PLANNING COMMISSION AGENDA REPORT

VI.4

MEETING DATE: NOVEMBER 9, 2009 ITEM NUMBER

SUBJECT: CODE AMENDMENT CO-09-13 TO TITLE 13, CHAPTER V, ARTICLE 10 OF THE COSTA MESA MUNICIPAL CODE RELATED TO FLOODWAY AND FLOODPLAIN DISTRICTS

DATE: OCTOBER 6, 2009

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA, SENIOR PLANNER
(714) 754-5610

DESCRIPTION

Code Amendment CO-09-13 is an amendment to Title 13 (Zoning Code) of the Costa Mesa Municipal Code to update the City's Floodplain Management Ordinance in accordance with the latest requirements of the National Flood Insurance Program and Flood Emergency Management Agency (FEMA).

RECOMMENDATION

Recommend that City Council introduce and give first reading to ordinance.

MINOO ASHABI, AIA
Senior Planner

KHANH NGUYEN
Acting Asst. Development Svs. Director

BACKGROUND

Federal Emergency Management Agency (FEMA) has updated the Floor Insurance Rate Maps (FIRM) that will be effective on December 3, 2009. To remain in compliance with the National Flood Insurance Program (NFIP), the City of Costa Mesa is required to adopt the latest floodplain management regulations that meet the standards of Sections 59.1, 59.22, 60.2, 60.3, 60.6, 65.3 of the NFIP by the effective date of the FIRMs. The current Floodplain Management Ordinance contained in Title 13, Chapter V, Sections 13-77 through 13-83 are required to be updated to reflect the most recent federal requirements. No building permit may be issued in Special Flood Hazard Zone A until the ordinance is adopted.

ANALYSIS

Updated Flood Insurance Rate Maps:

The FIRMs dated February 18, 2004 are currently in effect to determine the special hazard areas within the City limits. Every few years FEMA updates the FIRMs to reflect the latest improvements in the flood channels and any changes to special flood hazard areas. This includes any Letter of Map Revision (LOMR) approved by FEMA during the update period. The following two categories are applicable to areas within City limits:

- Zone "X" – Areas of 0.2% and 1.0% annual chance flood with average depth of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood

- Zone "A" – No Base Flood Elevation determined.

The updated maps by FEMA depict all residential areas in the Zone "X" category; however, as before, there are three areas of commercial, open space and industrial land uses within the City limits that are subject to flood insurance because of "A" flood rating designation.

Existing Areas subject to LOMR:

Although, adequate and timely information was submitted to FEMA, the updated FIRMs do not reflect the most recent LOMR in Home Ranch Development area north of the 405 Freeway and south of South Coast Drive. Staff will be working with FEMA to reinstate the LOMR for this area upon the effective dates of the maps.

Required Amendments:

The most significant amendments are related to the following areas:

- Purpose – the ordinance is required to include language related to the purpose of the floodplain management ordinance;
- Base Flood Elevation – the ordinance is required to include a definition related to the base elevation for special flood hazard areas;

- Effective dates of the Flood Insurance Rate Maps – all reference to the current maps is required to be updated to reflect the new maps effective date of December 3, 2009;
- Variance, abrogation and enforcement procedures – the ordinance is required to include consistent language with the federal requirements; and,
- Disclaimer and liability – the ordinance needs to refer to the extent of liability of federal requirements related to special flood hazard areas.

ENVIRONMENTAL DETERMINATION:

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

CONCLUSION:

The code amendment is required to update the current Floodplain Management Ordinance reflecting FEMA requirements and in compliance with the state model ordinance in time for the effective dates of the Flood Insurance Rate Maps.

Distribution: Acting Development Svs. Director
Public Services Director
Deputy City Attorney
City Engineer
Staff (4)
File (2)

Attachment: Ordinance

File: 110909CO0913	Date: 102909	Time: 2:30 p.m.

ORDINANCE NO. 09-

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-09-13, AMENDING CHAPTER V OF TITLE 13, OF THE COSTA MESA MUNICIPAL CODE REGARDING FLOODWAY AND FLOODPLAIN DISTRICTS

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

SECTION 1: TITLE 13. Title 13, Chapter V, Article 10, Floodway and Floodplain Districts, of the Costa Mesa Municipal Code is hereby amended as follows:

a. Section 13-77 is amended as follows:

"Sec. 13-77 PURPOSE

The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of Costa Mesa does hereby adopt floodplain management regulations of the National Flood Insurance Program, subject to amendments as provided by law and contained elsewhere in this chapter. The provisions of this article are supplemental to those of the National Flood Insurance Program.

The floodway and floodplain districts and regulations are intended to be applied to those areas of the city which, under present conditions, are subject to periodic flooding and accompanying hazards. The objectives of the floodway and floodplain districts include:

(a) Prevention of loss of life and property and minimization of economic loss caused by flood flows.

(b) Establishment of criteria for land management and land use in floodprone areas that are consistent with the criteria promulgated by the Federal Emergency Management Agency for the purpose of providing flood insurance eligibility for property owners.

(c) Prohibition of encroachments, new construction or other improvements or development that would obstruct or divert the flow of floodwaters within a regulatory floodway.

(d) Regulation and control of use of land below the elevation of the design flood flow within the remainder of the floodplain."

b. **Section 13-78 Definitions** is amended to include the following new or revised definitions to be placed alphabetically in the list of definitions:

Sec. 13-78 DEFINITIONS

[...]

"**Base Flood Elevation (BFE)**. The elevation shown on the Flood Insurance Rate Map for zones AE, AH, A1-30, VE and V30 that indicates the water surface elevation resulting from a flood that has a one percent or greater chance of being equaled or exceeded in any given year."

[...]

"**Flood insurance rate map (FIRM) and flood boundary and floodway map.** The official maps published by the Federal Insurance Administration (dated ~~August 9, 2002~~ December 3, 2009, and any subsequent amendments or revisions thereof) on which are delineated both the areas of special flood hazards and the risk premium zones applicable to the community."

[...]

"**Flood insurance study.** The "Flood Insurance Study for the City of Costa Mesa, California, Orange County" (preliminary study dated ~~August 9, 2002~~ December 3, 2009, and any subsequent revisions or updates thereof) prepared by the Federal Insurance Administration providing flood profiles, as well as the boundaries and the water surface elevations of the base flood, including the flood boundary and flood-way map."

[...]

"**New construction.** For floodplain management purposes, new construction signifies structures for which the "start of construction" commenced on or after (December 15, 1980- date of first Costa Mesa Floodplain Ordinance), and includes any subsequent improvements to such structures."

[...]

"**Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its prior undamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred."

[...]

"**Violation.** The failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without elevation certificate, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as the documentation is provided."

c. Section 13-79 is amended as follows:

"**Sec. 13-79 APPLICATION**

a) In any base flood district, when the property is included within a designated flood hazard area shown on the adopted Orange County (countywide) Flood Insurance Rate Map (FIRM) dated ~~August 9, 2002~~ December 3, 2009, or a subsequent FIRM, of flood boundary and floodway maps as published by the Federal Emergency Management

Agency (FEMA), the additional requirements, limitations and standards contained in this article and by FEMA shall apply.

b) Flood hazard areas shall be identified and mapped, based upon:

(1) The base flood and criteria set forth by the "Flood Insurance Study for the City of Costa Mesa, California, Orange County" (preliminary study dated ~~August 9, 2002~~ December 3, 2009, and any subsequent amendments or revisions thereof). If FEMA has not provided base flood elevations in the study, such base flood data shall be obtained from other available sources or studies meeting with city approval; or,

(2) The design flood as determined from engineering studies reviewed and found satisfactory by the city as approved by the city council.

c) The following documents are hereby adopted for the application of floodway area regulations only: (1) all the standards of ~~Paragraph 60.3(b)~~ Sections 59.1, 59.22, 60.1, 60.2, 60.3, 60.6, 65.3 of the National Flood Insurance Program, (2) The Orange County (countywide) FIRM and flood boundary and floodway maps as zoning district maps (dated ~~August 9, 2002~~ December 3, 2009, and any subsequent amendments or revisions thereof), and (3) Flood Insurance Study for the City of Costa Mesa (dated ~~August 9, 2002~~ December 3, 2009, and any subsequent revisions or updates thereof).

(d) **Disclaimer of Liability.** The degree of flood protection by this ordinance is considered reasonable but does not imply total flood protection.

(e) **Severability.** If any section, provision, or portion of the ordinance is deemed unconstitutional or invalid by a court, the remainder of the ordinance shall be effective."

(f) **Compliance.** No structure or land shall thereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the City of Costa Mesa from taking such lawful actions as is necessary to prevent or remedy any violations.

(g) **Abrogation and Greater Restrictions.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(h) **Variance Procedure.** Consistent with the requirements of the National Flood Insurance Program.

d. Section 13-82 is amended as follows:

"Sec. 13-82 PROCEDURES AND DEVELOPMENT STANDARDS FOR FLOODWAY AREAS

(a) Review procedures. Pursuant to FEMA's National Flood Insurance Program regulations, the Floodplain Administrator shall review projects proposed in areas subject to the floodway areas district regulations to determine compliance with the provisions of this article. Specific responsibilities shall include, but not be limited to:

(1) Require permits for all proposed development within ~~Zone A~~ special flood hazard areas on the City's FIRM;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (a) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (b) be constructed with materials resistant to flood damage, (c) be constructed by methods and practices that minimize flood damages, and (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (a) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (c) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems;

(6) Require that all new subdivision proposals and other proposed new developments (including proposals for subdivisions greater than 50 lots or 5 acres whichever is the lesser), include within such proposals base flood elevation data.

(b) Submittal requirements. All development, subdivision, structure and substantial improvement proposals shall include submittal of detailed drainage studies and plans drawn to scale showing the nature, location, dimensions and elevation of the area in question, and all existing or proposed structures, fill, storage of materials, drainage facilities and their locations. Specifically, the following information is required:

(1) Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO and Zone AH, elevation of existing and proposed elevation of lowest floor of all structures.

(2) Proposed elevation in relation to mean sea level to which any structure will be floodproofed.

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria contained in this article.

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. The plans, floor height information, and certifications shall be maintained on file by the Development Services Department for flood insurance reference purposes.

(c) Notification of Other Agencies. The following submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

(1) Alteration or relocation of watercourse. The Floodplain Administrator shall notify adjacent communities and the State Department of Water Resources prior to approval of any project which would alter or relocate a watercourse having an effect on the flood hazard areas shown on the flood insurance rate maps and submit evidence of such notification to the appropriate Federal agency. Any approval action for such project shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity of the watercourse is not diminished.

(2) Base Flood Elevation changes due to physical alterations.

a. The floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR) within 6 months of information becoming available or project completion, whichever comes first.

b. The floodplain administrator shall ensure that all LOMR's for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of

construction" definition."

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b) (3) (general rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this ordinance amending the zoning code will have a significant effect on the environment.

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 or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: APPLICABILITY. The provisions of this ordinance shall be applicable to all properties within City limits and subject to Flood Insurance Rate Maps.

SECTION 5: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 6: PUBLICATION. 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 _____ 2009.

_____
ALLAN R. MANSOOR
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)
)ss
COUNTY OF ORANGE)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above foregoing Ordinance No. 09-___ as introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2009, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the ____ day of _____, 2009, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this ___ day of _____, 2009.

_____
City Clerk
City Council of the City of Costa Mesa