



Legislation Text

File #: 2017-838, Version: 1

Report to Mayor and City Council

Monday, November 06, 2017

Special Orders of the Day

SUBJECT:

INTRODUCTION OF ORDINANCE NO. 17-1634 AMENDING AND UPDATING PROVISIONS OF THE CARSON MUNICIPAL CODE REGARDING APPEALS OF CERTAIN PERMITS, USE PERMITS, OR CONDITIONAL USE PERMITS (CITY COUNCIL)

I. SUMMARY

Periodically, the City Attorney's office reviews relevant appellate case decisions and, in light of the same, make recommendations to update various provisions of the municipal code. A court of appeals decision out of the Fourth Appellate District, in Santa Ana, *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, has prompted the City Attorney's office to recommend certain amendments to the appeals sections of the municipal code relating to permits, use permits, or conditional use permits.

On October 2017, the Planning Commission considered this amendment and approved Resolution No. 17-2613, recommending the City Council approve the ordinance amendment (Exhibit No. 1).

Accordingly, presented for City Council consideration and action is Ordinance No. 17-1634 making changes to certain of the appeals sections of the Carson Zoning Ordinance (Exhibit No. 2).

II. RECOMMENDATION

WAIVE further reading and INTRODUCE for first reading ORDINANCE NO. 17-1634 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA AMENDING ARTICLE IX, CHAPTER 1, OF THE CARSON MUNICIPAL CODE RELATING TO APPEALS."

III. ALTERNATIVES

1. DIRECT staff and the City Attorney to further review and revise the attached ordinance.
2. TAKE such other and further actions as the City Council deems appropriate consistent with the requirements of law.

IV. BACKGROUND

In *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, the Newport Beach Planning Commission approved a CUP authorizing a restaurant to extend weekend operating hours and to allow dancing inside the restaurant. Although the City's municipal code permitted appeals by "interested parties" who followed certain specified procedural rules, a City Councilmember informed the City Clerk he wanted to appeal that decision and argued forcefully against the project when it came before the full City Council (including making the motion to overrule the Planning Commission and deny the CUP). Ultimately, the full City Council reversed the decision granting the CUP and denied the extended hours. (*Id.* at 1019)

In its resolution of denial, the City Council asserted the Councilmember's appeal was proper based on the "long-standing, unwritten policy permitting councilmembers to initiate appeals without complying with any of the procedures required of other appellants." The Court of Appeal reversed the trial court's denial of the petition on the ground the City's municipal code contained no provision allowing city councilmembers to appeal actions of a planning commission or otherwise exempting them from the procedural prerequisites for an appeal. (*Id.* at 1020-23.)

The *Woody's* court also found the appealing Councilmember's actions and advocacy had created "an unacceptable probability of actual bias" (*id.* at 1022) that was "amplified" when combined with "the related phenomenon of a city violating its own procedure by initiating an appeal to itself." (*Id.* at 1023.)

Carson Municipal Code ("CMC") § 9172.21 sets forth the appellate procedures for reviewing decisions of the Planning Commission and refers potential appellants to CMC § 9173.4. Unlike in *Woody's*, the CMC specifically provides that an appeal can be brought by a member of the City Council. However, this section of the code could be strengthened by making clear that the statement of grounds of appeal by a member of the City Council or the City Manager need not specify grounds for appeal, but, rather, need only request review by the Planning Commission or the City Council as the case may be. The proposed ordinance would codify this exception to the general rule.

CMC § 9173.9 describes fees for filing an appeal. Resolution 17-001, the Master Fees Resolution, requires "\$500 or half of the original filing fee not to exceed \$2,500, whichever is greater" for appeals from the decision of the Planning Commission. The City has a long standing custom and practice not to require Councilmembers to pay this fee but the same

is not codified in the CMC. The proposed ordinance would codify this custom and practice.

Finally, staff review of peer City zoning ordinances discloses that, in Carson, a denied permit, use permit, or conditional use permit can simply be reapplied for following denial or revocation of the same. This means that, having gone through the sometime lengthy and costly process of denying or revoking a permit, use permit, or conditional use permit, an unhappy applicant can simply re-file its application.

To remedy this potential for abuse of the City's application procedures, the proposed ordinance would provide that "following the denial of any permit application by the Director, the Planning Commission, or the City Council . . . or upon the revocation of any permit, use permit, or conditional use permit by the Director, the Planning Commission, or the City Council . . . no application for a permit, use permit, or conditional use permit for the same or substantially the same use or conditional use on the same or substantially the same real property shall be filed within one (1) year from the date denial or revocation of the permit, use permit, or conditional use permit"

V. FISCAL IMPACT

None is anticipated.

VI. EXHIBITS

1. Resolution No. 17-2613 (pgs. 4-6)
2. Ordinance No. 17-1634 (pgs. 7-8)

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