



# **PLANNING COMMISSION**

## **AGENDA REPORT**

VI. 1

MEETING DATE: JANUARY 11, 2010

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 31, 2009

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

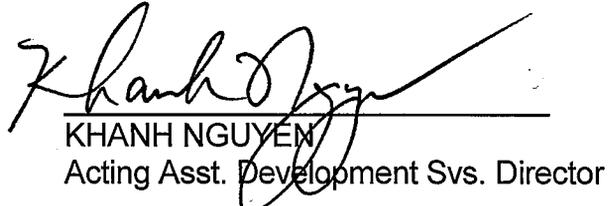
### **DESCRIPTION**

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***

#### **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 by which 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 meeting minutes can be viewed on-line (page 8) at:

[http://www.ci.costa-mesa.ca.us/council/planning/pm\\_091109.pdf](http://www.ci.costa-mesa.ca.us/council/planning/pm_091109.pdf)

#### **December 14, 2009**

The Commission continued the proposed ordinance to the January 11, 2010, meeting and directed staff to provide analysis on activities that are "permitted" versus "non-permitted" as they apply to the ordinance.

The staff report can be viewed on-line at:

<http://www.ci.costa-mesa.ca.us/council/planning/2009-12-14/121409CO0916.pdf>

## **ANALYSIS**

### ***Permitted versus Non-permitted Work***

"**Permitted**" work refers to legal construction, repair, remodeling, demolition or grading with the issuance of appropriate permits, as applicable. "**Non-permitted**" work refers to illegal construction, repair, remodeling, demolition or grading without required permits. Some work do not require permits from the City and would be considered lawful construction activities subject to the City's Noise Ordinance.

### ***City Survey***

Staff contacted the surrounding cities (Fountain Valley, Huntington Beach, Irvine, Mission Viejo, and Newport Beach) to inquire about how they regulate construction activities. Staff's findings are summarized below:

- Surrounding cities allow minor construction activity outside the permitted construction hours, provided that the construction work complies with the Noise Ordinance and valid building permits are obtained, as applicable. Similar to the City of Costa Mesa, the surveyed cities include permissible construction hours within the context of the

Noise Ordinance. All cities surveyed exempt noise associated with construction activities, occurring within specified hours and days, from the noise ordinance.

- The proposed ordinance would be consistent with regulations set by the surrounding cities. While construction is prohibited on Sundays and Federal holidays in addition to other specified hours during the week, the prohibition relates to noise associated with construction activities. The Building Industry Association (BIA) is supportive of the proposed changes.

### ***Enforcement of Construction Hours***

The proposed ordinance would prohibit operation of construction vehicles and equipment outside the approved construction hours due to associated noise. However, if the City receives noise complaints outside the permissible construction hours, the existing Code regulation (as well as the proposed Code amendment) does give the Building Official discretion to determine if a noise violation has occurred.

The Building Official may require a job site to be shut down and/or fined due to noise disturbances outside the approved hours. Such noise disturbances could be related to the presence/operation of construction equipment/vehicles, presence of construction workers generating noise from their collective activities, etc. The Zoning Code does empower the Building Official to enforce the code regulations to promote peace and quiet enjoyment in neighborhoods.

Staff believes the attached Ordinance would comply with the Planning Commission's directive to be consistent with the construction regulations in other surrounding Cities. Planning staff has not made any additional changes to the proposed Ordinance since the Planning Commission meeting of December 14, 2009.

### **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:

7 a.m. through 7 p.m. Mondays through Fridays

9 a.m. through 6 p.m. Saturdays

Prohibited all hours on Sundays and Federal holidays

2. Receive and file. This action will allow the existing Code regulations to be applied to construction projects.

**CONCLUSION**

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

Attachment: 1. Ordinance

Distribution: Acting Development Services Director  
Deputy City Attorney  
City Engineer  
Fire Protection Analyst  
Staff (4)  
File (2)

File: 011110CO0916	Date: 123009	Time: 10:30 a.m.
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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.**

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ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

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City Clerk of the City of Costa Mesa

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City Attorney

