



PLANNING COMMISSION AGENDA REPORT

VI.3

MEETING DATE: DECEMBER 14, 2009

ITEM NUMBER:

SUBJECT: ZONING CODE AMENDMENT CO-09-16 TO AMEND TITLE 13, CHAPTER XIII, SECTION 13-279 RELATING TO THE DAYS AND HOURS IN WHICH CONSTRUCTION ACTIVITY IS EXEMPT FROM THE CITY'S NOISE REGULATIONS AND TO ESTABLISH A PROCEDURE TO SEEK RELIEF FROM THE PROPOSED RESTRICTIONS.

DATE: DECEMBER 3, 2009

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136
WSHIH@CI.COSTA-MESA.CA.US

DESCRIPTION

Zoning Code Amendment CO-09-16 is proposed to amend Title 13, Chapter XIII, Section 13-279 of the Costa Mesa Municipal Code. The amendment will establish more restrictive construction hours and establish a procedure to seek a temporary waiver for construction activity outside the permitted hours.

RECOMMENDATION

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


WENDY SHIH
Associate Planner


KHANH NGUYEN
Acting Asst. Development Svs. Director

BACKGROUND

Meeting History

On November 9, 2009, the Planning Commission directed staff to prepare a Zoning Code amendment to establish more restrictive construction hours and to establish a procedure to seek relief from the proposed hours. The staff report can be viewed on-line at: <http://www.ci.costa-mesa.ca.us/council/planning/2009-11-09/110909CO0916ConstHrs.pdf>.

The Commission considered modified construction hours as follows:

- 7 a.m. to 7 p.m. Mondays through Fridays.
- 9 a.m. to 6 p.m. on Saturdays.
- Prohibited on Sundays and Federal holidays.

The following table lists Federal holidays:

Date	Official Name
January 1	New Year's Day
Third Monday in January	Birthday of Martin Luther King, Jr.
Third Monday in February	Washington's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veterans Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

The Commission directed staff to specify application of the proposed ordinance to activities that are "permitted" with the issuance of appropriate permits. The language is included in the existing Code regulation (see existing Code regulation below) and will be retained in the amendment.

ANALYSIS

Existing Code Regulation

The City's Noise Ordinance sets standards for regulating unnecessary, excessive and annoying noises. Section 13-279(b), *Exceptions*, of the Zoning Code exempts the following from the Noise Ordinance:

- Construction equipment, vehicles, or work between the hours of 7 a.m. and 8 p.m., provided that all required permits for such construction, repair, or remodeling have been obtained from the appropriate City departments.

The reference to "required permits" for construction activity is to ensure that appropriate permits are obtained. This Code section does not imply that construction activity not requiring a building permit is exempt from the City's noise regulations.

Whether or not construction activity requires a building permit, noise exceeding the City's noise standards (including: construction noise, amplified noise, mechanical equipment noise, etc.) are subject to the City's noise regulations.

Existing Standard Condition of Approval

The following condition is applied to construction projects located on or near residentially zoned properties that require discretionary review:

- All construction-related activity shall be limited to between the hours of 7 a.m. and 8 p.m., Monday through Friday, and 8 a.m. to 6 p.m. Saturday. Construction is prohibited on Sundays and federal holidays. Exceptions may be made for activities that will not generate noise audible from off-site, such as painting and other quiet interior work.

Since not all construction activities require discretionary review, this condition is not applied to all projects.

Code Amendment CO-09-16 to Modify Construction Hours

The following summarizes how the Code amendment would address any concerns/issues related to the City's regulation on construction hours:

- The Code amendment would provide consistent regulation on all construction activities. The Zoning Code currently allows construction between 7 a.m. and 8 p.m. daily. Pursuant to a condition of approval, the City has historically applied more restrictive hours/days for projects located on or near residentially zoned properties. Because this restriction has been applied as a "condition of approval" on a case-by case basis for discretionary projects, construction projects approved over-the-counter were not subject to these restrictions. Therefore, this resulted in non-uniform application of these construction restrictions.

The proposed Code amendment would codify the language contained in this condition of approval and allow unilateral application of these requirements through the City.

- The Code amendment would be comparable to regulations set by the surrounding cities. The amendment would prohibit construction on Sundays and Federal holidays like the surrounding cities (see Attachment 2 Construction Hours Survey). As with existing Code, the construction hours would not apply to activities that will not generate noise audible from off-site, such as painting and other quiet interior work.

If the Code amendment does not specify prohibition of construction activities on Federal holidays, construction could occur on any of the holidays listed above. All construction activities outside the permitted hours would be subject to the City's noise regulations.

- The Code amendment includes a waiver procedure by which extended construction hours may be approved on a case-by-case basis by the Planning Division. The Commission may consider a minor modification process to allow a temporary waiver for construction equipment, vehicles, or work outside the permitted hours. Any temporary waiver would take into consideration the unusual circumstances requiring construction activities outside the permitted hours and the short-term impacts on nearby residential and business communities.

It should be noted that this waiver procedure is strictly for construction activity that must occur outside the permitted hours due to unusual circumstances. The Code already specifies a variance procedure for exemptions from the City's Noise Ordinance for violating noise sources that take into account the uses of property affected by the noise, the economic factors related to age and useful life of equipment and a proposed method/time schedule for achieving compliance.

A public notice regarding the proposed amendment has been sent to the Building Industry Association and major homebuilders. If the Code amendment is adopted by Council, staff will incorporate a notice of allowable construction hours on all building permits issued.

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.

LEGAL REVIEW:

The City Attorney's office approved this Ordinance as to form.

ALTERNATIVES

1. Recommend City Council introduce and give first reading of Ordinance. This action will exempt the following hours from the Noise Ordinance for construction activities and provide a waiver procedure to deviate from the hours. The Commission may recommend alternate hours and/or days for construction activities exempt from the Noise Ordinance.

2. Receive and file. Because this Code amendment was prepared pursuant to Planning Commission direction, Commission may decide to receive and file this information at this time. This action will allow the existing Code regulation and standard condition of approval to be applied to construction projects. The Code amendment will not be brought forward for Council consideration.

CONCLUSION

This Code amendment would provide consistent regulation on all construction activities that are comparable to surrounding cities and provide a waiver procedure to deviate from the regulation.

Attachment: 1. Ordinance
2. Construction Hours Survey

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

File: 121409CO0916	Date: 120309	Time: 10:15 a.m.
--------------------	--------------	------------------

ORDINANCE NO. 10-

AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-09-16 TO AMEND TITLE 13, CHAPTER XIII, SECTION 13-279(b) OF THE COSTA MESA MUNICIPAL CODE RELATING TO THE DAYS AND HOURS IN WHICH CONSTRUCTION ACTIVITY IS EXEMPT FROM THE CITY'S NOISE REGULATIONS AND TO ESTABLISH A PROCEDURE TO SEEK RELIEF FROM THE RESTRICTIONS.

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

SECTION 1: TITLE 13. Title 13, Chapter XIII. Noise Control, of the Costa Mesa Municipal Code is hereby amended as follows:

- a. Amend Section 13-279(b) as follows:

"Sec. 13-279. EXCEPTIONS FOR CONSTRUCTION

The provisions of this chapter shall not apply to the following:

- (a) Emergency machinery, vehicles, or work; or
- (b) Construction equipment, vehicles, or work between the following approved hours, ~~of 7:00 a.m. and 8:00 p.m.,~~ provided that all required permits for such construction, repair, or remodeling have been obtained from the appropriate City departments.

HOURS FOR CONSTRUCTION ACTIVITIES

<u>7:00 a.m. through 7:00 p.m.</u>	<u>Mondays through Fridays</u>
<u>9:00 a.m. through 6:00 p.m.</u>	<u>Saturdays</u>
<u>Prohibited all hours</u>	<u>Sundays and Federal holidays</u>

- (c) **Waiver Procedure.** An applicant may request approval of a minor modification for a temporary waiver for construction equipment, vehicles, or work outside these permitted hours. The minor modification may be granted by the Development Services Director or his/her designee. Any temporary waiver shall take into consideration the unusual circumstances requiring construction activity outside the permitted hours and the short-term impacts upon nearby residential and business communities.

Minor modification findings shall indicate whether or not the extended construction hours will be materially detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the construction site.

Unless a temporary waiver is approved, construction activity outside the permitted hours shall still be subject to the City's noise regulations."

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 building permit activities that will generate noise audible from off-site.

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 _____ 2010.

ALLAN R. MANSOOR
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

CONSTRUCTION HOURS SURVEY

DAY OF THE WEEK

	Monday - Friday	Saturday	Sundays & Federal Holidays
CITY			
COSTA MESA	7:00 am – 8:00 pm	7:00 am – 8:00 pm (8:00 am – 6:00 pm if conditioned through Planning Application)	7:00 am – 8:00 pm (Prohibited if conditioned through Planning Application)
FOUNTAIN VALLEY	7:00 am – 8:00 pm	9:00 am – 8:00 pm	Prohibited
HUNTINGTON BEACH	7:00 am – 8:00 pm	7:00 am – 8:00 pm	Prohibited
IRVINE	7:00 am – 7:00 pm	9:00 am – 6:00 pm	Prohibited
MISSION VIEJO	7:00 am – 8:00 pm	7:00 am – 8:00 pm	Prohibited
NEWPORT BEACH	7:00 am – 6:30 pm	8:00 am – 6:00 pm	Prohibited