

**MEETING MINUTES OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

JANUARY 13, 2020

CALL TO ORDER

The Chair called the meeting to order at 6:00 PM.

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Russell led the Pledge of Allegiance.

ROLL CALL

Present: Chair Byron de Arakal, Vice Chair Jeffrey Harlan, Commissioner Kedarious Colbert, Commissioner Marc Perkins, Commissioner Dianne Russell, Commissioner Jenna Tourje, Commissioner Jon Zich

Absent: None

Officials

Present: Director of Economic and Development Services Barry Curtis, Assistant Director of Development Services Jennifer Le, Assistant City Attorney Tarquin Preziosi, Deputy City Attorney Scott Porter, Transportation Services Manager Jennifer Rosales, Senior Planner Mel Lee, Assistant Planner Justin Arios, Assistant Planner Johnwilly Aglupos, and Recording Secretary Julie Colgan

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS:

Ann Parker, Costa Mesa resident, felt staff does not have the residents rights and well-being in mind; asked the Commission to not believe every operator (sober living operator or restaurateurs) that comes before them stating that they only need a number of parking spaces; asked to stall the cell phone tower item and wait until the latest information comes out and not to rely on old technology information from 1996 because that is borderline insanity.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Tourje spoke regarding the Costa Mesa Alliance for better streets.

Commissioner Perkins reported on the holiday ride that took place; spoke regarding the next Costa Mesa community ride event; and that the Costa Mesa Alliance for Better Streets is meeting on Monday, January 20.

Commissioner Colbert wished everyone a Happy New Year and happy Founder's Day to the women on Delta Sigma Theta Sorority Incorporated.

Chair de Arakal acknowledged staff and the City Council for their work at the last City Council meeting on the passing a formal Resolution objecting to the proposed methodology for the Regional Housing Needs Assessment and spoke on the RHNA/housing element update process that the City is going through.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS

- 1. A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE (CODE AMENDMENT CO-19-04) AMENDING TITLE 19 AND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (FRANCHISES AND PLANNING, ZONING, AND DEVELOPMENT), RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES AND RELATED INFRASTRUCTURE WITHIN THE PUBLIC RIGHT-OF-WAY**

Project Description: Code Amendment CO-19-04 would amend Title 19 and Title 13 of the Costa Mesa Municipal Code to modify and establish standards and procedures for wireless telecommunications facilities in the public right-of-way. This item was continued from the November 25, 2019 and the December 9, 2019 Planning Commission meetings.

Environmental Determination: The ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) (General Rule).

Four ex-parte communications to report: Commissioner Zich had telephone conversations and email exchange with representatives from the Costa Mesa Advocacy Group; Commissioner Colbert had email communications with the Costa Mesa Advocacy Group; Commissioner Perkins had email communications with the Costa Mesa Advocacy Group and had an in person meeting with Monica and Alison from the Costa Mesa Advocacy Group; and Chair de Arakal had a meeting with a representative from the Costa Mesa Advocacy Group in the last few days

Jennifer Le, Assistant Director of Development Services, presented the staff report.

Discussion ensued on what the rights are for a wireless telecommunication carrier to provide service above what they already provide; responded to public correspondence received in regards to cellphone towers providing data and voice; how the City can regulate a wireless telecommunication facility based on aesthetics without violating federal law; how recently the applicable RF regulations from the FCC have been updated; what specific information needs to be provided to establish a small cell site; how a resident would be informed should a wireless telecommunication facility be located near their residence; the difference in a ministerial process versus discretionary process; what work would be involved if noticing was required for the ministerial process; adding language to the appeal period to address when it falls on a holiday or weekend; small cell installer would be held accountable to the City's landscape requirements in Chapter 5, Title 15; how the ordinance and the City's Design Guidelines are integrated; why a ministerial permit would not be required first before the Wireless Telecommunication Use Permit; can RF emission can be considered; cumulative examination is required in a post certification install; when regular checks can occur after the

sixty-day post installation; the consequence if the 25-foot setback requirement from the nearest residential structure is extended; why 500 feet is the proposed separation between facilities from a single carrier; the process of finding something technically infeasible versus technically feasible; and whether staff incorporated comments from the public and the wireless carriers responses into the revisions of the ordinance.

PUBLIC COMMENT

The Chair opened public comments for the continued public hearing.

Monica Draghici, representing the Costa Mesa Advocacy Group, voiced concerns with the inclusion of macrocells in the ordinance; no inclusion of on strand-mounted cells; ministerial review process affecting the due process for people under the ADA and Federal Housing Act; spoke in opposition of the discretionary appeal process of three calendar days; stated concerns that EMF standards have not been updated since 1996; asked what would trigger a third party review by a specialist consultant; spoke on a Wall Street Journal article about reviewing small cell sites throughout the United States; and the landscape replacement tree size.

Jay Humphrey, Costa Mesa resident, asked whether the City has a map where every cell pole exist in the City and asked staff to send an email to him of where the map is on the City website; suggested tagging the pole with a notice; asked what is done with the RF study data.

Aaron Schnyder, from Crown Castle, stated that they look at both coverage and capacity; explained that they also have to pay attention to utility specific codes; and that they have to follow city control along with state and federal oversight when they deploy a network.

Discussion ensued on what Crown Castle's role is with the small cell providers; how far in time they look when they roll out technology; why Crown Castle would not move forward with a facility; the potential limitations that would exist because of capacity and how they are identified; how competitive conflicts are dealt with.

Alison Burchette, representing the Costa Mesa Advocacy Group, stated that the City lacks authority to require spacing based on carriers; asked for 1,000 feet between poles regardless of carrier; spoke on how the tiered zones are ineffective; stated concerns with the appeal timeframe to comply with ADA standards; the cost of the appeal; that RF testing needs to have a field test element; tiered residential zones does not mention schools; stated that her recommendation is to amend the Design Guidelines to have tighter tiers and to have a fall zone.

Ann Parker, Costa Mesa resident, spoke on San Diego's cell phone ordinance having a 1,000 feet between poles; suggested looking at other City's ordinances; stated concerns with basing the proposed technology on a 24- year-old telecom act; spoke on how Mobilite Cell Phone office in the back bay area became Southern California Recovery; how Gary Jabara and Villa Real Estate and Mobilite Cell Phone are all involved in cell phone towers and sober living and these are two things that she thinks are wrecking the City.

Ted Flintner, Costa Mesa resident, spoke on the difference between 4G and 5G technology; stated concerns with using the Telecommunications Act of 1996 on future facilities; would

like to see greater cell phone pole spacing; he is not against technology and would like to have safe use of technology.

The Chair closed the public comment portion of the public hearing.

Discussion ensued on the cost of the appeal process; why macrocells are included in the ordinance; that a sign will be posted on the pole along with a 500-foot radius mailout; public noticing requirements will not be included in the ministerial process; strand mounted facilities; the idea that there is ADA protection for people sensitive to RF emissions; how the City will manage the different pole sites owned by Crown Castle but are acting on behalf of different carriers; that there is a standard condition of approval during post-installation certification requiring onsite RF testing; process of a tree removal; the distance requirements for residential setbacks and distance setbacks between installations of the same providers are included in the City's design guidelines; how the City would handle a circumstance where a permittee provides incorrect or misleading information; and discussed the result of having a distance requirement between poles without reference to a carrier.

The Chair closed the public hearing.

MOVED/SECOND: Zich/Tourje

MOTION: Approve staff's recommendation with changes to the noticing paragraph by adding "ministerial".

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Colbert, Perkins, Russell, Tourje, Zich

Nays: None

Absent: None

Motion carried: 7-0

Discussion ensued on whether the decisions of the Director, Zoning Administrator or City Manager are currently ministerial decisions.

Commissioner Perkins requested that the motion include a section on appeal time specifically if an appeal falls on a holiday or a weekend when City Hall is closed, the application shall be filed no later than the next business day. Commissioner Zich and Commissioner Tourje agreed to add it to the motion.

ACTION:

The Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3)(General Rule exemption); and
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment CO-19-04, amending Title 19 and Title 13 of the Costa Mesa Municipal Code (Franchises and Planning, Zoning, and Development), relating to wireless telecommunications facilities and related infrastructure within the public right-of-way.

ADDED:

- Notices of the upcoming Director, Zoning Administrator or City Manager discretionary or ministerial decisions shall be provided to the applicant and provided as described

in subsection (d)(1) and (2) of section 13-29 of the Municipal Code [generally requiring 500 foot notice at least 10 days before the decision on the application].

- Notwithstanding Municipal Code section 2-305, an application for appeal of a Director decision hereunder must be filed within three (3) calendar days after the date the written decision being appealed was posted to the City's website. If the final day for filing an application for appeal falls on a holiday or weekend day when City Hall is closed, the application shall be filed no later than the next business day. The application for appeal must contain a short and plain statement about the basis for the appeal, which may be supplemented after the appeal period has expired but before the appeal is considered.

Commissioner Tourje provided comments.

Vice Chair Harlan spoke in support of the motion.

Chair de Arakal spoke on the item.

RESOLUTION PC-2020-01 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA RECOMMENDING THAT CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE (CODE AMENDMENT CO-19-04) AMENDING TITLE 19 AND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (FRANCHISES AND PLANNING, ZONING AND DEVELOPMENT), RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES AND RELATED INFRASTRUCTURE WITHIN THE PUBLIC RIGHT-OF-WAY

The Commission took a break at 8:11 PM.

The Commission reconvened at 8:22 PM.

2. ZONING APPLICATION 19-83 FOR A MINOR CONDITIONAL USE PERMIT TO DEVIATE FROM SHARED PARKING REQUIREMENTS FOR AN INDIVIDUAL AND GROUP COUNSELING USE LOCATED AT 2790 HARBOR BOULEVARD, SUITES 307, 309, AND 310

Project Description: Zoning Application 19-83 is a request for a Minor Conditional Use Permit to deviate from parking requirements due to unique operating characteristics for an individual and group counseling use (California Prime Recovery) proposing to locate in Suites 307, 309, and 310 of an existing multi-tenant commercial building at 2790 Harbor Boulevard.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

Commissioner Perkins stated his employer's property is within 1,000 feet of the proposed property and deferred to Mr. Preziosi for any conflict of interest.

Mr. Preziosi responded that Commissioner Perkins employer being a public entity in the form of a junior college district does not create a conflict of interest, it has no financial effect upon

Commissioner Perkins directly or indirectly, and that the City has no zoning authority over the community college district.

Justin Arios, Assistant Planner, presented the staff report.

Discussion ensued regarding whether a minor conditional use permit runs with the land; additional minor conditional use permits or conditional use permits for this property; the number of employees and number of employee parking spaces; that Condition of Approval No. 2 related to hours of operation for administrative staff and group counseling hours were proposed by the applicant; and the reason for the condition about the smoking breaks.

PUBLIC COMMENTS

Steven Carmel, CEO of California Prime Recovery, stated he has read the staff report and the conditions of approval and agrees to them.

Discussion ensued regarding the potential traffic impact during van drop off times; the Fountain Valley location offers services for substance abuse; the proposed location will focus on mental health; where the clients reside and how they will get there; why this proposed location works for the applicant; and the process to change approved of hours of operation.

Jay Humphrey, Costa Mesa resident, stated concerns with the shared parking process.

Ann Parker, Costa Mesa resident, stated concerns with the parking; stated that she wished someone would postpone this item to watch who get gets dropped off there and what happens when the people get dropped off there; she asked where the smoking break location would be; stated that no one wants this group of people outside smoking in front of their businesses; asked whether drug testing would occur since the use is not medical offices; stated concerns with other people coming and going that are not hired by the company like the outsourced lab technicians.

Discussion ensued on whether any substance abuse testing would occur; the tracking system for the patients coming and going in the vans; and the smoking location.

Jacin Tong, landlord's representative, stated that the designated smoking location is in the parking lot and it is for all the tenants.

Commissioner Perkins and Mr. Carmel discussed changing the hours of operation to longer hours to address potential growth.

Discussion ensued on Zoning Administrator Determination No. 08-5; that the minor conditional use permit will run with the land along with the parking deviation for the same type of use; how parking is determined for a trade or vocational use versus a medical use; that Condition of Approval Nos. 1 and 8 would address any parking violations; how the appointments operate and that they are scheduled by appointment only; no blood samples are taken; there is no court mandating testing; that parking is not assigned and is general parking; parking spaces are never at capacity; how long the group counseling and individual appointments will be; how many people would be at the location at one time; that a staff member will be with the clients during smoking breaks; why there would be urine testing occurring for mental health patients; the maximum number of clients at the facility at one

time; the history of the existing parking agreement between the tenants; and how to make the existing parking agreement become a City-recognized?

Mr. Arios explained the discretionary approvals onsite.

The Chair closed the public hearing.

MOVED/SECOND: Perkins/Harlan

MOTION: Approve staff recommendation with a modification to the programming hours of operation in Condition of Approval No. 2.

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Colbert, Perkins, Russell, Tourje, Zich

Nays: None

Absent: None

Motion carried: 7-0

ACTION:

The Planning Commission approved staff's recommendation with a modification to Condition of Approval No. 2:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Zoning Application 19-83, subject to conditions of approval.

Condition of Approval No. 2: The hours of operation for administrative staff (two employees) are Mondays through Fridays from 8:30 AM to 4:30 PM. Programming hours of operation (individual and group counseling) are Mondays from 10AM to 1 PM, and Wednesday through Fridays from 10AM to 1PM 9 AM to 4 PM.

Commissioner Perkins, Vice Chair Harlan, Chair de Arakal, Commissioner Zich and Commissioner Colbert spoke on the motion.

RESOLUTION PC-2020-02 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING ZONING APPLICATION 19-83 FOR A MINOR CONDITIONAL USE PERMIT TO DEVIATE FROM SHARED PARKING REQUIREMENTS FOR AN INDIVIDUAL AND GROUP COUNSELING USE IN THE C1 ZONE FOR PROPERTY LOCATED AT 2790 HARBOR BOULEVARD, SUITES 307, 309 AND 310

The Chair explained the appeal process.

3. **ZONING APPLICATION 19-91, AMENDING MINOR CONDITIONAL USE PERMIT ZA-15-30 FOR AN EXISTING RESTAURANT (THE HALAL GUYS), REGARDING CONDITION OF APPROVAL NUMBER 4 REQUIRING ON-SITE SECURITY FOR THE BUSINESS AT 3033 BRISTOL STREET, SUITE E**

Project Description: Zoning Application 19-91 is a request to amend a previously-approved Minor Conditional Use Permit (ZA-15-30) for an existing restaurant (The Halal Guys) to remove a condition of approval requiring the applicant to provide a security guard between

the hours of 10 AM to 4 PM, Tuesday through Saturday, and 9 PM to 1:30 AM, Thursday through Saturday. The applicant is requesting that this condition be removed due to a lack of security-related problems with the business.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

No ex-parte communication to report.

Mel Lee, Senior Planner, presented the staff report.

Discussion ensued on the City's Police Department's memo; that requiring a security guard is not a common condition of approval; that the applicant proposed the security guard when it went before the Planning Commission in 2015; same security company is being used; and that the property owner is aware of the proposed request.

The Chair opened the public hearing.

PUBLIC COMMENTS

Ali Seperhi, applicant (owner of The Halal Guys), explained why the security guard is no longer needed and stated he has read the conditions of approval and agrees to them.

Discussion ensued on why the need for valet parking is needed and what the data is on how many calls were received from the phone number given to residents.

No public comments.

The Chair closed the public hearing.

MOVED/SECOND: de Arakal/Zich

MOTION: Move staff's recommendation.

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Colbert, Perkins, Russell, Tourje, Zich

Nays: None

Absent: None

Motion carried: 7-0

ACTION: The Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Authorize the Development Services Director to, in his or her discretion, temporarily suspend the requirement to comply with COA No. 4 of Zoning Application 15-30. The Development Services Director may, in his or her discretion, reinstate this requirement based on evidence of adverse impacts, as discussed in the staff report.

Commissioner Russell, Commissioner Tourje, and Commissioner Perkins spoke in support of the motion.

RESOLUTION PC-2020-03 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING ZONING APPLICATION 19-91, WITH REGARD TO CONDITION OF APPROVAL (COA) NUMBER 4 REQUIRING ON-SITE SECURITY FOR MINOR CONDITIONAL USE PERMIT ZA-15-30 FOR AN EXISTING RESTAURANT (THE HALAL GUYS), AT 3033 BRISTOL STREET, SUITE E

The Chair explained the appeal process.

DEPARTMENTAL REPORT(S)

1. Public Services Report – none.
2. Development Services Report – none.

CITY ATTORNEY'S OFFICE REPORT(S)

1. City Attorney – none.

ADJOURNMENT AT 9:48 PM

Chair de Arakal adjourned the meeting in honor of Rob Hamers from the Costa Mesa Sanitary District.

Submitted by:



BARRY CURTIS, SECRETARY
COSTA MESA PLANNING COMMISSION