



PLANNING COMMISSION AGENDA REPORT

U. J.

MEETING DATE: SEPTEMBER 27, 2004

ITEM NUMBER:

SUBJECT: DRAFT ORDINANCE AMENDING THE ZONING CODE TO ESTABLISH ADDITIONAL ZONING REGULATIONS FOR MOTOR VEHICLE RETAIL SALES BUSINESSES AND OUTDOOR COMMUNICATION SYSTEMS OPERATED BY COMMERCIAL AND INDUSTRIAL USES

DATE: SEPTEMBER 16, 2004

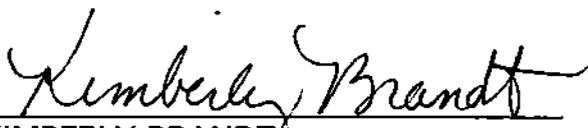
**FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT, SENIOR PLANNER
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DESCRIPTION

A draft ordinance amending the City of Costa Mesa's Zoning Code to establish additional zoning regulations for motor vehicle retail sales businesses and outdoor communication systems operated by commercial and industrial uses.

RECOMMENDATION

Recommend to City Council that the adoption of an ordinance be postponed for twelve months to allow the Harbor Boulevard of Motor Cars Dealers Association to work with their members to address the issues.


KIMBERLY BRANDT
Senior Planner


PERRY L. VALANTINE
Asst. Development Services Director

BACKGROUND

In May 2003, Planning Commissioner Foley requested staff to agendize the issue of automobile dealer setbacks. The Commission considered this issue in August 2003 and directed staff to draft development standards regarding the landscaped setback adjacent to a public street. At their January 20th study session, Planning Commission reviewed staff's preliminary recommendations, which also included revisions regarding landscaping materials and advertising banners.

On March 22, 2004, the Planning Commission recommended that Council give first reading to the draft ordinance, on a 5-0 vote.

On April 19, 2004 Council denied first reading of the draft ordinance and received and filed the report (see Attachment 2). In a separate motion, Council also directed staff and Planning Commission to work with the Harbor Boulevard of Motor Cars Dealers Association (Association) to discuss solutions regarding the following two issues:

- A ban on amplified sound; and
- A ban on storage of vehicle inventory in residential neighborhoods.

On July 27, 2004, staff met with Association representatives to discuss the issues. Further discussion is provided in the following section.

ANALYSIS

Amplified Sound Ban: Many of the City's automobile dealerships use amplified sound outdoors as a method of communicating with employees and customers during business hours. Although the sound levels do not violate the City's noise ordinance, the amplified sound may be audible in adjacent residential areas. It should be noted that a ban on the use of amplified sound is currently a condition of approval on new conditional use permits for automobile dealerships.

In considering this issue, there are other types of commercial and industrial uses that commonly use outdoor communication systems. For example, restaurants (both "drive through" and "sit down"), garden centers, and automobile repair businesses. Therefore, any ordinance that bans the use of amplified sound outdoors would need to be expanded to include any type of commercial and industrial business.

In their discussions with staff, Association representatives expressed that the use of outdoor communication systems was a necessary component of their daily business operation. Overall, they felt the problems were limited, and in the past they have worked hard to address community complaints, and cited examples of relocating or eliminating speakers in response to complaints.

Furthermore, the Association representatives recommended that in lieu of adopting an ordinance, the City allow the Association to work with its members to voluntarily restrict the use of outdoor communication systems to the hours between 8 a.m. to 7 p.m. Additionally, the Association will continue to work with Code Enforcement to address any site-specific complaints on a case-by-case basis. Code Enforcement has not received any recent complaints regarding outdoor communication systems.

Staff concurs with this suggested approach. The adoption of a citywide ordinance may be too broad in its scope, when the actual problems are limited and better addressed on an individual basis. Staff suggests that any action on an ordinance be delayed for twelve months to give sufficient time to the Association to work with their members. Staff can return with a reevaluation of the need for an ordinance at that time.

Ban on storage of vehicle inventory in residential neighborhoods: The Association representatives indicated that their members do not store their vehicle inventory in residential neighborhoods. Such a practice would expose the vehicles to vandalism and/or theft. It was generally expressed, that if this was occurring, it was rare and would be limited to small independent dealers. The Association was neutral regarding any ordinance the City may adopt, since this was not the business practice of their member dealerships.

The Police Department has not had any recent complaints of vehicle inventory being stored on residential streets. Staff believes this type of business practice is best handled on a case-by-case basis by existing Municipal Code remedies. Title 20 prohibits the operation of a business not consistent with all applicable zoning approvals and approved plans (Section 20-4(b)), and violations are treated as misdemeanors. Furthermore, conditional use permits are required for automobile dealerships, and the Planning Commission could review/call up a conditional use permit for either modification or revocation. Given these existing Municipal Code provisions, staff does not believe any additional code amendments are necessary.

ALTERNATIVES

If the Commission wants to recommend to Council that they now adopt an ordinance that bans outdoor communication systems, Attachment 1 contains a draft ordinance. Staff notes this ordinance applies to all commercial and industrial uses, not just limited to automobile dealerships.

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.

CONCLUSION

Staff supports the Association's recommendation that they voluntarily limit the operation of their outdoor communication systems, and that the need for a citywide ban on these types of systems should be reevaluated in twelve months. Furthermore, staff believes there are sufficient Municipal Code remedies to address the issue of the storage of vehicle inventory in residential neighborhoods.

Attachments: 1. Draft Ordinance
 2. City Council Meeting Minutes

cc: Deputy City Manager - Dev. Svcs.
 Assistant Development Services Director
 Sr. Deputy City Attorney
 City Engineer
 Chief Code Enforcement Officer
 Staff (4)
 File (2)

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Costa Mesa, CA 92626

File Name: 092704MOTORORD

Date: 090204

Time 2:30 pm

ATTACHMENT 1
DRAFT ORDINANCE

ORDINANCE NO. 04-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING OPERATION OF OUTDOOR COMMUNICATION SYSTEMS BY COMMERCIAL AND INDUSTRIAL USES.

WHEREAS, the City of Costa Mesa's Municipal Code does not currently address commercial and industrial uses that operate outdoor communication systems.

WHEREAS, the operation of an outdoor communication system by a commercial or industrial use is a nuisance when it is audible to adjacent and nearby neighbors, including both businesses and residences; and

WHEREAS, the City Council of the City of Costa Mesa has determined that limiting the operation of outdoor communication systems serves the greater health, safety, and concern of the citizens of the City.

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

Section 1. The following section is hereby added to Chapter XIII, Title 13 of the Costa Mesa Municipal Code to read as follows:

"Sec. 13-283.5 OUTDOOR COMMUNICATION SYSTEM

It shall be unlawful for any commercial and/or industrial business to operate an outdoor communication system that amplifies a voice, chime, ring, or similar sound so that it is audible on a property that contains residential uses and is an annoyance to a reasonable person residing on the property, regardless of the property's zoning or whether the noise level exceeds the standards specified in Section 13-280 EXTERIOR NOISE STANDARDS and Section 13-281 INTERIOR NOISE STANDARDS. This subsection shall not apply to an outdoor communication system that is used in conjunction with a special event that is permitted pursuant to Title 9 of this Code."

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. Publication. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after its passage, shall be published once in the NEWPORT BEACH-COSTA MESA 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 of the members of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of _____, 2004

Mayor

ATTEST:

APPROVED AS TO FORM:

Deputy 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. 04-___ was introduced and considered section by section at a regular meeting of said City Council held on the ___ day of _____, 2004, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ___ day of _____, 2004, 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 _____, 2004.

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

ATTACHMENT 2

City Council Meeting Minutes

**PUBLIC HEARING
Ordinance Amending
the Zoning Code for
Motor Vehicle Retail
Sales Businesses**

31, 2014, provided that the cost increase requests remain within the annual Consumer Price Index (CPI) limits, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

The Deputy City Clerk announced that this is the time and place set for a public hearing to consider an ordinance for the City Council of the City of Costa Mesa, amending the Zoning Code to establish special zoning regulations for Motor Vehicle Retail Sales Businesses. Environmental Determination: Exempt. The Affidavit of Publication is on file in the City Clerk's office. A communication was received from Sandra Genis, Costa Mesa, asking Council to consider other auto-related issues that have had a negative impact on neighborhoods. The Senior Planner reviewed the Agenda Report dated April 8, 2004, and responded to questions from Council.

Mike Berry, Costa Mesa, questioned the necessity of the proposed amendments as he felt the existing businesses would not be in compliance and that variances are routinely approved. Mayor Monahan clarified that the proposed code amendments would apply to new businesses or businesses undergoing a major improvement. Mr. Berry reminded council of complaints received regarding the public address system utilized by the Harbor Boulevard of Cars businesses and asked that Council consider requiring the businesses utilize other means of communication so as not to disturb residents within close proximity.

Jon Gray, President of Orange Coast Jeep/Chrysler/Dodge, Costa Mesa, noted that the Harbor Boulevard of Cars did not lobby for the proposed code amendments, and advised that they are willing to work with the City and with residents regarding specific issues. In response to Mayor Pro Tem Mansoor regarding that of use of the public address system, Mr. Gray stated that reasonably alternative means could be investigated, in addition to restricting the system to daytime use. He asked, however, that consideration not be given to the requiring discontinued use of the paging system if it was found to offer a more effective means of running their businesses.

Don Elmore, Costa Mesa, made comment regarding a seemingly routine approval of variances throughout the city and asked that whatever amendments are adopted, that they be strictly enforced. Regarding an alternative to the use of the public address system, Mr. Elmore suggested that dealerships utilize radio-phones as he has found them to be an effective and non-disruptive means of communication.

Matt Moloci, President of the Harbor Boulevard of Cars, reiterated the desire of the dealerships to work with the City and the residents to resolve issues and suggested that each dealership be reviewed separately, and that those concerns be brought to the attention of the local association of car dealerships to be addressed at their monthly meetings.

Robin Leffler, Costa Mesa, representing the Mesa Verde Homeowners Association, commented that the public address systems, test drives, and parking of cars from the dealerships, disturb the quality of life for the neighboring residents. She also voiced concerns about a landscape reduction, noting a preference in the recent addition of landscape along the thoroughfares throughout the City. She stated that the setbacks were important to allow for a deeper, well-maintained landscape as she felt that it would provide a look of well-being and prosperity in addition to

decreasing the runoff from the rain. Ms. Leffler also felt that the hanging of banners was "tacky, visual clutter", and devalued the area and suggested the planting of more trees along the major highway.

Judi Berry, Costa Mesa, disagreed with the proposed definition of a "car dealer" as having a minimum of two (2) cars for sale, questioning the applicability to individuals. The Senior Planner clarified for the Mayor that the requirement referenced outdoor display of vehicles versus indoor display.

Terry Shaw, Costa Mesa, concurred with previous comments made by speakers and felt that if City adopted the ordinance that it must be enforced. If it is not to be enforced, any further amendments were not worth pursuing. He also suggested that the amendments should be applied to like businesses throughout the City, not only to those on Harbor Boulevard.

Sandra Genis, Costa Mesa, reiterated her concerns as mentioned in her communication presented to the Council, regarding amplified sound, storage of vehicles on residential streets, test drives on residential streets, lack of on-site parking for employees, as well as loading and off-loading of vehicles.

Igal Israel, Costa Mesa, noted while it would nice to have more landscaping, it will be difficult and "unfair" to require current businesses into conformity of the new codes.

There being no other speakers, the Mayor closed the public hearing.

Council Member Cowan opined that establishing of setbacks for landscaping purposes would not curtail the requests for variances, as many businesses do not regard landscaping as an enhancement of the property.

MOTION/Receive and File Report

A motion was made by Council Member Cowan, seconded by Mayor Pro Tem Mansoor, to deny first reading of the recommended amendments to the Zoning Code, and receive and file the Agenda Report.

Mayor Pro Tem Mansoor expressed his desire that the dealerships work on an alternative means of communicating other than by utilizing the public address system.

Council Member Steel suggested that the issue be referred back to the Planning Commission to review along with the comments found in the communication from Sandi Genis.

Mayor Monahan expressed his opposition to the motion and explained that the purpose of the changes suggested by staff were: to allow the "banner program" to be extended to other dealerships and not just those along Harbor Boulevard and to reduce the setback requirements. He felt that the comments made by Ms. Genis were separate from the purpose of the proposed ordinance and could be dealt with at a later time. He pointed out that the recommendations were suggested by staff and approved unanimously by the Planning Commission.

Mayor Pro Tem Mansoor commented that he was hesitant to support the changes at this time without having had an opportunity to discuss in detail the issues with the dealerships.

	<p>Council Member Cowan expressed her opposition to the motion as she felt that the changes were not needed at this time.</p>
<p>Substitute Motion Failed To Carry</p>	<p>A substitute motion was made by Mayor Monahan, seconded by Council Member Scheafer, to give first reading to the ordinance, failed to carry 3-2, Mayor Pro Tem Mansoor and Council Member Cowan and Council Member Steel voting no.</p> <p>The original motion carried 3-2, Mayor Monahan and Council Member Scheafer voting no.</p>
<p>MOTION/Provided Direction to Staff</p>	<p>A motion was made by Council Member Cowan, seconded by Mayor Pro Tem Mansoor, to direct staff and the Planning Commission, to meet with representatives from the car dealerships to discuss solutions to amplified sound, and storage of vehicle inventory on residential streets.</p>
<p>SUBSTITUTE MOTION/Directing Staff Died for Lack of a Second</p>	<p>A substitute motion was made by Council Member Steel, directing staff to discuss solutions for the issues regarding amplified sound, storage of vehicle inventory on residential streets, test drives in residential neighborhoods, on-site parking for employees, and on-site loading and off-loading areas provided for delivery of vehicles, died for lack of a second.</p> <p>Mayor Pro Tem expressed his hesitancy in banning test drives in residential neighborhoods explaining it would be difficult to enforce the ban as the streets are for public right-of-way uses.</p> <p>The original motion carried 5-0.</p>
<p>RECESS</p>	<p>The Mayor declared a recess at 7:55 p.m., and reconvened the meeting at 8:10 p.m.</p>
<p>PUBLIC HEARING 2004-2005 Community Development Block Grant Public Service Grant Allocations</p>	<p>The Deputy City Clerk announced that this is the time and place set for a public hearing to consider the 2004-2005 Community Development Block Grant Public Service Grant Allocations. The Affidavit of Publication is on file in the City Clerk's office. Communications were received from Rhoda Watson, Costa Mesa, requesting that Council not reduce the funding to the Orange Coast Interfaith Shelter; and Dr. Dennis Short, Newport Beach, requesting that Council reverse their decision for a 25 percent reduction in public funds for the homeless. The CDBG/HOME Coordinator reviewed the Agenda Report dated April 5, 2004, and he and the Neighborhood Improvement Manager responded to questions from Council.</p> <p>Mayor Monahan announced that allocation of CDBG funding for the Boys and Girls Club would be taken out of order and that Council Member Scheafer had recused himself from the discussion and the vote regarding the Boys and Girls club due to his wife's employment by the organization.</p> <p>There was no public comment.</p>
<p>MOTION/Approved CDBG Fund Allocation for Boys and Girls Club</p>	<p>A motion was made by Mayor Pro Tem Mansoor, seconded by Council Member Steel, and carried 4-0, Council Member Scheafer abstaining, to approve Fiscal Year 2004-2005 CDBG Public Service Grant Funds allocation of \$5,000.00 for the Boys and Girls Club.</p> <p>Dr. Dennis Short, Newport Beach, asked Council to reconsider the</p>