



Agenda Item # \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Montgomery and Members of the City Council

**FROM:** Robert V. Wadden Jr., City Attorney

**DATE:** February 17, 2009

**SUBJECT:** Adoption of Ordinance No. 2120 Amending The Title I Appeal Process and Adopting A City Claims Procedure

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**RECOMMENDATION:**

Staff recommends that the City Council adopt Ordinance No. 2120.

**FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action.

**BACKGROUND:**

On February 3, 2009 the City Council introduced and waived further reading of Ordinance No. 2120. This proposed ordinance amends Chapter 1.12 of Title I of the Manhattan Beach Municipal Code which provides a generic appeal process for decisions of City commissions or staff which are not specifically covered by appeal processes elsewhere in the code. The section is vaguely written and its interpretation became the subject of a recent lawsuit. While the City prevailed in that action the section is unclear as to what actions are and are not appealable. In addition Government Code section 935 permits a City to adopt a claims procedure for demands which are not covered by the State law claims process. The proposed ordinance seeks to clarify the appeal process in Title I and adopt a local claims procedure.

**DISCUSSION:**

Currently Chapter 1.12 of the Manhattan Beach Municipal Code provides an appeal process for “. . . any person excepting to the denial, suspension or revocation of a permit applied for or held by him pursuant to any of the provisions of this Code, or to any administrative decision made by any official of the City pursuant to any of the provisions of this Code, . . .” The term “administrative decision” is not defined anywhere in the code.

Recently a lawsuit was filed by an aggrieved citizen who had made a complaint to the City Building Official about a project adjacent to his property. The Building Official investigated, determined that no violation had occurred and decided enforcement action was not warranted. The complainant demanded a hearing under Chapter 1.12 claiming that the decision not to undertake enforcement action was appealable as an “administrative decision.” When the City refused to hear the appeal the complainant sued. The City ultimately prevailed in the action. However, the judge in the case clearly struggled with the meaning of the section especially with the meaning of the term “administrative decision.” Subsequently the same individual attempted to appeal the issuance of a certificate of occupancy for the same project. This appeal was also rejected.

The proposed ordinance amends Chapter 1.12 to delete the undefined term “any administrative decision” thus limiting the scope of the appeal right to “denial, suspension or revocation of a permit or other entitlement” by a city official or commission. The revised section also clarifies that the appeal process does not apply to nondiscretionary permits such as building permits and certificates of occupancy to which an applicant is automatically entitled if they meet the conditions of application. The revisions further specify that the appeal process does not apply to code enforcement or prosecutorial decisions which have their own built in due process provisions either in court or through administrative hearings. These changes will clarify the section and allow it to be more easily interpreted in a way which is more consistent with its original intention.

The second element of the proposed ordinance is adoption of a local claims requirement. State law requires that before a claimant can pursue monetary liability against a public entity they must go through a claims process. However there are a few exceptions to the State law claims requirement including claims filed by other public entities and claims for wages and benefits filed by employees or former employees. Government Code section 935 permits adoption of a local ordinance to include such exceptions under a local claims process which is procedurally identical with the State claims process. The adoption of a local claims process effectively shortens the limitations period for such claims and allows the claim to be investigated, reviewed and potentially settled through a formal process.

Attachments: A. Ordinance No. 2120.

cc: Geoff Dolan, City Manager  
Richard Thompson, Director of Community Development

ORDINANCE NO. 2120

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING MANHATTAN BEACH MUNICIPAL CODE SECTION 1.12.010 REGARDING ADMINISTRATIVE APPEALS AND ADDING A NEW CHAPTER 2.56 TO TITLE 2 OF THE MANHATTAN BEACH MUNICIPAL CODE REGARDING CLAIMS

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

SECTION 1. The Manhattan Beach City Council hereby finds as follows:

- a. Manhattan Beach Municipal Code section 1.12.010 was intended to provide a right of appeal for administrative decisions for which no other appeal rights are provided in the Municipal Code, however the imprecision and lack of definitions has created confusion as to the extent and meaning of the section so clarification is required;
- b. The Government Claims Act (Cal. Government Code Sections 810, et seq.) requires the presentation of a claim and a shortened limitations period for certain monetary claims made against public entities. Government Code section 935 provides that a local claims ordinance may require a claim for demands which are otherwise excepted from the Government Claims Act. Manhattan Beach currently has no such ordinance however adoption of such an ordinance would serve to limit the time such claims can be made against the City and make them more defensible.

SECTION 2. Section 1.12.010 of the Manhattan Beach Municipal Code is hereby amended in its entirety to read as follows:

**“1.12.010 Right to Appeal.**

Except as otherwise specifically provided in this Code, any person excepting to the denial, suspension or revocation of a permit or other entitlement applied for or held by him pursuant to any of the provisions of this Code may appeal in writing to the Council by filing with the City Clerk a written notice of such appeal, setting forth the specific grounds thereof.

The appeal rights provided by this Chapter shall only apply to any entitlement or right provided for in this code (except as otherwise provided for) which is discretionary on the part of a City official or commission and shall not include ministerial decisions such as, but not limited to, building permits and occupancy permits or any enforcement or prosecutorial decision on the part of a City official entrusted with enforcement or prosecution of this code.”

SECTION 3. A new Chapter 2.56 is hereby added to Title 2 of the Manhattan Beach Municipal Code to read as follows:

**“Chapter 2.56 Matters Requiring Filing of Claims**

**2.56.010 Local Claims Requirement**

In addition to the requirements of state Government Code section 905, and notwithstanding the exemptions thereto, a claim filed with the city shall be a prerequisite to suit in the following matters:

- A. Any claim by public officers or employees for fees, salaries, wages, overtime pay, holiday pay, compensating time off, or vacation pay, sick leave pay, or any other expenses or allowances claimed due from the city, when a procedure for processing such claims is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by sections 910 through 915.2 of the state Government Code; and such claim shall be subject to the provisions of section 945.4 of the state Government Code prohibiting suits in the absence of the presentation of such claim and action thereon by council.
- B. Any claim against the city for damages or money, when a procedure for processing such claim is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by sections 910 through 915.2 of the state Government Code; and such claim

shall be subject to the provisions of section 945.4 of the state Government Code prohibiting suits in the absence of the presentation of such claim and action thereon by council.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 5. This notice shall be published by one insertion in *The Beach Reporter*, the official newspaper of the City, and this ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

SECTION 6. The City Clerk shall certify to the adoption of this ordinance; shall cause the same to be entered in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published by one insertion in *The Beach Reporter*, the official newspaper of the City and a weekly newspaper of general circulation, published and circulated within the City of Manhattan Beach hereby designated for that purpose.

PASSED, APPROVED, and ADOPTED this 17th day of February, 2009.

Ayes:  
Noes:  
Absent:  
Abstain:

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Mayor, City of Manhattan Beach, California

ATTEST:

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City Clerk