



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: March 4, 2013

TO: Members of the Technical Advisory Committee

FROM: Amanda Lee, Senior Planner, Development Services

SUBJECT: Amendments Related to Appeals of Environmental Determinations

Staff is requesting that the Technical Advisory Committee provide a recommendation to the City Council regarding proposed amendments to Land Development Code (LDC) Sections 112.0310 and 112.0510 to clarify the City's process for issuance of a Notice of Right to Appeal an environmental determination and the required time for filing an appeal of an environmental determination made by the Planning Commission or Hearing Officer.

The City's procedures for environmental notification and appeals are intended to implement the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, and to provide accurate, objective, timely, and orderly evaluation for disclosure of potential environmental effects of proposed projects in the City. The City requires that a Notice of Right to Appeal (NORA) be prepared for all categorical and general rule exemptions as defined by State CEQA Guidelines and for environmental documents associated with a project decided by the City Manager. LDC Section 128.0207 requires that the Development Services Director determine if a project is exempt, and that a NORA be posted in accordance with LDC Section 112.0310. The environmental determination is subject to the appeal procedures in LDC Section 112.0510.

The City's current procedures provide for greater notification than is required by the LDC or CEQA by providing notice to any persons who request notification, the community planning group, and Council office for the Council District in which the project is proposed to be located, and the posting of notice on the City website, in addition to the posting of a hard copy notice in the lobby of the Development Services Department. On January 9, 2013, the City Council Rules and Economic Development Committee recommended that the City's current practice for issuance of a Notice of Right to Appeal an environmental determination be formally incorporated into the code. The Committee requested that staff return within 90 days with a draft ordinance (tentatively scheduled for Rules Committee on March 20).

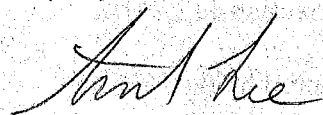
Following is a description of the amendments included in the proposed ordinance:

The proposed amendments to LDC Section 112.0310 clarify that the NORA procedures apply to City Manager determinations that a project is exempt and to environmental determinations for projects that do not require a public hearing or that are decided at the Process Two decision making level. Environmental documents that are prepared for projects decided in accordance with Process Three, Four, or Five (i.e. Negative Declarations, Mitigated Negative Declarations, and Environmental Impact Reports) are not subject to the NORA noticing requirements in LDC Section 112.0310. Instead, the public is notified at the time of action in a public hearing of the right to appeal a Process Three (Hearing Officer) or Process Four (Planning Commission) decision to adopt or certify an environmental document. Process Five decisions (City Council) are not appealable because they reflect the final action of the legislative body.

The ordinance also clarifies details regarding the location where the notice must be posted, who the notice must be distributed to, and the timing and duration required for availability of the notice. NORAs will continue to be required to be posted at the Development Services Department in a location easily accessible to the public. The amendments clarify that notice shall also be posted on the City website and distributed to the community planning group and Council office for the council district where the project is proposed, and to any interested person that requests notification. This type of notice is required to be posted for 15 business days and provided by electronic mail (or United States mail if electronic mail is unavailable) at least 15 business days before the date of decision on the project.

The proposed amendments to Section 112.0510 clarify that an appeal of an environmental determination that is made by the Planning Commission or Hearing Officer must be filed with the City Clerk within 10 business days of the date of decision to adopt or certify an environmental document. The proposed ordinance is expected to clarify the resources available for interested persons that are seeking to review this type of environmental notice and clarify the process for filing an appeal of an environmental determination.

On February 26, 2013, the Community Planners Committee voted 20-1-3 to recommend approval of the proposed amendments. If you have any questions, please feel free to contact me at (619) 446-5367 or ajohnsonlee@sandiego.gov.



Amanda Lee
Senior Planner

Attachment: Draft code language

Environmental Appeals Draft Code Language March 4, 2013

112.0310 Notice of Right to Appeal Environmental Determination

- (a) A Notice of Right to Appeal Environmental Determination shall be posted for the following:
- (1) A determination made by the City Manager that a project, as defined by State CEQA Guideline section 15378, is exempt from CEQA in accordance with State CEQA Guidelines section 15061(b)(2) or (3); and
 - (2) An *environmental determination* associated with a project, as defined by State CEQA Guidelines section 15378, that the City Manager approves or decides to carry out in accordance with his powers under City of San Diego Charter section 28, or a project to be decided at a Process Two decision making level.
- (b) The Director is not required to post a Notice of Right to Appeal Environmental Determination for the following:
- (1) ~~these projects~~ Projects deemed statutorily exempt in accordance with State CEQA Guidelines, Article 18, commencing with Section 15260; and
 - (2) Projects decided in accordance with Process Five and other matters decided by the City Council.
- (c) The Notice of Right to Appeal Environmental Determination shall include:
- (1) An identification of the project, including its common name where possible and its location;
 - (2) A brief description of the project;
 - (3) A statement regarding the type of *environmental determination* ~~and~~;
 - (4) A brief statement to support the reasons for the *environmental determination*, including citation to applicable State CEQA Guidelines or statutes; and
 - (5) The date of notice and a brief statement indicating the time for filing an appeal in accordance with Section 112.0520(b).
- (d) The Notice of Right to Appeal Environmental Determination shall be posted at the City of San Diego, Development Services Department at a location easily accessible to the public, and in addition, shall be provided as follows:
- (1) On the City of San Diego's website;
 - (2) To the Council Office for the Council District in which the project is proposed;

- (3) To the officially recognized community planning group, if any, that represents the area in which the project is proposed; and
- (4) To any person who has submitted a written request for notification of the proposed *development* to the City staff person named in the Notice of Future Decision.
- (e) The Notice of Right to Appeal Environmental Determination shall remain posted at the Development Services Department for a period of 15 *business days*, and shall be provided by electronic mail (or by U.S. mail if electronic mail is unavailable) to the distribution in Section 112.0310(d) at least 15 *business days* before the date of decision on the project.

112.0520 Environmental Determination Appeals

(a) Persons Who Can Appeal

Notwithstanding other provisions of this Code, any person may appeal an *environmental determination* not made by the City Council.

(b) Time for Filing an Appeal

An application to appeal a decision described in Section 112.0520(a) shall be filed in the Office of the City Clerk as follows:

- (1) ~~within~~ Within 10 *business days* from the date of the posting of the Notice of Right to Appeal Environmental Determination; or
- (2) Within 10 *business days* from the date of a decision made by a Hearing Officer or the Planning Commission to adopt or certify an environmental document.

(c) Scheduling Appeal Hearings. The appeal hearing before the City Council shall be held, or the City Clerk shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with Section 112.0308.

(d) Power to Act on Appeal. The City Council shall consider the appeal and shall, by a majority vote:

- (1) Deny the appeal, approve the *environmental determination* and adopt the CEQA findings and statement of overriding considerations of the previous decision-maker, where appropriate; or
- (2) Grant the appeal and set aside the *environmental determination*, in accordance with Section 112.0520(e).

- (e) If the City Council grants the appeal under Section 112.0520(d)(2):
- (1) The lower decision-maker's decision to approve the project shall be held in abeyance. The City Council shall retain jurisdiction to act on the revised environmental document and associated project at a subsequent public hearing.
 - (2) The Development Services Director shall reconsider the *environmental determination* in accordance with Section 128.0103 and prepare a revised environmental document as appropriate, in consideration of any direction from the City Council.
 - (3) At a subsequent hearing, the City Council shall again consider the *environmental determination* and associated projects, and take action in accordance with Section 112.0520(e)(3)(A), (B), or (C) to:
 - (A) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; and affirm the previous decision to approve the associated project;
 - (B) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; condition and approve the associated project as modified; or
 - (C) Find that the environmental document is insufficient, in which case the document shall not be certified. The associated project shall be denied and the decision shall be deemed the final administrative action.