORDINANCE**

**ORDINANCE NO. 05-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES.**

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

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Row 24 and add Row 24a to Table 13- 30 as show in Attachment A.

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

Section 3. Inconsistencies. 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 the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa

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

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. 05-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2005, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2005, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2005.

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

# ATTACHMENT A

**TABLE 13-30  
CITY OF COSTA MESA LAND USE MATRIX**

LAND USES	ZONES																					
	R 1	R 2 M D	R 2 H D	R 3	R A P	C L	C 1	C 2	C 1 S	T C	M G	M P	P D R L D <sup>1</sup>	P D R M D <sup>1</sup>	P D R H D <sup>1</sup>	P D R N C M <sup>1</sup>	P D C <sup>1</sup>	P D I <sup>1</sup>	I & R S <sup>1</sup>	P		
<b>RESIDENTIAL USES</b>																						
24. Churches and other places of religious assembly <u>NOT WITHIN 200' of residential zones</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	•
24a. Churches and other places of religious assembly <u>WITHIN 200' of residential zones</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	•

7

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; • - Prohibited

**ATTACHMENT 2**

**PLANNING COMMISSION MEETING MINUTES AND  
STAFF REPORTS**

ORDINANCE REGARDING  
CHURCHES/PLACES OF  
RELIGIOUS ASSEMBLY IN  
COMMERCIAL ZONES

City

The Chair opened the public hearing for consideration of an ordinance regarding Churches/Places of Religious Assembly in Commercial Zones for the City Council of the City of Costa Mesa California, amending Title 13 of the Costa Mesa Municipal Code. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

There was discussion between Vice Chair Hall and Ms. Brandt regarding hours of operation.

In response to a question from Commissioner Fisler regarding a definition for a church or religious use, Ms. Brandt explained that there is no proposal for a definition of church or places of religious assembly as part of this zoning code amendment, nor does one currently exist in the zoning code. Commissioner Fisler asked how someone would prove they are a church in order to open a church in a commercial zone if it's permitted by right without definition. Deputy City Attorney Tom Duarte explained that in the absence of a local ordinance, the State statute or federal law would be utilized. Commissioner Fisler said if a church is one with religious beliefs that included the use of "peyote", would it be legal? Mr. Duarte said he believed there are federal and state statutes prohibiting that. There was also discussion between Commissioner Fisler and Mr. Duarte regarding illegal aliens sanctioned in the church and possible consequences.

In response to a question from the Chair regarding the need for a CUP by churches in relation to the current code, Mr. Brandt explained that in the Land Use Matrix within the zoning code, a church or place of religious assembly requires a conditional use permit in all zoning districts with the exception of the I&R zone (Institutional and Recreational). In that zone they are required to have a master plan approval that goes to the Planning Commission. In response to the Chair's question regarding adding conditions stating that the church may not allow people seeking refuge to stay overnight, Mr. Duarte explained that anytime there is a legislative body deciding on conditions for a conditional use permit it is legal to place conditions on the applicant for the use of that property. The Chair discussed Trinity Broadcasting and asked again about restraints. Mr. Duarte said the Commission has the authority to place conditions, but nothing contrary to what the state and federal law allows.

In response to a question from Commissioner Egan regarding clarification of conditional uses where the Commission adds conditions, however, if the use is permitted, Commission would not have that opportunity. Mr. Duarte stated that her statement was correct and

they are permitted in the I&R zone as a matter of right. If there is a CUP, they can be conditioned in accordance with state and federal law.

Commissioner Garlich wished he could accomplish due diligence on this matter in a study session and/or perhaps a closed study session with staff.

Judy Berry, 2064 Meadow View Lane, Costa Mesa, felt more definition should be made in order to be a religious organization. She felt some of these organizations are just a front for charities. She detailed her reasons for not wanting churches and/or places of religious assembly in commercial zones. She also felt the Commission should not be using the City Attorney's documents to make decisions if those documents aren't available to the public. She said the City has the right to waive the privilege of confidential documents. The Chair explained to Mrs. Berry that the Commission has had no closed sessions, but had their normal dinner session this evening that is open to the public. Mr. Duarte said with regard to the waiving of privilege, there is case law and statutory law and offered to discuss it with her later. He added that the legislative body can waive (depending on who the holder of the privilege is) that privilege.

Martin Millard, 2973 Harbor Boulevard, Costa Mesa, said he was concerned that the City Attorney is relying upon the confidential memorandum. He said he studied religion and first amendment issues, and he is hearing from the dais that one religion has to be treated exactly the same as all other religions. Mr. Millard felt if this were allowed to happen, it would create storefront churches and chase away businesses in the commercial area, including a decline in the tax roll. He believed the City should retain the current CUP process so that churches/places of religious assembly cannot become storefront businesses. He felt the City Attorney's office is getting involved in a political decision and not a legal one.

Mike Berry, 2064 Meadow View Lane, Costa Mesa, also felt that commercial zoning is for commercial businesses. He said he hoped the Commission would reject this request this ordinance.

Beth Refakas, 320 Magnolia Street, Costa Mesa, reiterated previous testimony and added that churches created a lot of noise, loitering, and they actually have people staying there overnight. She said there is also a lot of excess trash, overflow parking into residential neighborhoods, etc., and the CUP is a way to mitigate those things. She also felt the onset of putting churches into commercial zones has something to do with the City Attorney's Office and would also like to see the report as referred to by previous speakers.

No one else wished to speak and the Chair closed the public hearing.

Commissioner Egan said this item needs more discussion as to whether we should act in the first place, and whether C1 and C2 are the appropriate locations. She said the Commission was not in a position to discuss the confidential legal advice that was received, nor is the Planning Commission empowered to waive the attorney/client privilege.

MOTION:  
Churches/Places of Religious  
Assembly  
No vote was taken

A motion was made by Commissioner Egan, and seconded by Commissioner Garlich, to table the matter until such time as the City Council gives the Commission direction to move forward.

During discussion on the motion, Commissioner Garlich asked, suppose the Council doesn't do that, what happens next? Ms. Brandt requested more information from Commissioner Egan such as a time frame and whether there is direction to staff to bring this information to City Council. Commissioner Egan said her motion to "table" is to set the matter aside indefinitely; any member of this body can call it forward again, and/or on a majority, remove the matter from the table and replace it on the agenda. What she would envision would be that either the Council would give the Commission direction to move forward with some understanding as to whether the legal advice can be discussed and what the options are. She said she would then be ready to move forward, but until then she did not see how that could be done. She said there is no opportunity here for a proper open public discussion; nor, can the Commission explain why this item is before the Commission.

SUBSTITUTE MOTION:  
Church/Places of Religious As-  
sembly in Commercial Zones  
Recommended retaining existing  
zoning provisions

A motion was made by Vice Chair Hall, seconded by Commissioner Fisler, and carried 3-2 (Garlich and Egan voted no) to recommend to City Council that the City's existing zoning provisions be retained.

During discussion on the motion, Vice Chair Hall said that Commissioner Egan asked about churches in industrial zones. He noted that we have already granted CUP's for churches in industrial zones. He noted staff's comments on Commissioner Egan's question where the issue of incompatibility was pointed out for industrial zones—he asked if we could imagine the incompatibility on adjacent business activities in commercial zones. Storefront churches are normally "nonprofit" operations which will probably receive grant funds and could easily become a "defacto job center" therefore, he said he saw no reason to give them permitted use status

Commissioner Fisler stated he seconded this motion, and as he previously stated, he is not against CUP's as a whole, because they do condition the use and in this case, a CUP is definitely called

for. He said the land use issues are best addressed through the discretionary review process.

Commissioner Garlich stated that he did not support the motion, but he may get to that point where he will. At this time, however, he did not have enough information, nor has he had the opportunity to gather the information either in a public or closed session fashion. He felt to have an informed decision, he had to have one or the other, and could not support that motion at this time.

Vice Chair Hall asked how many requests for CUP's for "religious activities" (churches/places of religious assembly) have been applied for in the past year? Ms. Brandt said she did not believe there have been any applications in this past year; the most recent was for the Crossings Church located at 2115 Newport Boulevard in a commercial zone. He asked how many CUP's in the last 5 years have not been granted? Ms. Brandt stated there were none denied for a church or place of religious activity. He asked about the past 50 years? Planning Commission Secretary R. Michael Robinson stated that from his own recollection, he does not believe the City has ever denied a CUP, but may have modified some over the years to suit the neighborhood. Vice Chair Hall confirmed with Mr. Robinson, that this in no way has ever been an undue burden on anyone requesting a CUP for legitimate religious activity. Further, he said he could not see how any "secret memo" could tell him that would change his mind because he is totally against the idea of permitting this in C1 and C2 zones. He said CUP's have worked admirably in the past and he saw no reason they would not work in the future and there is no undue burden placed on these activities.

Commissioner Fisler asked if neighboring cities permit by right, churches in commercial zones. Ms. Brandt said she did not have that information. Commissioner Fisler asked if everyone in a commercial zone were required to have a conditional use permit, what would that encompass for the City. Ms. Brandt stated that there are a variety of uses called out in the zoning code; approximately 155-160 different types of uses with a variety of ways of processing them: either as permitted by right; a minor conditional use permit, which is through the Zoning Administrator; and a conditional use permit which comes before Planning Commission. She said there are some uses that are prohibited outright. It would be a substantial departure from the current Land Use Matrix, but it is certainly something the Planning Commission could recommend to City Council. She believed it would have implications on the Planning Commission, as well as the staffing.

Vice Chair Hall said he had no difficulty in making this motion and making this decision without considering any of the City Attorney's comments in their memo. Having read those, it does not

change his mind at all.

The Chair said he was troubled with both motions. He is pretty passionate when it comes to religious things and he did not think they should be charities, or that one should be able to walk in and be fed a meal. He said they cook food at his church but there is not someone there 24 hours a day.

The Chair also discussed both sides of the motion on the floor. He said he did not believe more discussion is needed and believed that churches can hide themselves under the name of "churches" and could become problems if left unchecked. He agreed with Vice Chair Hall's statements and supported his motion.

Ms. Brandt stated that this would be forwarded to City Council on their agenda of Tuesday, October 18, 2005.

In response to the Chair, Mr. Duarte confirmed that the Council could overturn the Commission's decision and/or send it back. He said this was a recommendation to City Council.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

place, the problem is exacerbated.

Commissioner Garlich noted that the President signed the Transportation Bill that Congress finally processed within the last two weeks. He said in Costa Mesa that bill was the means to eventually obtain approval for the Susan Street off ramp which will service the Home Ranch project and was something discussed during the Home Ranch hearings but was not a mitigation measure or an element of the development agreement; it was the developer's private funding that was going to do that. In this particular case, this was the mechanism by which the private sector would get to build an off-ramp that will take a lot of the incoming traffic off the arterials in that area of Costa Mesa.

Vice Chair Hall stated that yesterday's Orange County Register printed and evaluation of the police agencies throughout Orange County and were divided into small, medium and large cities with different populations. He announced that the City of Costa Mesa is number one in the County for cities with more than 100,000 population (response time, solving crimes, etc.) with a 5-star rating for Chief John Hensley.

**CONSENT CALENDAR:**

None.

**PUBLIC HEARINGS:**

AN ORDINANCE  
AMENDMENTS REGARDING PLACES OF  
RELIGIOUS ASSEMBLY IN COMMERCIAL  
ZONES, INCIDENTAL RETAIL SALES IN  
INDUSTRIAL ZONES, MASTER PLAN  
REVIEW PROCESS IN PLANNED  
DEVELOPMENT ZONES AND CHAIN LINK  
FENCING IN NONRESIDENTIAL ZONES  
CITY

W

The Chair opened the public hearing for consideration of an ordinance of the City Council of the City of Costa Mesa, California, amending Title 13 of the Costa Mesa Municipal Code regarding churches/places of religious assembly in commercial zones, incidental retail sales in industrial zones, the master plan review process in planned development zones, and chain link fencing in non-residential zones. Environmental determination: exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a brief overview of each of the four amendments in the ordinance. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

In response to a question from Commissioner Fidler concerning applications for churches in commercial zones, Ms. Brandt stated that in recent history, the churches reviewed by Planning Commission have been located in industrial zones and she knew of none-recently that were within a commercial zone, and none pending at this time.

In response to a question from the Chair, Ms. Brandt explained that these amendments came from Planning Division staff in consultation with the City Attorney's Office regarding the permitting of churches within the City's Zoning Code Matrix. Deputy City Attorney Tom Duarte stated that this was his understanding as well. He stated that City Attorney Kim Barlow generated the first part of the ordinance. He said if the Chair needs additional background as to the reasons, the City Attorney's Office would be happy to bring back a memo in addition to the staff report. The Chair asked Mr. Duarte if he knew of any other cities in Orange County that have something similar in relation to religious activities or churches. Mr. Duarte did not know of any at this time, however, he said they do represent a few other cities but he did not have those code sections memorized. Vice Chair Hall asked the Chair if he was specifically talking about the churches or the full ordinance. Chair Perkins said he was speaking about all items and asked Mr. Duarte if they were doing all four at once because it would go more smoothly. Mr. Duarte explained that it was being reviewed as presented since it was noticed that way, but he said the Commission has the right to break it up if they so desire.

Mike Berry, commented that he did not understand why the City is "streamlining" a process. He said one of the problems in Costa

Mesa is that the City is built out and there is no place left to put anything, yet every time we take a piece of property and move it into a "non-taxed" use, we take money out of our own pockets. He felt there should be a public hearing.

Martin Millard, 2973 Harbor Boulevard; Costa Mesa, felt it was a mistake to recommend this ordinance to City Council and agreed that CUP process should be instituted to review the applicants. He also felt this action would allow "store front" churches. He said most give out food or other benefits and attracts a population that may need churches, but also needs food and other things and the churches become that kind of place. He also felt the words "final authority" should be changed in item #3 under Description 3.; "To designate the Planning Commission as the final review authority in the master plan review process" and should instead read "primary review authority."

Christian Eric, a Placentia Avenue resident, Costa Mesa, felt it was wrong for the City to be putting churches into storefront properties. He asked the Commission not to allow this kind of thing to come about.

Beth Refakas, 320 Magnolia Street, Costa Mesa, agreed with the previous speakers regarding the churches. She also felt chain link fencing should be phased out completely and more expediently than is called for in the ordinance.

Council Member Eric Bever stated that in reviewing the staff report for this item, he felt it was lacking in certain regards. He said generally, when something of this nature is brought forward, there is some basis for the change. He said his understanding is that the City has not addressed a storefront church issue in a commercial C1 or C2 zone in the last 5 years. Council Member Bever said he did not know if the Commission had received a memorandum from Mayor Monsoor concerning this issue and urging the Planning Commission to set this aside. He said he concurs with the Mayor's request and they have been unable to find the basis of this suggested change, and without that, he did not know how it was possible for the Planning Commission to deliberate. He pointed out what he believed to be an error in the report and wished to clarify. The Chair confirmed that the Planning Commission received the Mayor's memorandum.

No one else wished to speak, and the Chair closed the public hearing.

A motion was made by Vice Chair Hall, to continue this item to the meeting of September 26, 2003 with the ordinance divided into 4 separate items.

A motion was made by Chairman Perkins, seconded by Vice Chair Hall, to take each individual item and vote on each separately to continue to the Planning Commission meeting of September 26, 2005 and directed staff to separate into four action items. *This motion was not called before a substitute motion was made.*

Commissioner Egan said she thought the Chair had seconded Vice Chair Hall's motion and had she known it had not been seconded, she would have done so. She said she would like to see the entire public hearing for item #1 be continued to September 26, 2005, because they could be discussed and voted on individually. She was asked if that was a motion and she agreed. The motion was seconded by Vice Chair Hall and carried 3 to 2 (Perkins and Fisler

MOTION 1: PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES; INCIDENTAL RETAIL SALES IN INDUSTRIAL ZONES; MASTER PLAN REVIEW PROCESS IN PLANNED DEVELOPMENT ZONES; AND CHAIN LINK FENCING IN NONRESIDENTIAL ZONES

FAILED FOR LACK OF A SECOND

MOTION 2: PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES; INCIDENTAL RETAIL SALES IN INDUSTRIAL ZONES; MASTER PLAN REVIEW PROCESS IN PLANNED DEVELOPMENT ZONES; AND CHAIN LINK FENCING IN NONRESIDENTIAL ZONES

MOTION WAS NOT CALLED

SUBSTITUTE MOTION: PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES; INCIDENTAL RETAIL SALES IN INDUSTRIAL ZONES; MASTER PLAN REVIEW PROCESS IN PLANNED DEVELOPMENT ZONES; AND CHAIN LINK FENCING IN NONRESIDENTIAL ZONES

CONTINUED

voted no).

During discussion on the motion, Commissioner Garlich felt this motion was the appropriate action. He said whether they are brought back separately, or in any other variation, they can be discussed independently of each other as has been done in the past; each one can be called for on a separate vote regardless of how they are packaged. He said he supported the motion.

Chair Perkins said he was not going to support the substitute motion this evening because he would like to take care of this item this evening. He commented on how easy it is to start a church and he did not want to see storefront churches in Costa Mesa. He maintained there was not enough background on the church item.

Commissioner Fisler said that previously he had asked Ms. Brandt how many people have applied for a church in the commercial zone because in order to find out the reason why this item is before the Commission. He said personally, he would like to reject this part of the ordinance this evening.

Commissioner Garlich stated that with regard to the item concerning churches, the issue the Commission is dealing with is whether they are permitted or whether they are a conditioned use. One of the things he would like to find out when more information is provided, under the heading of "background", is whether any of the things just said can be legally considered under a conditional use permit. He felt it would be better to have additional information to make a more informed decision on what the Commission is doing and why.

The Chair clarified with Ms. Brandt, a scenario of a church that would meet all requirements and standards to this point and as a result is permitted and would not have to come before the Commission.

Commissioner Egan explained that there are many things that could be done other than this ordinance and other than continuing with the current process. For example, as Mr. Millard suggested, concentrate churches by having an overlay zone where they would be permitted. She felt that when Kim Barlow returns, she may send the Commission a memo saying that an amendment to the current ordinance is legally required; if that is the case, the Commission needs to look at amending it.

The Chair said he appreciated Commissioner Egan's comments, but he would rather vote on it now, and if Ms. Barlow brings it back and says it's constitutionally incorrect and the Commission needs to make some changes, then it will make changes. He said Mr. Millard mentioned different areas of concentration and he agreed, but he said those are "spread out" areas; they're not right on top of each other. He said he felt the same way. He then called for the vote (3-2, as shown above).

The Chair opened the public hearing for consideration of an ordinance of the City Council of the City of Costa Mesa, California, amending Title 20 of the Costa Mesa Municipal Code regarding trash dumpsters/bins and trash enclosures. Environmental determination: Exempt.

Principal Planner Kimberly Brandt reviewed the information in the staff report and gave a presentation. She said staff was recommending that Planning Commission recommend to City Council to give ordinance first reading.

In response to a question from Commissioner Egan regarding a provision for a property owner who has an unusual hardship and to

AN ORDINANCE:  
AMENDMENTS REGARDING TRASH  
DUMPSTERS/BINS AND TRASH  
ENCLOSURES

CITY

# City of Costa Mesa

## Inter Office Memorandum

**To:** Planning Commission

**From:** Kimberly Brandt, Principal Planner 

**Date:** September 20, 2005

**Subject:** SUPPLEMENTAL MEMORANDUM  
ORDINANCE REGARDING CHURCHES AND PLACES OF RELIGIOUS  
ASSEMBLY IN COMMERCIAL ZONES  
PLANNING COMMISSION MEETING OF SEPTEMBER 26, 2005

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Commissioner Egan inquired whether a church/place of religious activity should be allowed as a permitted use in the industrial zones (MG, MP, or PDI) as opposed to the commercial zones. She stated that industrial development lots are typically larger and generally religious activities occur in the evening and/or weekends, which can help in meeting the anticipated parking demand.

Staff agrees that industrially zoned properties can be well suited for churches/places of religious assembly land uses. Staff's primary concern in allowing this land use by right in an industrial zone, is the potential for land use incompatibility issues with adjacent industrial uses. This will vary by location and the type of activities that will occur in conjunction with the proposed church/place of religious activity. Staff believes that land use compatibility issues are best addressed through a discretionary review process.

In the proposed ordinance, a church/place of religious activity may only be allowed by right in either the C1 or C2 zones, if the property is not located within 200 feet of residentially zoned property, and the City's parking requirement is met. For this land use, the City requires 1 parking space for every 3 fixed seats in the main assembly area or 1 space for every 35 square feet of seating area if there are no fixed seats.



# PLANNING COMMISSION AGENDA REPORT

MEETING DATE: SEPTEMBER 26, 2005

*III.2.*  
ITEM NUMBER:

**SUBJECT:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES.

**DATE:** SEPTEMBER 15, 2005

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER  
(714) 754-5604

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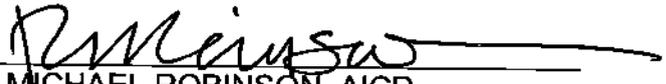
## DESCRIPTION

An ordinance to allow churches and other places of religious assembly as permitted uses in some commercial zones.

## RECOMMENDATION

Staff recommends that Planning Commission recommend to City Council that the ordinance be given first reading.

  
KIMBERLY BRANDT, AICP  
Principal Planner

  
R. MICHAEL ROBINSON, AICP  
Assistant Development Svs. Director

**BACKGROUND**

Periodically, staff addresses minor Zoning Code amendments through a single ordinance. Through the course of administering the Zoning Code, staff notes sections that need to be amended in order to clarify the Code's intent or streamline the development review process. A discussion of each change is provided in the following section.

**ANALYSIS**

Presently, the Zoning Code requires a conditional use permit for this land use in all zones except the I&R (Institutional and Recreational) district. Staff recommends that churches/places of religious assembly be permitted land uses in the C1 and C2 commercial zones, provided that they are located a minimum of 200 feet away from any residential zone and they comply with all other applicable code standards including parking. Staff believes it is only when churches/places of religious assembly are located in proximity to residential or industrial uses that there is a potential for land use compatibility issues. These issues are usually unique to a site, and therefore, they are best addressed through the conditional use permit process. This code change will streamline the review process for churches/places of religious assembly if they locate in a C1 or C2 zone, comply with all other applicable code standards, and the proposed site is not within 200 feet of a residential area.

The City Attorney's Office has also provided a discussion on this ordinance. This report is under separate cover.

**ALTERNATIVES CONSIDERED:**

Commission may choose to do any of the following:

1. Recommend to Council that first reading be given to the ordinance as recommended by the staff;
2. Modify any of the recommended changes to the ordinance; or
3. Recommend to Council that the City's existing zoning provisions be retained.

**ENVIRONMENTAL DETERMINATION**

This code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

Attachments: ~~1. Proposed Ordinance - (strike-through version)~~

Distribution: Deputy City Manager - Dev. Svs. Director  
 Senior Deputy City Attorney  
 Public Services Director  
 City Engineer  
 Fire Protection Analyst  
 Staff (4)  
 File (2)

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# **PLANNING COMMISSION AGENDA REPORT**

*JL I.*

MEETING DATE: AUGUST 22, 2005

ITEM NUMBER:

**SUBJECT:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES, INCIDENTAL RETAIL SALES IN INDUSTRIAL ZONES, THE MASTER PLAN REVIEW PROCESS IN PLANNED DEVELOPMENT ZONES, AND CHAIN LINK FENCING IN NON-RESIDENTIAL ZONES.

**DATE:** AUGUST 11, 2005

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER  
(714) 754-5604

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## **DESCRIPTION**

Several amendments to the Zoning Code are proposed to accomplish the following:

1. To allow churches and other places of religious assembly as permitted uses in some commercial zones;
2. To allow incidental retail sales in conjunction with industrial businesses in industrial zones;
3. To designate the Planning Commission as the final review authority in the master plan review process; and
4. To prohibit chain link fencing in any area that is visible from a public street or alley in non-residential zones.

## **RECOMMENDATION**

Staff recommends that Planning Commission recommend to City Council that the ordinance be given first reading.

  
KIMBERLY BRANDT, AICP  
Principal Planner

  
R. MICHAEL ROBINSON, AICP  
Assistant Development Svs. Director

## BACKGROUND

Periodically, staff addresses minor Zoning Code amendments through a single ordinance. Through the course of administering the Zoning Code, staff notes sections that need to be amended in order to clarify the Code's intent or streamline the development review process. A discussion of each change is provided in the following section.

## ANALYSIS

1. *To allow churches and other places of religious assembly as permitted uses in some commercial zones:* Presently, the Zoning Code requires a conditional use permit for this land use in all zones except the I&R (Institutional and Recreational) district. Staff recommends that churches/places of religious assembly be permitted land uses in the C1 and C2 commercial zones, provided that they are located a minimum of 200 feet away from any residential zone and they comply with all other applicable code standards. Staff believes it is only when churches/places of religious assembly are located in proximity to residential or industrial uses that there is a potential for land use compatibility issues. These issues are usually unique to a site, and therefore, they are best addressed through the conditional use permit process. This code change will streamline the review process for churches/places of religious assembly if they locate in a C1 or C2 zone and the proposed site is not within 200 feet of a residential area.
2. *To allow incidental retail sales in conjunction with industrial businesses in industrial zones:* This amendment would allow industrial business owners that wish to sell retail products, which relate to their primary business without going through a discretionary review process. Examples include clothing and furniture manufacturers/distributors or cabinetmakers that wish to have a small showroom or an auto repair shop that sells replacement parts. The code amendment limits the retail sales area to 20% of the gross floor area and requires the retail products to be related to the primary industrial use.
3. *To designate the Planning Commission as the final review authority in the master plan review process:* The most recent Zoning Code amendments (Ordinance 05-2) changed the master plan review process in all zones to designate the Commission as the final review authority and Zoning Administrator would be the final review authority for amendments. Subsequent to the code change, staff identified other code sections that need to be amended as well to reflect the delegation in the final review authority.
4. *To prohibit chain link fencing in any area that is visible from a public street or alley in non-residential zones:* Presently the Zoning Code allows chain link fencing in non-residential zones as long as it is not located in any required building setback area adjacent to a public right-of-way. This amendment would be consistent with the current standard for residential zones. Staff is proposing that the current requirement that existing chain link fencing in residential zones be removed in conjunction with building permits that are valued at \$30,000 or more be expanded to include removal of chain link fencing in nonresidential projects as well.

**ALTERNATIVES CONSIDERED:**

Commission may choose to do any of the following:

1. Recommend to Council that first reading be given to the ordinance as recommended by the staff;
2. Modify any of the recommended changes to the ordinance; or
3. Recommend to Council that the City's existing zoning provisions be retained.

**ENVIRONMENTAL DETERMINATION**

These code amendments have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and have been found to be exempt.

Attachments: ~~1. Proposed Ordinance - strike-through version~~  
~~2. Existing Zoning Code Provisions~~

Distribution: Deputy City Manager - Dev. Svs. Director  
 Senior Deputy City Attorney  
 Public Services Director  
 City Engineer  
 Fire Protection Analyst  
 Staff (4)  
 File (2)

File: 082205Title13Amendments	Date: 080905	Time: 11:00 a.m.
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**ATTACHMENT 3**  
**CORRESPONDENCE**

-----Original Message-----

**From:** millard6 [mailto:millard6@pacbell.net]  
**Sent:** Wednesday, September 28, 2005 2:55 PM  
**To:** PLANNING COMMISSION  
**Subject:** Storefront churches fyi

September 28, 2005

Dear Mayor Mansoor and City Council:

Subj: 1. Request to make confidential report public  
2. Request that City specify authorities in Agenda Reports and not mix unrelated issues

1. This is a request that the City Council waive its Attorney/Client privilege relevant to a confidential report sent to the City Council by City Attorney Kim Barlow regarding Item Number VII-2, which was before the Planning Commission on September 26. The full name of this item is: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES. This item is apparently scheduled to go before the City Council for a vote at your regularly scheduled meeting on October 18, 2005. Members of the public have expressed much interest in this item.

At the September 26, Planning Commission dinner session, the public was invited by both Ms. Barlow and Mr. Duarte to call their office to learn what authority Ms. Barlow was relying on to keep her report confidential. When I called Ms. Barlow on September 27, she was abrupt and told me that her confidential report is protected by Attorney/Client Privilege and as Attorney Work Product. Ms. Barlow did not offer reasons for confidentiality that might be based in privacy or other concerns extrinsic to the two reasons given. She also agreed, however, that the City Council, as a holder of the privilege, may waive the privilege. Ms. Barlow also indicated that the original request to change our CUP process originated with Ms. Barlow and was a result of Ms. Barlow reviewing our municipal codes. This seems to be at odds with a statement made to me by Ms. Brandt prior to the first time this issue was before the Planning Commission at the Commission's August 22, 2005 meeting. At that time, if I understood her correctly, Ms. Brandt told me that the change to the CUP process was suggested by staff and that Ms. Barlow then offered comments and/or reviewed the recommendation for legal sufficiency. "Staff," in this case, was further delineated to me, by Ms. Brandt, as meaning Ms. Brandt, Mr. Lamm and Mr. Robinson. It would be nice to know who actually did initiate this matter and why it was brought forward at this time.

I believe that in the interest of good government, and to build trust in our public officials, that the City Council should waive the privilege in this case and let the public see Ms. Barlow's confidential report so it may be researched before this matter comes before the City Council. I make this request based on the fact that this confidential report is apparently not a personnel matter, and apparently has not been sent in respect to pending litigation or other sensitive areas that one might reasonably want and expect to remain confidential. Without being able to view the confidential report, the public is simply left to guess at Ms. Barlow's, or staff's, reasons for bringing this matter forward at this time and about why Planning Commissioners voted as they did on September 27, and why Councilmembers will vote a certain way on October 18.

While I understand Attorney/Client privilege and the need for it in many cases, I wonder, in this case, if keeping this matter secret from the public is the best way to have open government that serves and includes the

09/29/2005

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governed, or whether this may lead Costa Mesa further down the path to routinely and reflexively claiming many important matters are confidential or secret so the public is effectively locked out of the process until whatever is decided is decided. The secret Job Center committee comes immediately to mind in this regard.

In general, and leaving the specific above referenced confidential report aside for a moment, it appears that such confidential reports delivered to any City Council and any Planning Commission, composed mainly of non-lawyers, might tend to cause these non-lawyers—who do not have the time to personally research all the statutory and case law that may be cited—to make policy decisions based on an appeal to authority or presumed superior knowledge of the subject matter possessed by the originator of the confidential report, rather than through a robust deliberative process based not only on a confidential report, but also on the facts as discovered through independent investigation and informed citizen input.

By allowing reports on such matters regarding public policy to remain confidential, there is the possibility of abuse of the political system in that this could cause an undue influence on how policy issues are handled by the deliberative bodies in matters that may have political and social implications for the City. During this truncated process made anemic and one dimensional by such a confidential report, concerned citizens who wish to comment to the City Council and the Planning Commission, are put at a disadvantage because they don't have the information that has been given to the City Council and the Planning Commission and they are thus unable to research and rebut, if necessary, assertions and assumptions made in such confidential reports.

Although Ms. Barlow refused to give me any information at all about her confidential report, my guess, given the subject matter of this item, is that it is related to the Religious Land Use and Institutionalized Persons Act of 2000 (hereafter, RLUIPA). I further surmise that Ms. Barlow may have cited Cutter v. Wilkinson, the major case to date on this act, as one of the primary reasons for writing and sending the confidential report and asking that the Planning Commission, and ultimately the City Council, change our CUP process to allow churches and religious assemblies to be permitted land uses in C1 and C2 commercial zones without requiring CUPs.

If my guesses are correct, I don't understand why this issue has surfaced at this time. It is my understanding that in Cutter, the U.S. Supreme Court upheld the constitutionality of the RLUIPA with respect to the rights of institutionalized persons, but did not address the land use issues. It is also my understanding that the latest action on Cutter was on September 13, when the Sixth Circuit, which had the case on remand from the U.S. Supreme Court, also ruled on aspects relating to institutionalized persons, but, as with the Supreme Court, the Sixth Circuit also did not address the land use issues.

Assuming, again, that Ms. Barlow's confidential report is related to the RLUIPA, it would be helpful if the public were allowed to know any other cases besides Cutter. (if, in fact, Cutter was cited by Ms. Barlow), that Ms. Barlow might be relying on, and which she may have referenced in her confidential report, so the public may research, distinguish, and intelligently comment on these cases before the City Council votes on this matter that may have various consequences for the quality of life of Costa Mesa citizens.

2. In the aforementioned Planning Commission Agenda Report available to the public for this item, the only notice to the public that there was more information available to the Planning Commission than was available to the public were these two toss-away sentences appearing at the end of the Analysis section: **"The City Attorney's Office has also provided a discussion on this ordinance. This report is under separate cover."** (emphasis added)

After reading those two sentences, I contacted Ms. Brandt to obtain and review a copy of the report as part of my preparation to discuss the issue with the Planning Commission at their meeting. Only then did I learn that this was a confidential report and that the public wasn't allowed to see it.

I believe that the public interest would be better served if the City Attorney and Staff would indicate in the Agenda Reports when something is confidential and if they would give the legal citations and specific reasons for the confidentiality. If attorney/client confidentiality or attorney work product are the reasons for the public not being able to see the confidential material, then this should be shown. If there are other reasons, then, just as when a closed session is called, the proper legal citations for the session should be indicated.

In summation, and to repeat my two main points:

1. I believe this requested CUP change has potential political and quality of life ramifications and that the public should be allowed to see the confidential report from Ms. Barlow. This would allow the public to play a meaningful part in the process and to intelligently present aspects of this issue to the Council that might help the Council with

its deliberative process.

2. I also believe, that in the future, the public interest would be better served if proper legal citations are used in the staff reports when material is being withheld from the public and that it be clearly indicated that the material is being withheld from the public. In addition, it would be helpful if staff did not mix several unrelated issues and then ask for a single up or down vote on all unrelated issues when any of the unrelated issues may be far weightier than the others and have far reaching consequences. In this regard, and as you probably know, when the matters that are the subject of this present letter were originally presented to the Planning Commission at their meeting of August 22, staff included this issue of **churches and our CUP process** with issues about **chain link fences, retail sales in industrial zones, and the designation of the Planning Commission as the final review authority in the master plan process**, and sought a single vote on these very different issues.

Respectfully,

M. H. Millard

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**CITY OF COSTA MESA  
CITY MANAGER'S OFFICE  
INTEROFFICE MEMORANDUM**

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**TO: PLANNING COMMISSION**   
**FROM: MAYOR ALLAN R. MANSOOR**  
**DATE: AUGUST 19, 2005**  
**SUBJECT: REQUEST TO PULL PUBLIC HEARING #1 FOR THE PLANNING COMMISSION MEETING OF AUGUST 22, 2005**

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Upon review of the Commission's agenda for August 22, 2005 and the staff report prepared for Public Hearing #1 (Ordinance amending Title 13 regarding churches/places of religious assembly in commercial zones), I respectfully request that the Commission pull this item from your agenda.

To date, the City Council has not been appraised of the basis for the proposed change in permitted zoning for churches and places of religious assembly. It is my understanding that the City Attorney's Office has some concerns relative to our existing zoning regulations in this regard, yet those concerns are not addressed in the staff report. Given the sensitivity of this subject generally, I would ask that this item be pulled from your agenda so that the City Attorney's Office can provide a briefing to the City Council before proceeding with this zoning code change.

Please understand that I am not prejudging the wisdom of the proposed change but simply the legal basis behind it.

Thank you for your consideration of this request.

c: City Council  
City Manager  
Development Services Director  
City Attorney  
City Manager  
✓ Assistant Development Services Director

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**CITY OF COSTA MESA  
CITY MANAGER'S OFFICE  
INTEROFFICE MEMORANDUM**

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TO: PLANNING COMMISSION  
FROM: COUNCIL MEMBER KATRINA FOLEY   
DATE: AUGUST 22, 2005  
SUBJECT: CONSIDERATION OF REQUEST TO PULL PUBLIC HEARING #1 FOR THE  
PLANNING COMMISSION MEETING OF AUGUST 22, 2005

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I understand that there has been a request by the Mayor to pull Public Hearing #1 from tonight's Planning Commission agenda pending direction from City Council.

While I appreciate and respect the Mayor's right to make the request, I wanted to let you all know that I do not believe it is necessary to forgo the public hearing on this item tonight. The item will go to the City Council for final approval and the Council has discretion to consider and accept the Planning Commission recommendation or some part of it, or reject it and do something entirely different.

I believe such a delay is a waste of staff and community resources, as well as expenses relating to notice. Whatever your position is on this proposed change, to have this item go to the City Council for direction to the Planning Commission and then back to the Planning Commission for hearing and then again back to the Council for final action is unnecessary and unduly delays the process.

I encourage you to conduct a public hearing on the matter at your meeting tonight and make a recommendation so that we can efficiently process this agenda item and not waste taxpayer dollars.

Thank you for your service and consideration.

c: City Council  
City Manager  
Development Services Director  
Assistant Development Services Director  
City Attorney