



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: March 10, 2004 REPORT NO. 04-042
ATTENTION: Honorable Mayor and City Council
Agenda of March 15, 2004
SUBJECT: Environmental Appeals Regulations

SUMMARY

Issues - Should the Mayor and City Council approve an ordinance amending Chapter 11, Article 2, Division 3 and Division 5 and Chapter 11, Article 3, Division 1 of the Land Development Code to clarify how the City will administer the change to Public Resource Code Section 21151 (c) regarding appeals of environmental determinations?

Managers Recommendation – Approve the proposed ordinance (Attachment No. 1).

Environmental Review – This activity is not a project and is exempt per Section 15060(c)(3) of the State of California Environmental Quality Act Guidelines.

Fiscal Impact - The staffing costs and fiscal impact to prepare the proposed regulations are part of the Land Development Code Implementation work program.

Code Enforcement Impact - The proposed regulations will have no impact on code enforcement.

Housing Impact Statement - This code change, necessitated by change to State Law, could result in increased costs for those housing projects that have the environmental determination appealed to City Council. Additional costs could result from processing costs associated with the appeal and from delays in obtaining final approval and, thus, could delay construction of the project.

BACKGROUND

A change to the California Public Resources Code regarding the California Environmental Quality Act has necessitated a change to the City's Land Development Code. Public Resource Code Section 21151 (c) was amended as follows:

- (c) *If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.*

This change became effective January 1, 2003 and provides for an appeal to City Council of a lower decision making body's decision on an environmental document or on the determination a project is exempt. This appeal would be applicable to exemption determinations and to Process 2 decisions (a staff level decision that can now only be appealed to Planning Commission) and Process 3 decisions (a Hearing Officer decision that can now only be appealed to Planning Commission).

DISCUSSION

City Attorney and Development Services staff have drafted the attached ordinance (Attachment No. 1) to clarify the procedures and rules that the City will apply in implementing this change to date law.

Under the current Land Development Code, procedures are established for appeals including who may file an appeal, the required content of an appeal, the types of notice that must be given for an appeal, the type of information that must be included in the appeal notice, and the procedures and decision process for the appeal hearings. These procedures are standardized for all decision making processes.

The proposed revision to the Land Development Code for this new appeal utilizes most of these same standards. It allows the same parties to appeal an environmental determination as with any other discretionary action. The same time frame for allowing an appeal is the same as all other appeals. Most of the appeal criteria and content of the appeal notice are also the same. In addition, the same property owners and tenants get noticed of the appeal.

In addition to these changes, the new regulations establish what issues are subject to appeal and how the various decisions that City Council can make will affect the subject project associated with the environmental document or determination. For projects where the appeal of the environmental determination is denied, the decision of the lower decision making body is upheld and becomes effectively immediately. For projects where the appeal of the determination is upheld, the Council will remand the environmental determination back to the lower decision making body for reconsideration based on the issues determined by the City Council.

CONCLUSION

Staff believe the proposed regulations implement the revision to State law, maintain consistency with other appeal processes within the City, and make it clear to project applicants and the public how the various actions that City Council can take will affect the project in the future.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved by: P. Lamont Ewell
Assistant City Manager

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Attachments: 1. Environmental Determinations Ordinance