

ORDINANCE NO. 13-08

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 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. Reserved.
- Sec. 2-305. Time limitations for appeals and reviews.
- Sec. 2-306. Time limitation for issuance of permits.
- Sec. 2-307. Fees.
- Sec. 2-308. Notice of appeal 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 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 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.

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. 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.

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.

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JAMES M. RIGHEIMER  
Mayor

APPROVED AS TO FORM:

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THOMAS DUARTE  
City Attorney

ATTEST:

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BRENDA GREEN  
City Clerk of the City of Costa Mesa

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. 13-08 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:           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.

\_\_\_\_\_  
BRENDA GREEN  
City Clerk