

WARRANT INFORMATION November 5, 2013

Payment Ref.	Date	Remittance to:	ID:	Payment Amount	Explanation of payment
2495					
0175429	10/11/13	Create A Party Rentals	10210	\$571.18	<p>What is this for? Recreation Hank Lloyd Tennis Tournament</p> <p>The City budgets each year \$750 for rentals for the annual CM Golf Tennis Tournament. The \$571.18 is the amount the City is reimbursing the Tennis Center for the rental of chairs, tables, sound system, etc.</p>
0175442	10/11/13	Faronics Technologies USA	18659	\$149.60	<p>What is this for?</p> <p>Finance Deep Freeze licenses - This warrant is for a piece of software called Deep Freeze. Essentially what Deep Freeze does is prevent any software changes to the system that it is installed on. This helps prevent critical systems from being changed or altered which could prevent them from functioning properly. Currently we use this software in our PD patrol cars and 2<sup>nd</sup> floor laptops.</p>
0175477	10/11/13	Pringles	3683	\$3,496.99	<p>What is this for and where?</p> <p>Fire Station #5, Vanguard</p> <p>Replacement of horizontal blinds and roller shades for all rooms. Take down old and install new.</p>

0175523	10/18/13	Bear Valley Waterfeatures	21728	\$17,745.00	<p>What is this for?</p> <p>Maintenance Services</p> <p>The warrant was for partial payment for contracted work to install large isolation valves and underground filter structure for the TeWinkle Park Lakes. This project designed and installed protection for the pumping system to eliminate repetitive damage to the two large pumps providing circulation to the lakes.</p>
0175564	10/18/13	CBI Noor Inc	18684	\$8,962.00	<p>What is this for?</p> <p>Engineering, Parks</p> <p>Smallwood Park meter installation. This is a Park Development project expense. A new electrical system was installed in the restroom as a part of the CDBG funded project included installation of a new electric meter to support park security lighting.</p>
0175638	10/18/13	Mark Sauer Construction	2916	\$951.00	<p>Was Historical Society consulted on how to repair adobe blocks? How was it determined who would do this work?</p> <p>Maintenance Services</p> <p>This payment was for repair work to the Estancia Adobe exterior brick work. Mark Sauer Construction was the contractor that did the exterior renovation a few years ago and has expertise in historical building renovation and was familiar with this building and the materials involved.</p>

**REVISED DOCUMENTS PERTAINING  
TO  
NEW BUSINESS ITEM 2**

**AMENDMENT OF CHAPTER IX OF  
TITLE 2 OF THE COSTA MESA  
MUNICIPAL CODE RELATING TO  
APPEAL, REHEARING, AND REVIEW  
PROCEDURES**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER IX OF TITLE 2 OF THE COSTA MESA MUNICIPAL CODE RELATING TO APPEAL, REHEARING, AND REVIEW PROCEDURE

WHEREAS, Chapter IX of Title 2 of the Costa Mesa Municipal Code provides for the review, appeal, and rehearing of decisions; and

WHEREAS, the City Council desires to amend Chapter IX to preserve the appeal and review procedures and remove the rehearing procedure.

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

Section 1. Chapter IX of Title 2 of the Costa Mesa Municipal Code is hereby amended as follows:

CHAPTER IX. APPEAL, ~~REHEARING~~ AND REVIEW PROCEDURE

- Sec. 2-300. Purpose.
- Sec. 2-301. Definitions.
- Sec. 2-302. City council review requests.
- Sec. 2-303. Procedure for appeal.
- Sec. 2-304. ~~Procedure for rehearing~~ Reserved.
- Sec. 2-305. Time limitations for appeals, ~~rehearings~~, and reviews.
- Sec. 2-306. Time limitation for issuance of permits.
- Sec. 2-307. Fees.
- Sec. 2-308. Notice of appeal, ~~rehearing~~ or review.
- Sec. 2-309. Person or body to hear an appeal or review a decision.
- Sec. 2-310. Exhaustion of administrative remedies.
- Sec. 2-311. Exclusive procedures.
- Sec. 2-312. Accrual of certain claims.
- Sec. 2-313. Limitations on judicial review.
- Sec. 2-314. Severability.
- Secs. 2-315—2-400. Reserved.

Sec. 2-300. Purpose.

The purpose of this chapter is to provide an orderly and fair method of appeal, ~~rehearing~~ and review of decisions of the staff, committees, commissions and council of the city.

Sec. 2-301. Definitions.

As used in this chapter, the following terms shall have the meanings set forth herein below:

- (1) *Affected person* means any person, including the applicant, any city staff member, committee, or commission who has an interest in the matter at issue or whose health, safety, or welfare may be affected by the decision.
- (2) *Appeal* means reconsideration, by a higher authority, of the specific facts and circumstances of any final decision made by the city, any of its employees, committees or commissions or by the redevelopment agency.
- (3) *Applicant* means the person who applied for or requested the decision or action which is the subject of the appeal, rehearing or review.
- (4) *Council* means the Costa Mesa City Council.
- (5) *Decision* means any final decision, finding, ruling, order or action.
- (6) *Permit*, as used in section 2-306, means anything referred to elsewhere in this Code as being a "permit" or "license."
- (7) *Person* shall have the meaning attributed in section 1-21 of this Code.
- ~~(8) *Rehearing* means reconsideration of a decision by the person or body having made the decision~~
- ~~(9)~~(8) *Review* means reconsideration of the decision of any city employee, committee, or commission requested by the city council, on its own motion, or upon request of any council member, in order to consider the decision and any broad legislative and policy factors involved.

Sec. 2-302. City council review requests.

Within the time limits set forth in section 2-305, the city council or any council member may request that a decision of any city employee, committee, or commission be reviewed by filing an application with the city clerk stating the reasons for the requested review. Said review will be conducted according to the procedures specified in section 2-303 and 2-309. The person or body to hear the review will be designated in the application by the person or body seeking such review and shall be as specified in section 2-309, unless the council as a whole specifies a higher level of review in the first instance.

Sec. 2-303. Procedure for appeal.

- (1) Any affected person may, within the time limits set forth in section 2-305, file an application for appeal with the city clerk. Said application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting an appeal.
- (2) If the appeal is to be heard by a person or body which conducts regularly scheduled meetings, the appeal shall be considered at the first regular meeting which follows receipt of the application by ten (10) or more days,

and which allows sufficient time for the giving of notice as required by section 2-308

- (3) If the appeal is to be heard by an individual or body which does not conduct regularly scheduled meetings, the appeal shall be considered not more than ten (10) days following receipt of the application; provided that the time period may be extended if necessary to allow the giving of notice as required by section 2-308
- (4) An appeal hearing shall consist of a new (i.e., de novo) hearing on the matter by the person or body specified in section 2-309. The appeal hearing shall be based on the following evidence:
  - (a) Any relevant evidence, including staff reports, etc., submitted at the time of the prior decision and at the appeal hearing, and
  - (b) Findings, if any, and decision of the person or body whose decision is being appealed.
- (5) Notwithstanding the provisions of this chapter, there shall be no right of appeal to the city council from a decision by a public officer designated by City Council Policy No. 100-7 on an application for a waiver of fees for use of a city owned public facility or show wagon. A decision pursuant to City Council Policy No. 100-7 shall be subject to California Code of Civil Procedure section 1094.6.
- (6) If the original decision being appealed involved issuance of any permit, license, or other entitlement or approval or requested some action by the city, the applicant for the original decision shall have the burden of proof to support the granting of the requested issuance, approval, or action at the appeal.

Sec. 2-304. Procedure for rehearing Reserved.

- ~~(1) Any affected person, or the city council or any council member, may within the time limits set forth in section 2-305 file an application for rehearing with the city clerk. The application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting a rehearing.~~
- ~~(2) The application shall be considered at the first regular meeting which follows filing of the application by ten (10) or more days, or shall be considered within ten (10) days if the person or body to whom the application is made does not hold regular meetings.~~
- ~~(3) To justify a rehearing 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 person or body failed to comply with the law, which~~

~~contention was not asserted at the earlier hearing. The person or body 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.~~

- ~~(4) If the person or body concludes the applicant has met the burden of justifying the rehearing, the rehearing will be scheduled for the next regular meeting which allows sufficient time for the giving of notice as required by section 2-308.~~
- ~~(5) No application for rehearing is required to be filed by any member of the city council or the redevelopment agency to allow the council or agency to take any new or different action on an item of city policy, agency policy, or a purely legislative function or decision, which does not involve a specific property owner, application, license or permit. The city council or redevelopment agency, respectively, may establish reasonable rules to restrict the number of times a particular policy or legislative decision may be considered by the city council or the redevelopment agency.~~

#### Sec. 2-305. Time limitations for appeals, ~~rehearings~~, and reviews.

All applications for appeals, ~~rehearings~~, and reviews must be filed, in writing, during regular business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, and within the time limits hereinafter set forth:

- (1) For all matters relating to the approval, disapproval or extension of tentative and parcel maps, within ten (10) days from the date of the final decision subject to appeal, ~~rehearing~~ or review.
- (2) For all other items, within seven (7) days from the date of the final decision subject to appeal, ~~rehearing~~ or review.
- (3) For all matters requiring approval by the city, its employees, committees, or commissions, ~~or council~~ and by the redevelopment agency, the time limits for all applications shall begin on the date of the later of the following:
  - (a) Final decision by the city, its employees, committees, or commissions ~~or council~~; or
  - (b) Final decision by the redevelopment agency.

If the final day for filing an application for appeal, ~~rehearing~~ or review falls on a holiday or weekend day when city hall is closed, the application shall be filed no later than the next business day.

#### Sec. 2-306. Time limitation for issuance of permits.

Where a permit is sought and its issuance is contingent upon obtaining a prerequisite permit, the permit sought shall not be issued until the expiration of the time limit for seeking an appeal, ~~rehearing~~, or review specified in section 2-305 applied to the

prerequisite permit. Provided, however, that if an application for appeal, ~~rehearing,~~ or review of the prerequisite permit is filed within the specified time limits, the permit sought shall not be issued until seven (7) days following the final decision on the appeal, ~~rehearing,~~ or review. Any permit issued in violation of the provisions of this section shall be void.

#### Sec. 2-307. Fees.

Each application for appeal ~~or rehearing~~ shall be accompanied by a processing fee in an amount determined by resolution of the city council.

#### Sec. 2-308. Notice of appeal, ~~rehearing~~ or review.

Notice of the hearing for the appeal, ~~rehearing,~~ or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal, ~~rehearing,~~ or review was made. In all cases for the hearing for an appeal, ~~rehearing,~~ or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal ~~or rehearing~~ regarding the same matter, and for appeals ~~and rehearings~~ the person requesting the current appeal ~~or rehearing~~.

#### Sec. 2-309. Person or body to hear an appeal or review a decision.

The person or body to hear an appeal or review a decision shall be the following:

- (1) From a decision of the city staff to the department head; except that an appeal from a decision of the transportation services engineer regarding traffic matters pursuant to Title 10 of this Code, shall be made to the planning commission;
- (2) From a decision of the department head to the city manager; except that (a) an appeal from a decision of the development services director on planning matters pursuant to Title 13 of this Code shall be made to the planning commission, and (b) an appeal from a decision of the building official on building matters pursuant to Title 5 of this Code shall be to the access, building, fire and housing board of appeals as required by section 5-3 of this Code;
- (3) From a decision of the city manager to the city council;
- (4) From a decision of any city committee or commission to the city council.

#### Sec. 2-310. Exhaustion of administrative remedies.

Unless appealed, ~~reheard,~~ or reviewed as provided herein, any decision becomes final for all purposes when made. ~~To constitute the exhaustion of administrative remedies and as a condition precedent to filing any court action thereon, there must be filed and considered an application for rehearing of the council action in any case where any of the factors set forth in subsection 2-304(3) are contended to exist. If an application for~~

~~rehearing a council decision is filed, the council's decision becomes final when either (1) the application is denied, or (2) a decision is made at the rehearing.~~

Sec. 2-311. Exclusive procedures.

The procedures set forth in this chapter are the exclusive methods by which appeals, ~~rehearings~~ and reviews may be pursued and none of the steps set forth herein may be waived or omitted.

Sec. 2-312. Accrual of certain claims.

No claim for violation of constitutional rights for deprivation of economic use of property shall arise until and unless a claimant has secured a final decision on a permit application for a plan of development and on a request for a variance or similar relief from the zone or other development standard for a plan of development as specified in Title 13 of this Code.

Sec. 2-313. Limitations on judicial review.

Notwithstanding any provision in this Code to the contrary, no court action or proceeding to attack, review, set aside, void or annul any decision or procedure of the City of Costa Mesa, its council, commissions, boards or officers, which has become administratively final shall be maintained by any aggrieved person unless duly commenced in a court of competent jurisdiction within ninety (90) days, as provided in California Code of Civil Procedure, Section 1094.6, incorporated herein by reference, and/or as provided in California Government Code section 65009, or any shorter statute of limitations provided by law.

Sec. 2-314. Severability.

If any provision of this chapter is found to be invalid or unconstitutional by interpretation or application to any person or circumstances, such invalidity or unconstitutionality shall not affect the other provisions or applications thereof which can be given valid effect.

Secs. 2-315—2-400. Reserved.

Section 2. 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 that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause,

phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

ATTEST:

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

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

I, BRENDA GREEN, Interim 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. \_\_\_\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_\_th day of \_\_\_\_\_, 2013, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Interim City Clerk and ex-officio  
Interim Clerk of the City Council of the  
City of Costa Mesa

## CHAPTER IX. APPEAL AND REVIEW PROCEDURE

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- (2) *Appeal* means reconsideration, by a higher authority, of the specific facts and circumstances of any final decision made by the city, any of its employees, committees or commissions or by the redevelopment agency.
- (3) *Applicant* means the person who applied for or requested the decision or action which is the subject of the appeal or review.
- (4) *Council* means the Costa Mesa City Council.
- (5) *Decision* means any final decision, finding, ruling, order or action.

- (6) *Permit*, as used in section 2-306, means anything referred to elsewhere in this Code as being a "permit" or "license."
- (7) *Person* shall have the meaning attributed in section 1-21 of this Code.
- (8) *Review* means reconsideration of the decision of any city employee, committee, or commission requested by the city council, on its own motion, or upon request of any council member, in order to consider the decision and any broad legislative and policy factors involved.

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Sec. 2-303. Procedure for appeal.

- (1) Any affected person may, within the time limits set forth in section 2-305, file an application for appeal with the city clerk. Said application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting an appeal.
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- (3) If the appeal is to be heard by an individual or body which does not conduct regularly scheduled meetings, the appeal shall be considered not more than ten (10) days following receipt of the application; provided that the time period may be extended if necessary to allow the giving of notice as required by section 2-308
- (4) An appeal hearing shall consist of a new (i.e., de novo) hearing on the matter by the person or body specified in section 2-309. The appeal hearing shall be based on the following evidence:

- (a) Any relevant evidence, including staff reports, etc., submitted at the time of the prior decision and at the appeal hearing, and
  - (b) Findings, if any, and decision of the person or body whose decision is being appealed.
- (5) Notwithstanding the provisions of this chapter, there shall be no right of appeal to the city council from a decision by a public officer designated by City Council Policy No. 100-7 on an application for a waiver of fees for use of a city owned public facility or show wagon. A decision pursuant to City Council Policy No. 100-7 shall be subject to California Code of Civil Procedure section 1094.6.
- (6) If the original decision being appealed involved issuance of any permit, license, or other entitlement or approval or requested some action by the city, the applicant for the original decision shall have the burden of proof to support the granting of the requested issuance, approval, or action at the appeal.

Sec. 2-304. Reserved.

Sec. 2-305. Time limitations for appeals and reviews.

All applications for appeals and reviews must be filed, in writing, during regular business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, and within the time limits hereinafter set forth:

- (1) For all matters relating to the approval, disapproval or extension of tentative and parcel maps, within ten (10) days from the date of the final decision subject to appeal or review.
- (2) For all other items, within seven (7) days from the date of the final decision subject to appeal or review.
- (3) For all matters requiring approval by the city, its employees, committees, or commissions, and by the redevelopment agency, the time limits for all applications shall begin on the date of the later of the following:
  - (a) Final decision by the city, its employees, committees, or commissions; or
  - (b) Final decision by the redevelopment agency.

If the final day for filing an application for appeal or review falls on a holiday or weekend day when city hall is closed, the application shall be filed no later than the next business day.

Sec. 2-306. Time limitation for issuance of permits.

Where a permit is sought and its issuance is contingent upon obtaining a prerequisite permit, the permit sought shall not be issued until the expiration of the time limit for seeking an appeal or review specified in section 2-305 applied to the prerequisite permit. Provided, however, that if an application for appeal or review of the prerequisite permit is filed within the specified time limits, the permit sought shall not be issued until seven (7) days following the final decision on the appeal or review. Any permit issued in violation of the provisions of this section shall be void.

Sec. 2-307. Fees.

Each application for appeal shall be accompanied by a processing fee in an amount determined by resolution of the city council.

Sec. 2-308. Notice of appeal or review.

Notice of the hearing for the appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. In all cases for the hearing for an appeal or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal regarding the same matter, and for appeals the person requesting the current appeal.

Sec. 2-309. Person or body to hear an appeal or review a decision.

The person or body to hear an appeal or review a decision shall be the following:

- (1) From a decision of the city staff to the department head; except that an appeal from a decision of the transportation services engineer regarding traffic matters pursuant to Title 10 of this Code, shall be made to the planning commission;
- (2) From a decision of the department head to the city manager; except that (a) an appeal from a decision of the development services director on planning matters pursuant to Title 13 of this Code shall be made to the planning commission, and (b) an appeal from a decision of the building official on building matters pursuant to Title 5 of this Code shall be to the access, building, fire and housing board of appeals as required by section 5-3 of this Code;
- (3) From a decision of the city manager to the city council;

(4) From a decision of any city committee or commission to the city council.

Sec. 2-310. Exhaustion of administrative remedies.

Unless appealed or reviewed as provided herein, any decision becomes final for all purposes when made.

Sec. 2-311. Exclusive procedures.

The procedures set forth in this chapter are the exclusive methods by which appeals and reviews may be pursued and none of the steps set forth herein may be waived or omitted.

Sec. 2-312. Accrual of certain claims.

No claim for violation of constitutional rights for deprivation of economic use of property shall arise until and unless a claimant has secured a final decision on a permit application for a plan of development and on a request for a variance or similar relief from the zone or other development standard for a plan of development as specified in Title 13 of this Code.

Sec. 2-313. Limitations on judicial review.

Notwithstanding any provision in this Code to the contrary, no court action or proceeding to attack, review, set aside, void or annul any decision or procedure of the City of Costa Mesa, its council, commissions, boards or officers, which has become administratively final shall be maintained by any aggrieved person unless duly commenced in a court of competent jurisdiction within ninety (90) days, as provided in California Code of Civil Procedure, Section 1094.6, incorporated herein by reference, and/or as provided in California Government Code section 65009, or any shorter statute of limitations provided by law.

Sec. 2-314. Severability.

If any provision of this chapter is found to be invalid or unconstitutional by interpretation or application to any person or circumstances, such invalidity or unconstitutionality shall not affect the other provisions or applications thereof which can be given valid effect.

Secs. 2-315—2-400. Reserved.



November 5, 2013

Honorable Mayor Jim Righeimer  
77 Fair Drive  
Costa Mesa, CA 92626

Dear Mayor Righeimer and Members of the City Council,

The American Cancer Society Cancer Action Network is committed to protecting the health and well-being of the citizens of Costa Mesa. As such, we are encouraged by your consideration to close the state-level legal loophole that allows tobacco smoking inside establishments where people work, eat, and drink by enacting a local ordinance that prohibits hookah parlors in the city of Costa Mesa.

Smoking is the leading cause of preventable death in both men and women. Lung cancer kills over 13,000 Californians each year, and overall, one out of every three cancer deaths is due to tobacco. The U.S. Surgeon General has declared that there is "no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to your health." Even brief exposure to secondhand smoke has immediate adverse health effects in adults and children. Each year, over 3,400 non-smoking adults in the United States will die of lung cancer as a result of breathing secondhand smoke.

While many hookah smokers may be unaware of its health risks or believe that it is less harmful or addictive than cigarette smoking, this is not the case. Smoking waterpipes, as well as breathing secondhand smoke from waterpipes, is at least as harmful as exposure to cigarette smoke. Smoking hookah is not a safe alternative. Waterpipe smoke, like cigarette smoke, contains significant amounts of cancer causing ingredients, such as arsenic, cobalt, chromium and lead. In addition, smoke from a waterpipe contains carbon monoxide (CO) in amounts equal to or greater than smoke from cigarettes. A review and meta-analysis of existing research found that waterpipe smoking has the same negative effect on lung function as cigarette smoking. Alarmingly among high school seniors, 17% have smoked hookah in the past.

The American Cancer Society Cancer Action Network encourages the passage of strong smoke-free laws to protect people from the harms of secondhand smoke from all tobacco products. Hookah bars should not be exempt from smoke-free laws that prohibit smoking in public places, including workplaces, restaurants, and bars.

Sincerely,

Maggie Acuna  
Field Advocacy Director

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**From:** Perry Valantine  
**Sent:** Tuesday, November 05, 2013 11:27 AM  
**To:** council@costamesaca.gov  
**Cc:** HATCH, THOMAS; GREEN, BRENDA  
**Subject:** REHEARINGS

I may be unable to attend tonight's City Council meeting, but I would like to share my thoughts on New Business Item 2, which proposes to remove the procedure for rehearings.

A search of the City's web site reveals that, in the last six years, eight rehearings have appeared on City Council agendas. Of those, one was withdrawn before the agenda was printed (hence, no report was written), one was approved, and three were denied. I was unable to determine the results of the other three, due to unavailability of minutes.

The one rehearing that was approved was a request from Councilman Bever to reconsider newly-adopted EMS fees for Costa Mesa residents. As a result of unanimous Council action on the rehearing, the vote to bill residents for paramedic services was reversed.

Regardless of the outcomes, the fact that there have been an average of a little over one rehearing request per year indicates that this process has not overburdened the Council, City staff, or the public attending the meetings.

However, the proposal to remove the rehearing procedure has the appearance of an attempt to further marginalize members of the Council minority.

Wouldn't it be better to leave the process in place, avoid the certain criticism, and simply deal with the one or two rehearings that are requested each year? After all, the Council majority can always affirm their earlier action after full and open consideration of any further facts that may have come to light after the initial vote.

Thank you for your consideration.

Perry Valantine  
Costa Mesa resident

**ADDITIONAL DOCUMENT PERTAINING  
TO  
NEW BUSINESS ITEM 3**

**INTRODUCTION OF PROPOSED  
EXCESSIVE USE OF RESOURCES  
ORDINANCE**

ORDINANCE NO. 13-\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADDING CHAPTER VI (COST RECOVERY FOR EXCESSIVE USE OF RESOURCES DUE TO NUISANCE ACTIVITIES AT MOTELS) OF TITLE 14 (POLICE AND LAW ENFORCEMENT) OF THE COSTA MESA MUNICIPAL CODE REGARDING COST RECOVERY FOR EXCESSIVE USE OF POLICE SERVICES BY MOTELS

WHEREAS, the City of Costa Mesa has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city, Cal. Const. art. XI, § 7; and

WHEREAS, the City Council of the City of Costa Mesa has determined that a significant number of motel owners in the City have, for a number of years, consistently allowed their property to be used for illegal purposes and such motels have created a significant impact upon the living conditions in the City's neighborhoods and has raised justifiable concerns about public safety; and,

WHEREAS, the City Council finds that certain chronic nuisance activities at or generating from poorly managed motels can constitute a threat to the peace, health, safety, or general welfare of the public, as police officers have been required to make many return calls to such motels; and

WHEREAS, the City Council finds that such motels interfere with the comfort, health, safety, quality of life, and general welfare of the individuals residing in the neighborhood and lower the value of surrounding properties; and,

WHEREAS, the City Council finds that requiring motel property owners to reimburse the City for the excessive use of City resources will provide such motel property owners with additional incentives to ameliorate the problems that their property is creating; and,

WHEREAS, the City Council finds that chronic nuisance motels create a negative financial impact upon City services by numerous calls for service from various City departments, especially law enforcement; and,

WHEREAS, the City Council finds that holding motel owners financially responsible for excessive police responses will deter future incidents that require repeated responses, and will offset the cost of the repeated responses, thereby allowing law enforcement resources to be allocated where they are most needed; and

WHEREAS, the City Council finds that based on the Costa Mesa Police Department's annual budget of \$43,000,000 and the annual average number of calls for service of 150,000, each call for service costs the Department approximately \$286.00; and

WHEREAS, Sections 36901, 38771 and 38773.5(a) of the California Government Code authorize the City of Costa Mesa to enact ordinances declaring what constitutes a nuisance, the procedures for abating nuisance conditions, providing for the recovery of costs and attorney fees to abate the nuisance, and providing for the collection of civil penalties.

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

Section 1. Chapter VI (Cost Recovery for Excessive Use of Resources Due to Nuisance Activities) of Title 14 (Police and Law Enforcement) is hereby added as follows:

**14-80 Purpose.**

The purpose of this Chapter is to provide administrative and civil remedies against responsible persons who permit, allow, or fail to prevent recurring nuisance activities to occur at motels within the City of Costa Mesa owned or occupied by them that compromise the public health, safety or welfare.

**14-81 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings given herein:

- (a) "Chief of police" shall mean the Chief of Police and shall include his/her designee.
- (b) "City" shall mean the City of Costa Mesa.
- (c) "Enforcement officer" shall mean any person authorized by the chief of police to enforce violations of this Chapter.
- (d) "Excessive police call" shall mean any call for service for nuisance activity occurring at or in a motel above the threshold amount of nuisance activity.
- (e) "Finance department" means the Finance Department of the City of Costa Mesa or any person or entity that the finance department designates to perform any of its functions and duties.
- (f) "Gang-related crime" means any crime motivated by gang membership in

which the perpetrator, victim, or intended victim is a known member of a gang.

- (g) "Hearing officer" shall mean any person appointed to preside over a hearing pursuant to this chapter. The hearing officer shall not be a city employee and his/her compensation shall not be dependent on any particular outcome of the hearing.
- (h) "Motel" means an establishment within the City of Costa Mesa, which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.
- (i) "Motel owner" means the owner or owners of record of the subject motel as shown on the most recent business license application for the motel. Motel ownership may also be established through government records, and any other publicly available records that have indicia of reliability.
- (j) "Notice" means written notice provided as follows:
  - (1) Notice served upon a property owner by certified or registered mail, to the mailing address indicated on the last equalized assessment roll of the Orange County Assessor's Office.
  - (2) Notice served upon a motel owner by certified or registered mail, to the mailing address provided on the motel's most recent business license application.
  - (3) The service of notice shall be *prima facie* evidence that the intended recipient noticed has knowledge of the nuisance activity at or upon the property.
- (k) "Nuisance activity" means the occurrence of any of the following activities, behaviors, or conduct occurring at a motel:
  - (1) Disturbing the peace in violation of Penal Code Section 415.
  - (2) Manufacturing, giving away, selling, offering for sale, soliciting the sale of, possessing, purchasing, using, igniting, exploding, firing or otherwise discharging any fireworks within the City in violation of Article 8 (Fireworks Sales) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulations), any applicable provisions of the California Fire Code, as adopted by reference by Section 7-14, and Section 7-19.
  - (3) The occurrence or attempted occurrence of any gang-related crime.

- (4) Unlawfully discharging a firearm, whether a handgun, long gun, and/or shotgun on motel property.
  - (5) Parties or gatherings at which alcohol or controlled substances are illegally consumed or used by minors.
  - (6) The occurrence or attempted occurrence of any other criminal activity that threatens the life, health, safety, or welfare of residents of the motel, the neighborhood, or the public.
  - (7) The commission or attempted commission of any serious felony or violent felony as defined in Penal Code Sections 1192.7(c) and 667.5(c), respectively.
  - (8) The manufacture, cultivation, sale, use, or possession of a controlled substance in violation of the Uniform Controlled Substances Act (Health & Safety Code §§ 11000 et seq.), or in violation of federal law.
  - (9) The commission or attempted commission of any act of prostitution as defined in Penal Code Section 647(b).
  - (10) The manufacture, sale, possession, or use of a firearm in violation of the Dangerous Weapons Control Law (Penal Code § 12000 et seq.).
- (l) "Person" means any individual, entity, corporation, association, partnership, limited liability company, trustee, lessee, agent representative and assignee.
  - (m) "Property" shall mean the lot or parcel(s) of land where the motel is located within the City of Costa Mesa.
  - (n) "Property owner" shall mean the owner or owners of record of the property where the subject motel is located, as shown on the latest equalized tax assessment role of Orange County.
  - (o) "Responsible person" shall mean the property owner, the motel owner, or both.
  - (p) "Subsequent police response" means any police response to a specific property in response to nuisance activity, which is made within ninety (90) days after the chief of police has given a written warning to the responsible person notifying the responsible person that administrative costs will be imposed for any subsequent response to abate the nuisance.

- (q) "Threshold amount of nuisance activity" means any calls for service for nuisance activity beyond a motel's monthly allotment, which shall be based on an annual allotment of more than 0.5 calls for service per room per year for nuisance activities.

**14-82 Authority.**

The chief of police shall be responsible for administering and enforcing the provisions of this chapter. The chief of police shall have the authority to designate city employees as enforcement officers in conformance with this chapter to assist with enforcement responsibilities, including, but not limited to, the issuance of civil citations.

**14-83 Scope of application.**

- (a) A criminal conviction is not required for establishing the occurrence of nuisance activity pursuant to this chapter. The occurrence of nuisance activity may be established by documented evidence that the nuisance activity was witnessed by a peace officer or other witness willing to testify.
- (b) The remedies set forth in this chapter are cumulative and additional to any and all other legal and equitable remedies.

**14-84 Chronic nuisances at motels prohibited.**

It shall be unlawful and a public nuisance for any responsible person to cause or allow a threshold amount of nuisance activity at or in any motel owned or occupied by him or her.

**14-85 Cost recovery for excessive use of resources for nuisance activities.**

- (a) When the chief of police determines that for any one-month period law enforcement has been dispatched to the same motel in response to a threshold amount of nuisance activity at or in that motel, the chief of police shall review the incident reports for that motel and shall impose a cost recovery fee for all nuisance activity calls for service at and above the threshold amount of nuisance activity for that month.
- (b) The invoice for the cost recovery fee notice shall:
  - (1) Identify the motel and the threshold amount of nuisance activity for that motel;
  - (2) Summarize the evidence of the nuisance activity occurring at or in the motel (including the documented observations of the peace officer or a witness willing to testify) for which the responsible

person is being imposed a fee;

- (3) Provide the dates on which the nuisance activity was reported to the police department and the dates of any prior responses by the police department to nuisance activity at or in the motel for the month at issue; and
  - (4) Notify the property owner and the motel owner of the required corrective actions, including but not limited to conditions of operation, if any, and the date by which such corrective actions must be completed.
- (c) A subsequent and separate invoice for cost recovery fee shall be issued pursuant to this chapter each month that the threshold amount of nuisance activity occurs at or in a motel.

#### **14-86 Billing.**

The responsible person shall be billed a cost recovery fee for each and every excessive police call. Such fee is to be paid by the responsible person. The cost recovery fee shall be set by City Council resolution.

#### **14-87 Appeal.**

Any person who has been issued an invoice for excessive police calls pursuant to this chapter may contest the amounts owed by filing an appeal in writing pursuant to the procedures and timelines set forth in chapter IX (Appeal, Rehearing and Review Procedure) of Title 2 (Administration) of this Code shall apply.

Section 2. 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 that extent necessary to affect the provisions of this Ordinance.

Section 3. 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 4. 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 \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor of the City of Costa Mesa

ATTEST:

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

APPROVED AS TO FORM:

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

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

I, Brenda Green, 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. 13-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and thereafter passed

and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2013, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

DRAFT

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**From:** Amanda Knitter

**Sent:** Tuesday, November 05, 2013 1:37 PM

**To:** RIGHEIMER, JIM; MENSINGER, STEPHEN; LEECE, WENDY; GENIS, SANDRA; MONAHAN, GARY; RODELIUS, SHARON

**Cc:** GREEN, BRENDA

**Subject:** Hookah Lounges

**Importance:** High

Good afternoon, Mayor Righeimer and Honorable City Council Members.

On behalf of the American Lung Association in California, I would like to submit the following letter of support for tonight's agenda item - hookah lounges within Costa Mesa. Please consider me a resource as you discuss this topic and harms of hookah smoke and secondhand smoke. Hookah is alarming as it is becoming increasingly popular among youth and young adults.

The American Lung Association has begun collecting public opinion surveys in Costa Mesa about 1) current hookah-usage, 2) their perception of harm, and 3) their support for prohibiting this business within the community. I will share preliminary data tonight at the city council meeting and will continue to survey throughout the fall.

I have also attached an additional factsheet regarding hookah smoke harms.

All the best,

Amanda

**Amanda Knitter** | Advocacy Manager, Orange County

American Lung Association in California

202 Fashion Ln., Suite 219

Tustin, CA 92780

Phone: 714.933.1011

Fax: 866.881.7865

[Amanda.Knitter@lung.org](mailto:Amanda.Knitter@lung.org) | <http://www.lung.org/california>

Early detection of lung cancer can increase survival rates.

Call the Lung HelpLine at **1.800.LUNG.USA** or talk to your doctor about lung cancer screening.

**LungCancerScreeningSavesLives.org**



November is Lung Cancer Awareness Month



202 Fashion Lane  
Suite 219  
Tustin, CA 92780  
714-835-5864 phone  
714-835-0169 fax

[lung.org/california](http://lung.org/california)

Tuesday, November 5, 2013

Costa Mesa City Council  
77 Fair Drive  
Costa Mesa, CA 92626

Dear Members of the Costa Mesa City Council,

The American Lung Association in California is a leading public health organization fighting for clean and healthy air. With a mission of saving lives by improving lung health and preventing lung disease, our agency supports strong local regulations that protect the public from the harmful effects of secondhand smoke. Tobacco use is the number one preventable cause of death and disease in California and every year over 60,000 Americans exposed to secondhand smoke die.

We are writing to express our support for the revision of the Municipal Code and Zoning Ordinance to include Hookah Parlors. Hookah secondhand smoke contains the same cancer-causing chemicals that are found in secondhand smoke from cigarettes. Prohibiting all future hookah parlors and lounges protects your residents from the risk of increased exposure to deadly secondhand smoke. According to the World Health Organization, smoking hookah for 45-60 minutes can be equivalent to smoking 100 or more cigarettes.

Hookah smoking is also popular among young people and youth and may serve as a bridge to other forms of tobacco use. Fruit flavorings of the tobacco or shisha add further appeal and false perception that this is a less harmful form of tobacco. I commend the Costa Mesa City Council for taking steps to protect our youth and citizens from the harmful effects of hookah and reduce access to this dangerous activity.

Sincerely,

A handwritten signature in blue ink that reads 'Kimberly Amazeen'. The signature is fluid and cursive, with a long horizontal line extending to the right.

Kimberly Amazeen  
Vice President, Programs & Advocacy

# HOOKAH TOBACCO IS UNSAFE

## What Are Hookahs?

- Hookahs are glass or metal waterpipes that originated in India. They are shaped somewhat like a bottle and have long, flexible hoses with tips that people put into their mouths to inhale tobacco smoke. In most hookahs, hot charcoal is placed on top of tobacco in a bowl to heat it.<sup>1</sup> The tobacco, or shisha, is typically flavored, and contains the same chemicals found in all tobacco, including nicotine.<sup>2</sup>
- In recent years, there has been tremendous growth in the number of hookah bars and lounges in California.<sup>3,4,5</sup> Hookah smoking is **increasingly popular among underage youth and young adults**, exposing them to both tobacco use and secondhand smoke.<sup>6</sup> Many of these young people do not think that hookah smoke is as harmful and addictive as cigarette smoke.<sup>7</sup>

## Why Are Hookahs Harmful?

- Smoking hookah for 45-60 minutes can be equivalent to smoking 100 or more cigarettes.<sup>8</sup>
- Secondhand hookah smoke contains the same cancer-causing chemicals found in secondhand smoke from cigarettes.
- In addition, the charcoal used in the tobacco heating process produces the toxin carbon monoxide.<sup>9</sup>
- In 2005, the World Health Organization (WHO) issued an Advisory Note about hookah use, stating that people who smoke hookah pipes or who are exposed to secondhand hookah smoke are at risk for the same diseases that are caused by smoking cigarettes, including:
  - Cancer
  - Heart disease
  - Respiratory disease
  - Adverse effects during pregnancy
- The WHO Advisory Note also warned that sharing a waterpipe mouthpiece poses a serious risk of transmission of communicable diseases, including tuberculosis and hepatitis.<sup>10</sup>
- The proliferation of hookah bars and lounges in California is leading to a growing public acceptance of smoking. This threatens to setback twenty years of progress in reducing tobacco-related death and disease.



## How Can Hookah Bars and Lounges Allow Indoor Smoking?

- While smoking inside restaurants and bars has been banned since 1998 in California, the Smoke-Free Workplace law (Labor Code Section 6404.5) includes twelve exemptions that allow smoking in certain indoor workplaces.
- Hookah bars and lounges typically claim they operate as tobacco shops and private smokers' lounges, which are among the businesses that can allow indoor smoking under exemptions in California's Smoke-Free Workplace law.
  - The California Smoke-free Workplace law defines a tobacco shop as a business establishment whose "main purpose" is to sell tobacco products. Unfortunately, the definition of "main purpose" is unclear.

- For example, some hookah bars and lounges have obtained licenses to sell alcohol, serve food and nonalcoholic beverages, and provide entertainment –operating more like a bar or restaurant where smoking inside is prohibited under state law. The assertion that the “main purpose” of these businesses is the sale of tobacco is questionable.
- Other hookah bars and lounges assert that the business is owner-operated and has no employees and is therefore exempt from the state labor law.
- It is unfair that hookah bars and lounges are trying to take advantage of ambiguities in the law to allow indoor smoking, while other similar businesses (bars and restaurants) are following the law.
- The ambiguity and contradictions in state law make enforcement by cities and counties throughout California difficult. Investigating claims that hookah bars and lounges are violating the state Smoke-Free Workplace law can be time-consuming and challenging because of these seemingly contradictory interpretations of business classifications and permitting and licensing requirements and standards.

All California workers deserve to be protected from secondhand smoke. All businesses should be on a level playing field, required to abide by the same rules when it comes to protecting California’s workers from secondhand smoke exposure. It’s time to close the loophole on hookah bars and lounges.

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1. California’s Clean Air Project. *Hookah – In Your Community: Ideas for Action*. ETR Associates, 2005.
  2. Shihadeh, A. and Saleh, R. Polycyclic aromatic hydrocarbons, carbon monoxide, “tar”, and nicotine in the mainstream smoke aerosol of the narghile water pipe. *Food and Chemical Toxicology*, 2005, 43, 655–661.
  3. Asotra, K. and Kiser, D. Policies Needed to Regulate Hookah Smoking and Hookah Bars in California. *Burning Issues* 9(2): 4-5, 9, 2007. Available at: <http://www.trdrp.org/publications/newsletters/2007/407nwsltr.pdf>
  4. American Lung Association. *Tobacco Policy Trend Alert: An Emerging Deadly Trend: Waterpipe Tobacco Use*, 2007. Available at: [http://www.lungusa2.org/embargo/slati/Trendalert\\_Waterpipes.pdf](http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf)
  5. BACCHUS Network. *Reducing Hookah Use: A Public Health Challenge for the 21st Century*. 2007. Available at: <http://www.tobaccofreeu.org/pdf/HookahWhitePaper.pdf>
  6. Eissenberg T., Ward K.D., Smith-Simone S., Maziak, W. Waterpipe tobacco smoking on a U.S. college campus: prevalence and predictors. *Journal of Adolescent Health*, 42(5), 2008, 526-529. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2362063/pdf/nihms46743.pdf>
  7. Aljarrah, K., Ababneh, Z. Q. and Al-Delaimy, W.K. Perceptions of hookah smoking harmfulness: predictors and characteristics among current hookah users. *Tobacco Induced Diseases*, 2009, 5:16. Available at: <http://www.tobaccoinduceddiseases.com/content/5/1/16>
  8. World Health Organization Study Group on Tobacco Product Regulation (TobReg). *Advisory Note: Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators*. 2005. Available at: [http://www.who.int/tobacco/global\\_interaction/tobreg/Waterpipe%20recommendation\\_Final.pdf](http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf)
  9. Shihadeh, A. and Saleh, R. Polycyclic aromatic hydrocarbons, carbon monoxide, “tar”, and nicotine in the mainstream smoke aerosol of the narghile water pipe. *Food and Chemical Toxicology*, 2005, 43, 655–661.
  10. World Health Organization Study Group on Tobacco Product Regulation (TobReg). *Advisory Note: Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators*. 2005. Available at: [http://www.who.int/tobacco/global\\_interaction/tobreg/Waterpipe%20recommendation\\_Final.pdf](http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf)

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**From:** GREEN, BRENDA

**Sent:** Tuesday, November 05, 2013 3:27 PM

**To:** WENDY LEECE- City Council

**Cc:** HATCH, THOMAS; CITY COUNCIL; TOM DUARTE; FRANCIS, RICK; BRAVO-VALDEZ, PATRICIA

**Subject:** RE: Cities

Hello Wendy,

The online municipal codes of the following cities were reviewed : Westminster, La Habra, Whittier, Fullerton, Upland, Stanton, South Pasadena, Grand Terrace, Irvine, Fountain Valley, Cypress, Newport Beach, Lake Forest, Huntington Beach, Santa Ana.

*Brenda Green*

City Clerk

City of Costa Mesa

714/754-5221

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**From:** leecefam

**Sent:** Tuesday, November 05, 2013 10:27 AM

**To:** GREEN, BRENDA

**Cc:** HATCH, THOMAS

**Subject:** Cities

Hello Brenda. Please list other cities you contacted about rehearing process in muni code.

Thanks.

Wendy