



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Fahey and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Carol Jacobson, Building Official

DATE: December 6, 2005

SUBJECT: Consideration to Adopt an Ordinance to Amend the Construction Hours as Part of the Work Plan Regarding Residential Construction Impacts

RECOMMENDATION:

Staff recommends that the Council pass a motion to **ADOPT** Ordinance No. 2079 to add three holidays when construction will be prohibited.

FISCAL IMPLICATION:

There are no fiscal impacts to the City.

BACKGROUND:

On October 4, the Council recommended the addition of three holidays when construction will be prohibited. These holidays are Martin Luther King, Jr. Day, Veterans' Day, and the Friday after Thanksgiving. This is part of the work plan item to address residential construction impacts. On November 15, Ordinance No. 2079 was introduced and further reading was waived.

DISCUSSION:

At this time, it would be appropriate for the Council to adopt the Ordinance. The Ordinance would take effect 30 days after adoption.

Attachments: A. Ordinance No. 2079
B. City Council Minutes October 4, 2005

ORDINANCE NO. 2079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA AMENDING SECTION 5.48.060 OF THE MANHATTAN BEACH MUNICIPAL CODE REGARDING HOLIDAYS ON WHICH CONSTRUCTION ACTIVITIES ARE PROHIBITED

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Presently section 5.48.060 of the Manhattan Beach Municipal Code identifies six (6) holidays upon which construction activity is prohibited;
- B. In order to protect the health and welfare of the general public from the nuisance of on-going construction activity on days when many residents are free to enjoy the comfort of their homes the City council desires to add three additional publicly recognized holidays to the list of currently identified holidays on which construction activity is prohibited;
- C. Pursuant to the California Environmental Quality Act (CEQA) and the Manhattan Beach CEQA Guidelines, the subject Amendments are exempt in that they are covered by the general rule that CEQA [Section 15061 (3)] only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibly that the activity will have a significant effect on the environment, the activity is not subject to CEQA; and,
- D. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- E. The proposed amendment to Title 5 of the Municipal Code (Zoning Ordinance) is consistent with the goals and policies of the Manhattan Beach General Plan.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the proposed amendment to Section 5.48.060 of the Manhattan Beach Municipal Code as follows:

"5.48.060 Construction

- A. All construction activity shall be prohibited, except between the following hours:

7:30 a.m. and 6:00 p.m.	Mondays through Fridays
9:00 a.m. and 6:00 p.m.	Saturdays

All construction activity shall be prohibited on Sundays and on the following public holidays:

- 1. New Year' s Day;
- 2. Memorial Day;
- 3. Independence Day;
- 4. Labor Day;
- 5. Thanksgiving Day;
- 6. Christmas Day.
- 7. Veterans Day.
- 8. Martin Luther King Day.
- 9. The Friday after Thanksgiving.
- B. The term "construction activity" shall include, but not be limited to, the following:
 - 1. The operation of any tool, machine or equipment including, but not limited to, vehicles and helicopters being used by contractors or subcontractors and their employees to carry out any work for which a city permit is required;

2. The presence of workers or delivery trucks at the construction site even if no actual work or unloading is being done. It shall also include equipment or vehicles being started or idled, playing of radios, tape players or other devices, loud talking, unloading of equipment, tools or supplies;
 3. Performing any construction, demolition, excavating, grading, maintenance or repair work on buildings, structures or property, except as provided in subsection (B)(8) of this section;
 4. Any remodeling, improvements, or additions to residential homes requiring a city permit such as, but not limited to roof replacement, window replacement, and/or patio construction, except as provided in subsection (B)(8) of this section;
 5. Any painting using motorized equipment;
 6. The coming and going of any vehicles bringing construction equipment, materials or supplies to the site of the construction activity or the staging of such vehicles on any public streets;
 7. The coming and going of any food services vehicles providing food services to persons working at a site of construction activity;
 8. **Exception.** The following are exempt from the hours of construction activity prohibited in this section, provided noise disturbances as described in Section 5.48.140 of this chapter are not violated:
 - a. Home improvements or repairs not requiring a city permit, such as carpeting, cabinet work, or any painting not as described in subsection (B)(5) of this section, and
 - b. Routine maintenance or replacement of such items as, but not limited to water heaters, dishwasher units, and garbage disposals.
- C. It is prohibited for any person to operate any radio or disc player or cassette player or similar device at a construction site in a manner that results in noise levels that are audible beyond the construction site property line.
- D. In the case of an emergency, the Building Official may issue a permit for construction activity for periods during which construction activity is prohibited by subsection A of this section. Such permit shall be issued for only the period of the emergency. Issuance of any such permit shall require the notification of all neighbors as specified by the Building Official. The person requesting the emergency permit shall describe in writing how the public interest will be served and outline the way in which it will be served.
- E. An owner-builder who resides on their property shall be exempt from the prohibition on construction activity on Sundays and holidays, provided however that all such activity shall occur between the hours of 9:00 a.m. and 6:00 p.m. on such days.
- F. The Planning Commission or City Council shall retain the right to impose more restrictive hours of construction upon any project by adding appropriate conditions to the approval of any use permits that are required for the project.
- G. Any person violating the restrictions contained herein or employing any person who violates them, including but not limited to the property owner, contractor, subcontractor, or other individual responsible for the construction project, shall be guilty of a misdemeanor and shall be punishable as described in Section 5.48.310 of this chapter.”

SECTION 3. Pursuant to Government Code Section 66499.37, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this Ordinance and the City Council is served within 120 days of the date of this Ordinance.

SECTION 4. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 6. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 7. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 6th day of December, 2005.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

05/0920.18-12 Consideration of City Council Work Plan Item Regarding Residential Construction Issues

City Manager Geoff Dolan introduced this item noting the following: that the Council discussed this topic during their annual Work Plan Meeting and directed staff to review various construction issues; that, next to traffic, construction issues result in the greatest number of complaints the City receives; that this is the first presentation on this subject to the Council; and that staff would not necessarily expect final decisions this evening.

Building Official Carol Jacobson explained that during the Council's Work Plan Meeting in June of 2005, staff was directed to review issues relevant to residential construction impacts, including construction hours, notification to neighbors and construction rule enforcement/resolutions. With the aid of a PowerPoint presentation, she provided background information on these three areas and explained the following: that changes to current construction hours (7:30 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. Saturdays, with construction prohibited on Sundays and six holidays) would require the presentation of an Ordinance at a future Council meeting; that detailed information about the addition of a part-time Code Enforcement Officer could be presented at a future Council meeting; and that a postcard notification system and/or the "Good Neighbor Construction Policy" handouts could be implemented quickly. She reported that posting of construction signs showing the job address, description, contractor/owner and a telephone number on all major job sites was implemented approximately one year ago; that neighborhood notification within 100 feet of the project is currently required only in the Coastal Zone; that a ten-day notification is required for projects having shoring; that two parking permits are issued per job site; that radio and generator noise, as well as shoring vibration, have been a problem; and that the South Bay Dispute Resolution Center has provided assistance to property owners having disputes associated with construction projects. Building Official Jacobson concluded by offering several suggestions to mitigate construction impacts in neighborhoods, as reflected in the staff report.

Councilmember Montgomery requested clarification on neighborhood notification requirements, including demolitions, and related his wish to expand the postcard notification to be City-wide.

Councilmember Aldinger stated his understanding that neighborhood notification is currently provided when there is a potential to impact surrounding properties.

Mayor Pro Tem Ward voiced his opinion that, even though it may keep construction debris from spreading to adjacent properties, the house with the white plastic cover over it is aesthetically unappealing.

Building Official Jacobson clarified that notification prior to demolition is required for Coastal Permits; that ten-day notification is required prior to the commencement of projects having shoring; that staff recommends the expansion of the postcard notification to be City-wide; that the white plastic cover is unusual and the green mesh type fencing is typical; that notification of demolitions in the Coastal Zone is provided approximately one month in advance; that notification of demolition is not required for properties east of Sepulveda Boulevard; and that, should the Council agree with the postcard notification, staff would recommend that it be sent prior to the issuance of the demolition permit.

Mayor Pro Tem Fahey stated that the biggest construction related complaint she receives is related to parking and asked if the City attempts to do anything to limit the number of vehicles at a construction site and/or if the workers could be required to park their vehicles away from the area.

Building Official Jacobson affirmed that the City cannot do anything about construction vehicles legally parked near a project.

City Attorney Robert Wadden advised that one aspect of the proposed part-time Code Enforcement Officer would be to serve as a type of City liaison who could potentially help to arrange off-site parking of construction vehicles. He confirmed that the Ordinance could be amended to require specific parking requirements for individuals working on construction projects.

In response to Mayor Pro Tem Ward's question of whether the City could encourage workers to park elsewhere, such as on arterial streets close to the construction projects, City Manager Dolan commented that a Code Enforcement Officer could be the central point person to deal with construction issues and develop a rapport with the contractors to help keep them informed and make them aware of parking alternatives.

Mayor Fahey asked if the City Ordinance could be amended to give the City the right to determine parking requirements near construction sites and requested clarification on the proposed 7% surcharge on building permits to pay for a Code Enforcement Officer.

City Attorney Wadden advised that a parking plan that includes requirements for construction areas could be developed.

Building Official Jacobson provided input on the reasoning behind implementing a 7% surcharge on building permit fees to pay for a Code Enforcement Officer.

Councilmember Aldinger entertained the idea of sending out information about the Code Enforcement Officer, such as his/her name, to property owners in construction areas.

City Manager Dolan related staff's opinion that, for identification purposes, the Code Enforcement Officer should have some type of a unique vehicle, which could be paid for by the City.

Councilmember Tell questioned whether a Code Enforcement Officer would remain for a long period of time as it is proposed to be only a part-time position.

City Manager Dolan advised that an individual with whom the City is familiar might be interested in assisting the City in getting the program up and running and that he could determine down the road if the position should be full-time.

Mayor Fahey questioned whether it would be appropriate to ask for builders to pay a 7% surcharge on building permit fees for a Code Enforcement Officer.

The following individuals spoke on this item:

- **Esther Besbris, No Address Provided**
- **Chuck Milam, 18th Street**
- **Lynn Harris, No Address Provided**
- **Karla Mendelson, 15th Street**
- **Dave Harris, No Address Provided**
- **Viet Ngo, No Address Provided**
- **Jim Murray, 2500 Block of Palm Avenue**
- **Gary Osterhout, 500 Block of 31st Street**

In response to a comment made by an audience member, Mayor Fahey suggested that the underutilization of truck routes be discussed in the future and asked if the City's website could include a link for information about construction sites in the City. She stated her support for an Ordinance that requires a parking plan and gives a Code Enforcement Officer the right to enforce compliance with the parking plan.

Council briefly discussed the idea of limiting the number of building permits in specific areas to which Mayor Pro Tem Ward and City Manager Dolan both stated that it could be very problematic.

Acknowledging that parking in construction areas is a problem, Councilmember Tell questioned where else drivers could park. He also voiced his opinion that consideration should be given to making the proposed Code Enforcement Officer a full-time position.

City Manager Dolan verified that the Code Enforcement Officer would be certified and authorized to write parking tickets and related that it is staff's opinion that parking permits issued to contractors are not abused.

Mayor Fahey pointed out that the City could contribute to a portion of the Code Enforcement Officer's salary instead of it being completely paid for by a 7% surcharge on building permit fees.

City Manager Dolan advised that, in certain parts of the City (such as the Hill Section), lane/street closures do not create problems; that contractors are currently required to notify the City of lane/street closures in the vicinity of construction projects, but the City does not currently notify residents of same; and that those owning property within ten houses of a project could be notified of lane/street closures.

In regard to the topic of prohibiting construction work on holidays, Community Development Director Richard Thompson related that a lot of homeowners like to work on their construction projects on holidays.

After brief discussion, Council concurred to direct staff to change the current Ordinance to prohibit construction on three additional holidays: Martin Luther King Jr. Day, Veteran's Day and the Friday after Thanksgiving. The Council also concurred to support a full-time Code Enforcement Officer; City-wide notification regarding demolitions; temporary power poles instead of generators, wherever possible; green mesh fencing the height of the project throughout the City; trash receptacles for food; and notification of lane/street closures to individuals owning property within ten houses of a project.

City Manager Dolan advised that staff will provide input to the Council in approximately six months on the success of the new Code Enforcement Officer, as well as other changes agreed to this evening. He clarified that the construction notices provided to property owners will be bright orange in color and the proposed Ordinance change, prohibiting construction on the three additional holidays, will be presented at a future City Council meeting for adoption.

Councilmember Montgomery commended the excellent job done by staff with regard to this item.

RECESS AND RECONVENE

At 8:53 p.m. the Council recessed and reconvened at 9:05 p.m. with all Councilmembers present, with the exception of Councilmember Tell.