ORDINANCE NO. 14-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, REPEALING AND REPLACING SECTION 2-61 OF CHAPTER III (CITY COUNCIL MEETINGS AND PROCEDURES) AND ADDING SECTION 2-87 (SEVERABILITY) TO TITLE 2 (ADMINISTRATION) OF THE COSTA MESA MUNICIPAL CODE REGARDING DISRUPTIVE CONDUCT DURING CITY COUNCIL MEETINGS

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 finds that conduct by persons addressing the City Council during City Council meetings which interferes with, disrupts, disturbs or otherwise impedes the orderly conduct of City Council meetings, prevents the City Council from conducting its business, and inhibits the ability of Costa Mesa's citizens to petition their government for the redress of grievances; and

WHEREAS, City Council meetings are limited public fora, White v. Norwalk, 900 F.2d 1421 (9th Cir. 1990), and the Council may adopt regulations related to conduct at Council meetings that are reasonable to the purpose of the forum and viewpoint neutral. Norse v. City of Santa Cruz, 629 F.3d 966, 975 (9th Cir. 2010) and

WHEREAS, prohibited conduct at City Council meetings must be limited to conduct that actually disrupts the orderly operation of such meetings. Acosta v. City of Costa Mesa, 718 F.3d 800 (2013).

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

Section 1. Section 2-61 of Chapter III (City Council Meetings and Procedures) of Title 2 (Administration) is hereby repealed and replaced in its entirety with the following:

2-61 Conduct while addressing the council.

(a) Any person who engages in disorderly behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of any city council meeting shall, upon an order by the presiding officer or a majority of the city council, be barred from further audience before the city council during

that meeting, pursuant to the provisions of subdivision (c), below.

(b) Disorderly behavior under subdivision (a) may include, but is not limited to, the following:

(1) Speaking without being recognized by the presiding officer.

(2) Continuing to speak after the allotted time has expired.

(3) Speaking on an item at a time not designated for discussion by the public of that item.

(4) Throwing objects.

(5) Speaking on an issue that is not within the jurisdiction of the city council.

(6) Attempting to engage the audience rather than the City Council.

(7) Refusing to modify conduct after being advised by the presiding officer that the conduct is disrupting the meeting, or disobeying any other lawful order of the presiding officer or a majority of the city council.

(c) Enforcement. The rules of conduct while addressing the city council set forth above shall be enforced in the following manner:

(1) Call to order and warning to desist. Whenever practicable, the presiding officer or a majority of the city council shall give a warning to the person who is breaching the rules of conduct to be orderly and to comply with the rules of conduct hereunder. Such a warning shall articulate the rule of conduct being violated and the manner in which the person must comply.

A warning shall not be necessary when it would not be effective under the circumstances, including when, but not limited to, the disturbance is such that the warning cannot be heard above the noise, or the conduct of the person or persons constitutes an

immediate threat to public safety, such as the throwing of objects or specific threats of harm and the apparent, present ability to carry out such threats. A warning shall also not be necessary when an individual violates the rules of conduct more than once during a council meeting, or continuously violates the rules of conduct council meeting after council meeting.

(2) Order barring person from meeting. A person who engages in disorderly behavior shall be barred from the remainder of that council meeting by the presiding officer or a majority of the city council when that person: (i) continues the disorderly behavior after receiving a warning pursuant to subdivision (c)(1); (ii) ceases the disorderly behavior upon receiving a warning pursuant to subdivision (c)(1), but later in the same council meeting resumes such disorderly behavior; or (iii) engages in disorderly behavior and no warning is practicable under the circumstances, pursuant to subdivision (c)(1).

The continuation of disorderly behavior after receiving a warning, repeated disorderly behavior during a council meeting, disorderly behavior at council meeting after council meeting, or disorderly behavior that is so significant that a warning cannot be given, constitutes the type of behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of a city council meeting.

(3) Removal. If the person barred from the meeting does not voluntarily remove him/herself upon being instructed to do so by the presiding officer or a majority of the city council, the presiding officer or the majority of the city council may direct the sergeant-at-arms to remove that person from the council chambers.

(d) The following conduct shall be unlawful and shall be punishable as a misdemeanor:

(1) Continuing to engage in disorderly conduct, which disrupts, disturbs or otherwise impedes the orderly conduct of any city council meeting, after receiving a warning pursuant to subdivision (c)(1) of this section.

(2) Refusing to leave a city council meeting after being directed to do so pursuant to subdivision (c)(2) of this section.

(3) Returning to a council meeting after being barred, removed or directed to leave such meeting pursuant to subdivisions (c)(2) and (c)(3) of this section.

Section 2. Section 2-87 of Chapter III (City Council Meetings and Procedures) of Title 2 (Administration) is hereby added as follows:

Section 2-87 Severability.

If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Chapter III of Title 2, 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 Chapter III of Title 2 or its application to other persons. The City Council hereby declares that it would have adopted this Chapter III of Title 2 and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, words, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Chapter III shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

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 that extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, 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, word, 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 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 15th day of July, 2014.

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James R. Righeimer, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Thomas Duarte, 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. 14-09 was introduced and considered at a regular meeting of said City Council held on the 1st day of July, 2014, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the 15th day of July, 2014, 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 16th day of July, 2014.

Brenda Green, City Clerk
City of Costa Mesa