

## Council Member Barred From Considering Own Appeal

In *Woody's Group, Inc. v. City of Newport Beach*, the Fourth District Court of Appeal held that the City Council of Newport Beach "violated two basic principles of fairness: you can't be a judge in your own case, and you can't change the rules in the middle of the game." Thus, a council member who appealed a planning commission decision to the city council could not participate in the appeal; nor could the city council consider the appeal at all when the council member had failed to pay the filing fee or otherwise follow the procedures in the municipal code. [Woody's Group v. City of Newport Beach](#), No. G050155 (4th Dist., Jan. 29, 2015). Woody's Wharf is a long-established restaurant and bar overlooking Newport Harbor. In September 2013, the Newport Beach Planning Commission approved a conditional use permit and variance to allow Woody's to install a patio cover, continue to operate until 2 a.m. on weekends, and allow dancing inside the restaurant. Four days after the approval, Newport Beach City Council member Mike Henn sent the city clerk an email with an "official request to appeal" because he "strongly believed" the approval was inconsistent with policies in the City's General Plan. The city council subsequently voted 4 to 1 to reverse the planning commission decision, with Henn in the majority. Under the City's municipal code, an appellant from a planning commission determination must be an "interested party," post a fee, and use the proper form. The code contained no provision for appeals by city council members. The court of appeal found that the appeal did not comport with due process because the council member who brought the appeal also took part in the decision. The court held that an interested party for the purposes of *bringing* the appeal cannot simultaneously be a disinterested person for the purposes of affording due process in *hearing* the appeal, where the council is acting in an adjudicatory capacity. The court invoked the "cardinal rule" that "a person cannot be a judge in his or her own case," and stated, "we will not assume the drafters of Newport Beach's Municipal Code intended to contravene a cardinal rule of justice in the absence of a clear statement of such remarkable intent." The court also found that the city council violated its own municipal code by entertaining Henn's appeal because he did not comply with the procedures laid out in the code. The City argued that there was a longstanding practice of allowing council members to appeal without paying a filing fee because their appeals are taken for the benefit of the City's residents. The court rejected this argument, finding "no room for unwritten rules, policies or customs outside the municipal code or for the city council to give its members special privileges to appeal." The court also rejected the trial court's rationale that the improper appeal was harmless because interested parties (such as local residents) would surely have filed appeals anyway. The court concluded that a city council's consideration of an appeal not authorized under the municipal code required nullification of the council's decision rather than remand for reconsideration. The court ordered reinstatement of the planning commission's decision, thereby returning dancing and late nights to Woody's Wharf.

Blog series

## California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)