



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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March 15, 2017

Item Number: 9

# Comparative Information on Appeal Fees for Environmental Determinations

## OVERVIEW

On March 15, 2017, the Smart Growth and Land Use (SG&LU) Committee will be discussing the impacts and costs of environmental determination appeals to development projects within the City of San Diego. In preparation for Committee discussion of this item, Councilmember Sherman's Office requested the Office of the Independent Budget Analyst (IBA) to provide comparative information on appeal fees for environmental determinations (Appeal Fees) from other California cities/counties.

This report responds to the request from Councilmember Sherman's Office and provides information from other municipalities on their respective Appeal Fees. In developing the comparative information, our office reviewed three local municipalities and six large California municipalities. Our review only included California municipalities as the California Environmental Quality Act (CEQA) and State CEQA guidelines require the development of similar environmental documents. The reviewed municipalities included the Counties of San Diego, Orange, and Los Angeles; the Cities of Del Mar, Chula Vista, San Jose, Oakland, Los Angeles; and the City/County of San Francisco.

### Comparison Municipalities

#### Local

County of San Diego  
City of Del Mar  
City of Chula Vista

#### California

County of Orange  
City of San Jose  
City of Oakland  
City/County of San Francisco  
City of Los Angeles  
County of Los Angeles

While each of these municipalities followed similar environmental review guidelines and appeal processes, their fees for filing an appeal ranged from \$100 to \$5,479. Additionally, the types of costs recovered from appeal fees varied for each municipality. Some municipalities only recovered the cost of processing the appeal while others added surcharges to support general

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operations, enhanced technology, and records management. A brief summary for each of the reviewed municipalities is provided in the following section.

## FISCAL/POLICY DISCUSSION

The San Diego Municipal Code (SDMC) Section 113.0103 defines an environmental determination as a decision by any non-elected City decision maker, to certify an environmental impact report, adopt a negative declaration or mitigated negative declaration, or to determine that a project is exempt from the California Environmental Quality Act (CEQA), under State CEQA Guidelines Section 15061(b).<sup>1</sup> Any person may appeal an environmental determination not made by the City Council to the City Council for consideration per SDMC Section 112.0520. The City's Planning Department develops the environmental determinations for public and private projects within the City.

Currently, when an individual or private developer (Applicant) applies for a private project to be considered by the City, the Applicant is required to deposit funds (amount varies depending on type of project) with the City. These funds serve as a funding source to support City staff costs related to the project including any work related to an environmental determination appeal. The deposit ensures that City staff costs are fully recovered. While City staff costs are recoverable, the charge for the additional staff time to address the appeal does increase the overall costs of the specific project for the Applicant.

For City projects (public), the Planning Department's operational budget or funding identified for the capital project (General Fund, bond proceeds, etc.) serve as funding sources for City staff costs related to the projects including environmental determination appeals.

Based upon information collected by Councilmember Sherman's staff, which was provided by the Development Services Department, the average cost to address environmental determination appeals in CY 2016 was \$12,352.

### *Appeal Fee*

As previously stated, any person can file an appeal of a private/public project's environmental determination. The City charges \$100 to file the appeal. The appeal fee was approved in July 2000 (O-18822) and has not been increased since the approval date. The fee is waived for an appeal filed by the recognized Community Planning Group for the project area or the Community Planning Group which immediately abuts the project area.

Per information collected from the Development Services Department, Councilmember Sherman's staff identified 16 environmental determination appeals filed in Calendar Year (CY) 2016. The following table shows the number of environmental determination appeals and the average number of days to resolve the appeals since 2013.

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<sup>1</sup> Per the California Natural Resources Agency, CEQA is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to certain activities of state and local public agencies. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a "project." A project is an activity undertaken by a public agency or a private activity which must receive some discretionary approval (meaning that the agency has the authority to deny the requested permit or approval) from a government agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.

**Number of Environmental Determination Appeals**

Calendar Year	2016	2015	2014	2013
No. of appeals filed	16	27	4	6
Avg. Length of appeal (days)	107	104	261	195

Summary Information for California Municipalities

Our office reviewed the appeals fees for environmental determinations charged by several municipalities within California. The table below provides a snapshot of the reviewed appeal fees. Brief summaries of the review of other municipalities are provided following the table.

**Snapshot of Reviewed Appeal Fees**

<b>Municipality</b>	<b>Fee</b>	<b>Waiver Allowed</b>
City of Chula Vista	\$250	No
City of Del Mar	\$500	Yes
County of San Diego <sup>1</sup>	\$1,000	Yes
City of San Jose	\$100	No
City of LA <sup>2</sup>	\$107	Yes
County of Orange	\$500	Yes
City/County of SF	\$578	Yes
City of Oakland <sup>2</sup>	\$3,575	No
County of LA	\$5,479	No
<b>City of San Diego</b>	<b>\$100</b>	<b>Yes</b>
1. Amount shown is a deposit requirement for applicant or a fee for non-applicant.		
2. Includes appeal fee and other surcharges.		

City of Chula Vista – Per the Planning Department, the appeal filing fee is set at \$250 for the appellant and is collected at the time of filing the appeal. The City does not allow for a waiver of the fee. The Master Fee Schedule, which includes the appeal fee, was revised in July 2011. An item of note: the appeal fee was set \$7,000 as of 2010, however in review of the appeal process and fees, the fee was revised to the current fee of \$250 in 2011.

City of Del Mar – To appeal the decision by the Planning Director or lower decision-making body to the City Council, the appeal fee is set at \$500. The fee covers the request for initial consideration and a hearing. However, if a hearing is not set, \$250 of the fee is refunded. The City Manager may waive all or portion of the fees based upon unique circumstances such as requests from non-profit organizations. The fee schedule was last updated in 2014.

County of San Diego – Per the fee schedule for the Zoning Division of the County, the appeal fee to the Planning Commission or the Board of Supervisors is \$1,000. If the project applicant files the appeal, the full fee amount is taken as a deposit and costs for staff time and materials are charged against deposit. If the total charges to address the appeal are less than \$1,000, the balance of the deposit is returned to the applicant. If a non-applicant files the appeal, the full amount is taken as a one-time fee. The appeal fee is waived for a recognized Community Planning Group. This fee schedule was revised in 2017.

City of San Jose – The cost to appeal an environmental determination is set at \$100. Per the Planning Application Filing Fee Schedule, the Director of Planning, Building and Code Enforcement cannot waive fees. The current fee schedule became effective in 2016.

City of Los Angeles – The City of Los Angeles’ appeal fee consists of several components including a base fee of \$89 for the aggrieved party plus multiple surcharges to support the Development Services Department’s operation. The surcharges are based on a percentage of the base fee. The added surcharges include a three percentage (3%) surcharge to support the operation of the public counter at the Development Services Center for the Development Services Department; a six percent (6%) surcharge to support the public counter for other departments; a seven percent (7%) surcharge to support the operations of the Development Services Department; and a five percent (5%) surcharge to support updating and maintaining the City’s General Plan. In aggregate, the surcharges add 21% to the base fee for a total appeal fee of \$107. The appeal fee is allowed to be waived. The fees were last updated in 2011.

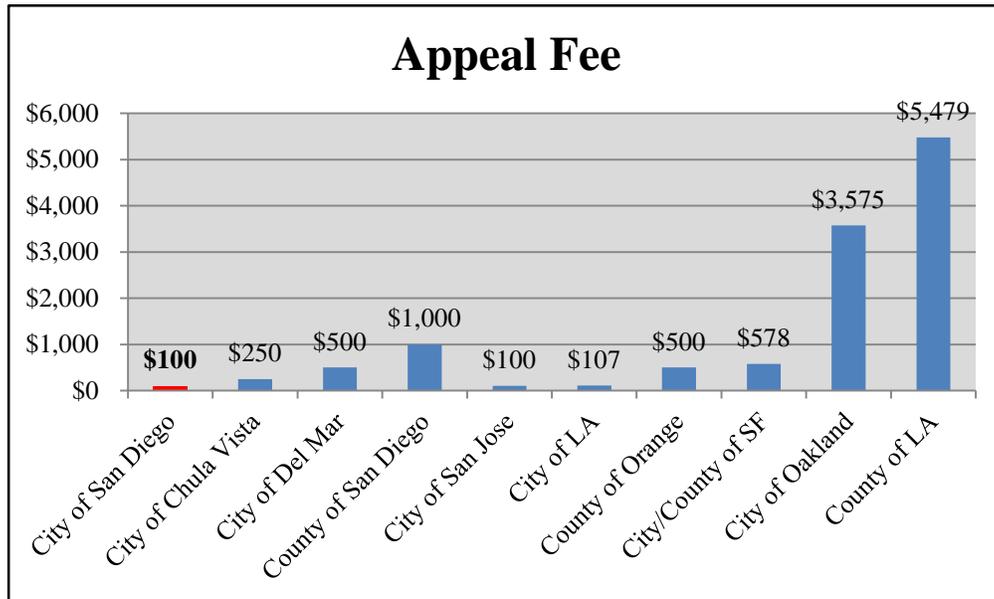
County of Orange – The County requires a deposit of \$500 for time and materials charges related to processing the appeal for the appellant. With time and material, if there is a need for additional funding to proceed with the appeal, a notification letter will be mailed to the appellant requesting an additional deposit. The Board of Supervisors can waive the appeal fee. These fees were last updated in 2015.

City/County of San Francisco – For CEQA related appeals, the City/County has set a flat filing fee of \$578 for the appellant only. The fee for filing an appeal from a neighborhood organizations, such as a planning group, is waived. The Planning Department’s Schedule of Application Fees was last updated in 2017.

City of Oakland – The appeal fee for the City of Oakland consists of two fixed fees plus two surcharges based as a percentage of the fixed fees. The surcharges are to support City activities/programs. The appeal fee consists of a fixed filing fee of \$2,011 and a fixed notification fee of \$1,105. In addition to the fixed fees, the City includes a 5.25% surcharge (Technology Enhancement Fee) based on the fixed fees to support permit tracking equipment and software; and a 9.5% surcharge (Records Management Fee) based on the fixed fees to support records retention equipment, software, and facilities. Per the fee schedule, the total charge for filing the appeal is \$3,575. No fee waiver is available. These fees became effective in 2016.

County of Los Angeles – Per the County’s Department of Regional Planning (DRP) Filing Fee Schedule, the fee to appeal to the County’s DRP Environmental Review Committee is set at \$5,479. Per the County, the high fee amount is due to requiring multiple county departments to respond to the appeal. The County does not allow for waiver of the fee. These fees became effective in 2017.

The following chart illustrates the range of fee amounts charged by the various municipalities for filing appeals for environmental determinations.



## CONCLUSION

In response to a request from Councilmember Sherman’s Office, the IBA reviewed nine other California municipalities to determine the amount of fees charged to file an appeal of an environmental determination.

Based on our review of these municipalities, we note that:

- For nearly all the municipalities, the project applicant is required to provide a deposit with the municipality to address staff costs associated with the additional work addressing the appeal;
- Some municipalities have set up a flat fee for the appellant or non-applicant to file the appeal and other municipalities require a deposit from those filing the appeal, similar to the requirement of the applicant;
- Two municipalities have established surcharges which are applied to the base appeal fee to support programs/operations within the respective municipalities; and
- In discussion with staff from various municipalities, agencies endeavor to set the cost of the appeal fee to recover processing costs but not so high as to dissuade interested parties from filing an appeal.

In our comparative review of nine California municipalities, the amount charged for filing an appeal of an environmental determination range from \$100 to \$5,479, with the City of San Diego positioned on the lowest end of that range.

  
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