

City of Hercules

*111 Civic Drive
Hercules, CA 94547*



Meeting Agenda

Monday, March 18, 2019

7:00 PM

Council Chambers

Planning Commission

*Chair Irina Galieva
Vice Chair Hector Rubio
Commissioner Ken Morrison
Commissioner Susan Tolley
Commissioner Nicole Sacramento*

To view webcast of meetings, live or on demand, go the City's website at www.ci.hercules.ca.us.

I. CALL TO ORDER - ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMUNICATION

IV. CONSENT CALENDAR

V. PUBLIC HEARINGS

1. [19-513](#) Discussion Regarding Possible Amendments to the Noticing Requirements in the Hercules Planning Code
RECOMMENDATION: Consider Recommendations from the City Council regarding Amendments to the Planning Codes's Noticing Requirements

Attachments: [Staff Report - Noticing Requirements](#)
 [Att 1 - 2-26-2019 Council Staff Report - Noticing Requirements](#)
 [Att 2 - PC Resolution 19-01 recommending Changes to Noticing Policy](#)

2. [19-514](#) Request from the City Council to Consider Possible Amendments to the Process for Appealing and Posting of Notices of Decision of the Planning Director and Planning Commission through Zoning Text Amendment #ZTA 19-02
RECOMMENDATION: Consider Recommendations from the City Council Regarding Amendments to the Appeals Process in the Hercules Zoning Code.

Attachments: [Staff Report on Appeal Requirements](#)
 [Att 1 - Past City Council Staff Reports on Appeals Process](#)
 [Att 2- PC Resolution 19-02 recommending Changes to Appeal Policy-hs-cc](#)

VI. DISCUSSION / ACTION ITEMS

VII. PLANNING DIRECTOR REPORTS AND ANNOUNCEMENTS

VIII. COMMISSIONER REPORTS AND ANNOUNCEMENTS

IX. ADJOURNMENT

The next Regular Meeting of the Planning Commission is Monday, April 1, 2019 at 7:00 p.m. at Hercules City Hall, 111 Civic Drive, Hercules, CA.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City's website at www.ci.hercules.ca.us then clicking on the Planning Commission meeting you are interested in. You can also receive an e-notice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Planning Department at (510) 799-8244.

Posted: March 14, 2019

COMMISSION STATEMENT OF PURPOSE: The Planning Commission typically meets the first and third Monday of every month; its primary functions are to advise the City Council on policy matters in regard to the growth and development of the City of Hercules and to act on applications for development permits.

SPECIAL ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a Planning Commission meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the Commission otherwise may make comments during the Public Communication period of the meeting.

PUBLIC COMMUNICATION: Persons who wish to address the Commission should complete the speaker form prior to the Commission's consideration of the item on the agenda. Speakers will be called after the project applicant has presented the project.

Anyone who wishes to address the Commission on a topic that is not on the agenda and is relevant to the Commission should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the Commission may not take action on items not listed on the agenda. The Commission may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes.

Anyone may also submit written comments at any time before or during the meeting.

CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Commission or a member of the public prior to the time the Commission votes on the motion to adopt.

PUBLIC HEARINGS: A public hearing enables the public to present information, opinions, and arguments relevant to the actions of the Commission, and informs the public about the details of the proposal.

At the beginning of an item, the Chair will read the description of that item as stated on the agenda. The staff will then give a brief presentation of the proposed project. The Commission may then ask staff questions about the item.

The Chair will open the public hearing and ask the applicant(s) if he or she wishes to make a presentation or statement. Those persons in favor of the project will then be given an opportunity to speak followed by those who are opposed to the project. The applicant(s) will then be given an opportunity for rebuttal.

The public hearing will then be closed, and the Commission may discuss the item amongst themselves and ask questions of staff. The Commission will then vote to approve, deny, approve in a modified form, or continue the matter to a later date for a decision. The Chair will announce the Commission's decision and advise the audience of the appeal procedure.

Persons who wish to speak on matters set for public hearings will be heard when the Chair calls for comments in support thereof or in opposition thereto. After the hearing is closed, there is no further comment permitted from the audience unless invited by the Chair.

The Commission has decided that no public hearings will begin after 11:00 p.m., and that items still remaining on the agenda after 11:00 p.m. will be held over to the next Commission meeting.

LEGAL CHALLENGES: If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging Commission decisions shall be subject to the time limitations contained in the Code of Civil Procedures Section 1094.6.

NOTIFICATION PROCEDURE: Property owners within 300 feet of a proposal will receive a notice of the proposal at least ten (10) days prior to the public hearing. The notice lists the type of application, application number, brief description and location of the project, and the applicant. The City of Hercules subscribes to a service that uses the property owner information from the most recent data on the Contra Costa County Tax Assessor's rolls. Please be aware there often is a time lag for both the tax rolls and this service to be updated.

AGENDA POSTING: The Planning Commission Agenda is posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website (www.ci.hercules.ca.us),

REVIEW OF PUBLIC DOCUMENTS: All Planning applications are public documents, and can be reviewed by the public. These files, however, are not allowed out of the office. Should a member of the public require copies of information contained within the file, a written request must be submitted to the City Clerk's Office. Staff will accommodate the request within ten (10) calendar days. The charge is \$0.20 per page. If you require a complete copy of the file, or if staff cannot accommodate your request within ten (10) calendar days, you must make arrangements to bring in a copier or copy service that can make copies without leaving City Hall.

Environmental Impact Reports, Specific Plans, and other project specific documents are made available for the public to review at City Hall at 111 Civic Drive, Hercules CA. Loan copies (limited supply) are available for review, not purchase, at the Planning Department. These documents must be checked out with staff. You will be asked to provide your name, phone number, and a deposit. Persons will be informed of the date and time the document must be returned. You may check out the loan document, but staff will not make a complete copy of the document. Staff will accommodate the request to make photocopies based upon the current workload and availability of personnel to make copies. Costs are outlined in above paragraph.



Legislation Details (With Text)

File #: 19-513 **Version:** 3 **Name:**
Type: Public Hearing **Status:** Agenda Ready
File created: 3/14/2019 **In control:** Planning Commission
On agenda: 3/18/2019 **Final action:**
Title: Discussion Regarding Possible Amendments to the Noticing Requirements in the Hercules Planning Code
RECOMMENDATION: Consider Recommendations from the City Council regarding Amendments to the Planning Codes's Noticing Requirements

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Noticing Requirements](#)
[Att 1 - 2-26-2019 Council Staff Report - Noticing Requirements](#)
[Att 2 - PC Resolution 19-01 recommending Changes to Noticing Policy](#)

Date	Ver.	Action By	Action	Result
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Discussion Regarding Possible Amendments to the Noticing Requirements in the Hercules Planning Code
RECOMMENDATION: Consider Recommendations from the City Council regarding Amendments to the Planning Codes's Noticing Requirements



STAFF REPORT TO THE PLANNING COMMISSION

MEETING DATE: March 18, 2019

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, AICP, Planning Director

SUBJECT: Discussion Regarding Possible Amendments to the Noticing Requirements in the Hercules Planning Code

RECOMMENDED ACTION:

Consider Recommendations from the City Council regarding Amendments to the Planning Code's Noticing Requirements

BACKGROUND:

At their regular meeting of February 26, 2019, the City Council referred to the Planning Commission for consideration possible amendments to the Planning Code's Notice Requirements. The proposed amendments would allow the Planning Director more flexibility in extending the typical 300 foot noticing requirement for zoning approvals when a particular situation warrants providing such additional noticing. Any amendments to the Planning Code require Planning Commission consideration, pursuant to Section 13-52.200 of the Hercules Zoning Regulations within the Hercules Municipal Code.

A copy of the February 26, 2019 staff report to Council is provided as an attachment to this report, for your information.

DISCUSSION:

The City's Municipal Code, which now incorporates the Zoning Code, establishes the noticing requirements which the City utilizes:

Sec. 13-44.200 Application Processing and Hearing Notice.

Upon submittal of a complete application(s), the application(s) shall be reviewed and processed consistent with the provisions of the California Government Code Section 65090 et seq.

When a provision of the Zoning Ordinance requires or results in a public hearing, notice shall be given in all of the following ways:

- 1. Written notice of the hearing shall be mailed or delivered to the owner or his agent and the applicant not less than 10 days prior to the public hearing.*
- 2. Written notice of the hearing shall be mailed or delivered to each local agency expected to provide public facilities or services to the project and whose ability to provide facilities or services may be significantly affected not less than 10 days prior to the public hearing.*
- 3. Written notice of the hearing shall be mailed or delivered to all property owners within 300 feet of the property subject to the hearing not less than 10 days prior to the public hearing. The list of owners within 300 feet along with adequate mailing labels to notice the required public hearings shall be prepared by the applicant and shall accompany the application using for this purpose the last known name and address of owners as shown in the current tax assessor's records.*

If the number of property owners to be notified exceeds 1,000, the City may in lieu of mailing notices provide notice by placing a display advertisement of at least one-eighth page in length in at least 1 newspaper of general circulation within the City and post notice of the hearing not less than 10 days prior to the public hearing in at least 3 public places within the boundary of the City including 1 area directly affected by the proceeding.

The public notice shall include the date, time, and place of public hearing, the name of hearing body, a general explanation of the matter to be considered, and a general description in text or diagram of the location of the property subject to the hearing. The notice should also include a statement that any interested person is invited to appear to address or object to the application in question and a statement of appeal procedures and time limits. [Ord. 515 § 2, 2018; ZO § 44.200.]

Please note that an exception to the 300 foot radius rule currently applies to new cell towers, which due to their height and visibility, have a 1,500 foot radius notice requirement per section 10-16.111(n)(4) of the Hercules Municipal Code.

As discussed in the February 26, 2019 staff report to Council, California Government Code Section 65091(c), referenced in the City's Municipal Code/Zoning Code, states that, "[i]n addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable." This provision gives authority to the Planning Director to provide additional or expanded notice given unique circumstances. The decision to exercise this discretion must not violate the due process rights of an applicant and should be well articulated at the time the decision is made to exercise this discretion.

At the February 26th Council meeting, the Council requested that an amendment to the Zoning Code be brought back for their consideration to expressly provide that the Planning Director has the discretion on a case by case basis to extend notice beyond a 300 foot radius and/or provide additional notice through means other than mail, but that the justification for the additional notice should be provided to the applicant, and clearly stated in the accompanying staff report.

Consistent with the concept discussed by Council on February 26th, Section 13-44.200(3) could be amended to read as follows:

3. Written notice of the hearing shall be mailed or delivered to all property owners within 300 feet of the property subject to the hearing not less than 10 days prior to the public hearing. The list of owners within 300 feet along with adequate mailing labels to notice the required public hearings shall be prepared by the applicant and shall accompany the application using for this purpose the last known name and address of owners as shown in the current tax assessor's records. **Additional notice may be required by the Planning Director when in a particular case circumstances warrant such additional notice. Such additional notice may include but is not limited to: extending mailed notice to beyond 300 feet of the property; providing notice to tenants in addition to the notice required to be provided to property owners; and utilizing additional means of notification in addition to mailed notice.**

Whenever the Planning Director decides in his or her discretion to require additional notice, the reason for imposing the additional notice shall be

provided to the applicant, and shall be included in any staff report to the Planning Commission and City Council.

Examples of when expanded notice might be required might include situations where the sight line from an applicant's property extends to properties beyond 300 feet, when noise generated by a proposed use or activity is likely to be heard beyond 300 feet, or when commercial tenants may not otherwise receive timely notice of a hearing from the property owner of record.

The Council directed that this matter be taken up for consideration by the Planning Commission, pursuant to the requirements of Section 52.200 of the Hercules Zoning Regulations.¹

ATTACHMENTS:

1. February 26, 2019 staff report to City Council
2. Recommending Resolution 19-01, including Exhibit A - Zoning Text modifications

¹ Section 52.200 of the Zoning Regulations states in pertinent part, "An amendment to the Zoning Ordinance or Zoning Map may be initiated by the Community Development Director, by resolution of the Planning Commission, or by action of the City Council in the form of a request to the Commission that it consider the proposed change."



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of February 26, 2019

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Patrick Tang, City Attorney
Holly Smyth, Planning Director

SUBJECT: Discussion of Noticing Requirements

RECOMMENDED ACTION: Receive Report, Discuss, and Provide Direction, if any.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this item.

DISCUSSION: On September 11, 2018, the City Council requested a future discussion item to review Planning and Zoning Noticing Requirements. This item came up in the context of notice for a project approval which met the 300 foot noticing requirement for a land use decision, though properties which may have had a view of the proposed development given their overlook of the site were not noticed because they were more than 300 feet from the project area.

The City's Municipal Code, which now incorporates the Zoning Code, establishes the noticing requirements which the City utilizes:

Sec. 13-44.200 Application Processing and Hearing Notice.

Upon submittal of a complete application(s), the application(s) shall be reviewed and processed consistent with the provisions of the California Government Code Section 65090 et seq.

When a provision of the Zoning Ordinance requires or results in a public hearing, notice shall be given in all of the following ways:

1. Written notice of the hearing shall be mailed or delivered to the owner or his agent and the applicant not less than 10 days prior to the public hearing.
2. Written notice of the hearing shall be mailed or delivered to each local agency expected to provide public facilities or services to the project and whose ability to provide facilities or services may be significantly affected not less than 10 days prior to the public hearing.

3. Written notice of the hearing shall be mailed or delivered to all property owners within 300 feet of the property subject to the hearing not less than 10 days prior to the public hearing. The list of owners within 300 feet along with adequate mailing labels to notice the required public hearings shall be prepared by the applicant and shall accompany the application using for this purpose the last known name and address of owners as shown in the current tax assessor's records.

If the number of property owners to be notified exceeds 1,000, the City may in lieu of mailing notices provide notice by placing a display advertisement of at least one-eighth page in length in at least 1 newspaper of general circulation within the City and post notice of the hearing not less than 10 days prior to the public hearing in at least 3 public places within the boundary of the City including 1 area directly affected by the proceeding.

The public notice shall include the date, time, and place of public hearing, the name of hearing body, a general explanation of the matter to be considered, and a general description in text or diagram of the location of the property subject to the hearing. The notice should also include a statement that any interested person is invited to appear to address or object to the application in question and a statement of appeal procedures and time limits. [Ord. 515 § 2, 2018; ZO § 44.200.]

There is an exception to the 300 foot noticing requirement for new cell towers, which due to their height and visual impact, require 1,500 foot noticing per section 10-16.111(n)(4) of the Hercules Municipal Code.

California Government Code Section 65091 (c), referenced in the City's Municipal Code/Zoning Code, states that, "[i]n addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable." The City Attorney has opined that this provides the Planning Director limited discretion to expand the noticing requirements given unique circumstances. The decision to use this discretion to provide expanded noticing must not impact the due process rights of an applicant and should be well articulated at the time the decision is made to exercise this discretion.

This background information is provided to facilitate the general discussion requested by the City Council.

ATTACHMENTS:

None.

RESOLUTION NO. 19-01

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL UPDATE NOTICING REQUIREMENTS IN THE ZONING ORDINANCE

WHEREAS, on February 26, 2019 the City Council of the City of Hercules discussed the current noticing process and wanted to clarify what is already allowed by the California Government Code Section 65090 and wanting to bring that clarity to the City's Zoning Code; and

WHEREAS, according to Zoning Ordinance Section 13-52.200, City Council action can request the Planning Commission to consider an amendment to the Zoning Ordinance at a public hearing; and

WHEREAS, at February 26, 2019 Regular Council Meeting, the City Council provided a framework of policy modification they would like to see considered to ultimately incorporate into the Zoning Ordinance; and

WHEREAS, it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is thus categorically exempt from the California Environmental Quality Act ("CEQA") [State CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the Planning Commission did hold a properly noticed public hearing on March 18, 2019 to consider Council's direction to modify the Noticing provisions of the Zoning Ordinance requiring a Zoning Text Amendment, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth;

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission, based on its independent judgment and analysis, finds that there is no substantial evidence that the project will have a significant effect on the environment based on the whole record before it.
3. After due study, deliberation, and public hearing, the Planning Commission finds and determines that the Zoning Text modification is:
 - a) consistent with the General Plan
 - b) would not be detrimental to the health, safety, welfare, and public interest of the City, and
 - c) is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.
4. The Planning Commission recommends that the City Council approve an Ordinance adopt Zone Text Amendment #ZTA 19-01 updating the Zoning Code related to noticing per the attached document (Exhibit A).

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 18th day of March 2019, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Irena Galieva, Chairperson

ATTEST:

Holly P. Smyth, AICP
Planning Director & Planning Commission Secretary

Exhibit A - Proposed Modification to Hercules Municipal Code (Zone Text Amendment 19-01)

EXHIBIT A

Proposed Modifications to Hercules Municipal Code (Zone Text Amendment 19-01)

Sec. 13-44.200 (3) Application Processing and Hearing Notice

3. Written notice of the hearing shall be mailed or delivered to all property owners within 300 feet of the property subject to the hearing not less than 10 days prior to the public hearing. The list of owners within 300 feet along with adequate mailing labels to notice the required public hearings shall be prepared by the applicant and shall accompany the application using for this purpose the last known name and address of owners as shown in the current tax assessor's records. Additional notice may be required by the Planning Director when in a particular case circumstances warrant such additional notice. Such additional notice may include but is not limited to: extending mailed notice to beyond 300 feet of the property; providing notice to tenants in addition to the notice required to be provided to property owners; and; utilizing additional means of notification in addition to mailed notice.

Whenever the Planning Director decides in his or her discretion to require additional notice, the reason for imposing the additional notice shall be provided to the applicant, and shall be included in any staff report to the Planning Commission and City Council.

If the number of property owners to be notified exceeds 1,000, the City may in lieu of mailing notices provide notice by placing a display advertisement of at least one-eighth page in length in at least 1 newspaper of general circulation within the City and post notice of the hearing not less than 10 days prior to the public hearing in at least 3 public places within the boundary of the City including 1 area directly affected by the proceeding.

The public notice shall include the date, time, and place of public hearing, the name of hearing body, a general explanation of the matter to be considered, and a general description in text or diagram of the location of the property subject to the hearing. The notice should also include a statement that any interested person is invited to appear to address or object to the application in question and a statement of appeal procedures and time limits. [Ord. 515 § 2, 2018; ZO § 44.200.]



Legislation Details (With Text)

File #: 19-514 **Version:** 1 **Name:**
Type: Public Hearing **Status:** Agenda Ready
File created: 3/14/2019 **In control:** Planning Commission
On agenda: 3/18/2019 **Final action:**
Title: Request from the City Council to Consider Possible Amendments to the Process for Appealing and Posting of Notices of Decision of the Planning Director and Planning Commission through Zoning Text Amendment #ZTA 19-02
RECOMMENDATION: Consider Recommendations from the City Council Regarding Amendments to the Appeals Process in the Hercules Zoning Code.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report on Appeal Requirements](#)
[Att 1 - Past City Council Staff Reports on Appeals Process](#)
[Att 2- PC Resolution 19-02 recommending Changes to Appeal Policy-hs-cc](#)

Date	Ver.	Action By	Action	Result
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Request from the City Council to Consider Possible Amendments to the Process for Appealing and Posting of Notices of Decision of the Planning Director and Planning Commission through Zoning Text Amendment #ZTA 19-02
RECOMMENDATION: Consider Recommendations from the City Council Regarding Amendments to the Appeals Process in the Hercules Zoning Code.



STAFF REPORT TO THE PLANNING COMMISSION

DATE: Meeting of March 18, 2019

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Request from the City Council to Consider Possible Amendments to the Process for Appealing and Posting of Notices of Decision of the Planning Director and Planning Commission through Zoning Text Amendment #ZTA 19-02

RECOMMENDED ACTION:

Consider Recommendations from the City Council Regarding Amendments to the Appeals Process in the Hercules Zoning Code

BACKGROUND:

At their regular meeting of January 22, 2019, the City Council considered certain staff recommendations that would clarify the Zoning Code's appeals process, and pursuant to Section 52.200 of the Hercules Zoning Regulations, has referred the matter to the Planning Commission for consideration.

Copies of the January 22, 2019 staff report to Council and prior related staff reports are provided as an attachment to this report, for your information.

DISCUSSION:

Existing planning appeal language appears to link the City Council's privilege to call up a zoning decision made by the Planning Director or Planning Commission to a "presentation" of the notice of decision, which is to occur at the same meeting where the item is to be called up by Council. This "presentation" process is not otherwise spelled out, and is not otherwise tied to the posting of the notice of decision.

In order to avoid confusion and promote consistency, staff has recommended to Council that Section 13-44.500 regarding the Council call up procedure be made consistent with the requirements for posting a notice of decision as provided for in Section 13-45.400, so that Section 13-44.500 Review by Council if amended would read,

13-44.500 Review by Council

"The Council, through majority vote, may call up for review any decision of the Community Development Director or Planning Commission. The determination to call up for review shall be made by the Council ~~at the meeting at which the notice of decision is presented to it~~, at its first regular meeting following the posting of the notice of decision pursuant to Section 13-44.400, unless that meeting would be within 2 calendar days of the posting of the notice, in which case the Council may make the determination to call up for review at the second regular meeting following posting of the notice. The Council shall specify the issues to be reviewed. The Council shall hear and determine a decision that is called up for review in the same manner as an appeal."

Additionally, Council directed that the appeals period and the posting period be amended from 10 working days to 14 calendar days given the confusion sometimes caused by "working days" given the City's Friday closures and additional holidays. Section 13-44.600 might be amended to read as follows:

13-44.400 Notice of Decision.

The Community Development Director shall prepare a notice of decision for actions on zoning applications by the Community Development Director, Planning Commission and City Council. The decision shall include findings, any conditions of approval (including date of effect) as needed to mitigate any impacts and protect the health, safety and welfare of the community, and the appeal period allowed by the Zoning Ordinance. The notice of decision shall be posted within a public area of City Hall and mailed by the Community Development Director to the applicant at the address on the application within ~~10 working~~14 calendar days of the decision. ~~{Ord. 515 § 2, 2018; ZO § 44.400.}~~

13-44.600 Filing of Appeals

Any discretionary decision made by the Community Development Director where such decision is not designated as final by the Zoning Ordinance may be appealed to the Planning Commission by the applicant or any person affected by a determination or decision. An appeal requires filing a written appeal with the Community Development Director within ~~10 working~~14 calendar days of the mailing or posting of the notice of decision.

Any determination or decision made by the Planning Commission may be appealed to the City Council by the applicant or any person affected by a determination or decision. An appeal requires filing a written appeal with Community Development Director within ~~10 working~~ 14 calendar days of the mailing or posting of the notice of decision.

The written appeal shall include the name and address of the person filing the appeal, the decision that is being appealed, a description of the grounds upon which the appeal is based, and applicable filing fees. [Ord. 515 § 2, 2018; ZO § 44.600.]

It should be noted that the language contained in Section 13-44.600 -Filing of Appeals and 13-44.500 Review by Council provisions that are being recommended for amendment are generally repeated in various sections of the Zoning Regulation (e.g. "Hearings and Appeals" under Sections 13-42.600 for Design Review, 13-45-500 for Minor Exceptions, 13-46.400 for Minor Modifications, 13-48.700 for Planned Development Plans, 13-49.400 for Specific Plans, 13-50.400 for Use Permits, 13-51.500 for Variances, and 13-52.500 for Zoning Amendments). For consistency, the same amending language proposed for Section 13-44.500 should be used to amend these similarly worded sections to point back to Section 13-44 – Hearings, Appeals and Judicial Review so that any future changes don't require changes to multiple sections.

The Council directed that the above proposed amendment to the appeals process be taken up for consideration by the Planning Commission, pursuant to the requirements of Section 52.200 of the Hercules Zoning Regulations.¹

It should be noted that the Council deferred discussion of several additional issues identified in the prior January 8, 2018 report, so that those issues have not been referred by the Council to the Planning Commission for consideration.

ATTACHMENT:

1. January 22, 2019 staff report to City Council (with prior related reports to Council)
2. Recommending Resolution 19-02 Zoning Text modifications #ZTA 19-02 related to Appeals process (including Exhibit A)

¹ Section 52.200 of the Zoning Regulations states in pertinent part, "An amendment to the Zoning Ordinance or Zoning Map may be initiated by the Community Development Director, by resolution of the Planning Commission, or by action of the City Council in the form of a request to the Commission that it consider the proposed change."



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 22, 2019

TO: Mayor Romero and City Council

SUBMITTED BY: Patrick Tang, City Attorney

SUBJECT: SUPPLEMENTAL REPORT - Review of City's Planning Appeal Process

SUPPLEMENTAL REPORT:

The City Attorney has been asked to clarify which of the recommendations contained in the prior September 25, 2018 and January 8, 2019 reports are considered essential in order to minimally address ambiguity and uncertainty in the current planning appeals process.

BACKGROUND:

A considerable amount of background information has been provided to Council regarding the planning appeals process. That information includes a survey of the process in other cities, and research on whether there is consensus from planning and legal experts as to what appeals process works best. Staff determined that while there is significant variation in the appeals process from one jurisdiction to another, nevertheless there are certain legal and practical requirements that the process must follow in order to promote fairness, provide adequate notice, and allow for due process.

DISCUSSION:

The primary concerns with the City's current process from a planning and legal perspective are highlighted in the original report to Council from September 25, 2018. The recommendation from staff and counsel in that report can be summarized as follows:

The existing planning appeal language appears to link the Council's privilege to call up a decision to a "presentation" of the notice of decision, to occur at the same meeting where the item is to be called up by Council. This "presentation" process is not otherwise spelled out, and is not otherwise tied to the posting of the notice of decision. In order to avoid confusion and promote consistency, staff recommends that Section 44.500 be made consistent with the requirements for posting a notice of decision as provided for in Section 45.400, so that Section 44.500 if amended would read,

*“The Council, through majority vote, may call up for review any decision of the Community Development Director or Planning Commission. The determination to call up for review shall be made by the Council ~~at the meeting at which the notice of decision is presented to it,~~ **following the posting of the notice of decision pursuant to Section 44.400**, and the Council shall specify the issues to be reviewed. The Council shall hear and determine a decision that is called up for review in the same manner as an appeal.”*

Section 44.400 of the Zoning Ordinance states that the Community Development Director shall prepare a notice of decision for actions taken by the Community Development Director, Planning Commission, and City Council. The notice is required to be posted “within City Hall and mailed to (the) applicant” within 10 working days of the decision.

Staff also suggests that it may be beneficial to change the appeal period in Section 44.600 to 14 calendar days or 10 working days to more closely tie the appeal period to the usual 14 day cycle for Planning Commission and Council meetings.

The additional issues of concern contained in the January 8, 2018 report, while not legally required to be addressed at this time, should be included in any future discussion regarding an overall update of the City’s Zoning Regulations.

Staff notes that any amendment to the planning appeal process would first require Planning Commission review and recommendation, pursuant to Section 52.200 of the Hercules Zoning Regulations.

Attachments:

1. January 8, 2019 Review of Appeal Policy related to Planning Decisions
2. September 25, 2018 Review of Appeal Policy related to Planning Decisions



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 8, 2019

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP, Planning Director
Patrick Tang, City Attorney

SUBJECT: Review of City's Appeal Policy Related to Planning Decisions

RECOMMENDED ACTION:

Discuss staff policy recommendations related to Council's "Call-Up" appeals process, and consider directing staff to prepare a Zoning Ordinance Amendment if desired.

FISCAL IMPACT OF RECOMMENDATION:

There may be fiscal impacts in the form of additional staff time required, depending on how the appeals process is amended.

BACKGROUND:

A staff report regarding the appeal process for planning decisions was presented and discussed by City Council at the September 25, 2018 regular Council meeting. After discussion, Council directed staff to bring recommended changes back to Council for further review and discussion prior to preparation and presentation of a draft Ordinance.

DISCUSSION:

Since the discussion at the September 25, 2018 Council meeting, staff has reached out to other agencies to determine the extent to which other jurisdictions allow for City Council "call-up" of planning decisions. What staff found is that while many other jurisdictions provide a process for a Councilmember to call up a planning decision, the procedure for doing so varies from one jurisdiction to another. The information obtained from other jurisdictions is summarized in the table below.

City	Appeal of Director Decisions	Appeal of Planning Commission Decisions
Citrus Heights	10 calendar days after decision to Commission	10 calendar days after decision by aggrieved person or by any member of the Council if there was public hearing required (This means that administrative decisions would not be subject to CC appeal).
Emeryville	15 calendar days from decision noted in the approval letter. PC review info if appeal called to affirm, set a date for hearing, or remand the matter to the director to cure a deficiency. PC decision final and may not be appealed to the CC.	Within 15 days from Commission decision, with Council needing majority to call for review in the same manner as an appeal by any other person. Such action shall not require any statement of reasons and shall not represent opposition to or support of an application or appeal.
Monterey	Appeal in writing within 10 days of decision by either City Manager or City Councilmember to call up without paying a fee. Basis for call up must be that the determination affects, impacts, or deals with matters of general policy in the City or may have significant impact on City facility or service.	Appeal in writing within 10 days of decision by either City Manager or City Councilmember to call up without paying a fee. Basis for call up must be that the determination affects, impacts, or deals with matters of general policy in the City or may have significant impact on City facility or service.
Pinole	10 calendar days from date of decision of Community Development Director or Zoning Administrator. Any appeal considered de novo.	Within 10 calendar days from date of decision of Planning Commission, with the Councilmember paying the standard \$500 appeal fee plus a \$2,500 deposit (refundable only if a Council majority agrees) and follow same process as from a member of the public. Any appeal considered de novo.
Pleasant Hill	Any decision of the zoning administrator may be called up for review by a planning commissioner, architectural review commissioner, or city Councilmember must be submitted in writing stating the reasons for appeal within 10 days of the mailed notice of decision with public hearing held within 45 days.	Any decision of the planning commission or architectural review commission may be called up for review by a member of the city Council in writing stating the reasons for appeal within 10 days of the mailed notice of decision with De Novo public hearing held in 45 days.
Redding	No Council call up provision	No Council call up provision
Redwood City		2 of 7 City Councilmembers must file written request to City Council within 15 days of notice of decision without filing fee to be heard at the next available City Council meeting.
San Pablo	Within 10 days of decision, administrative decisions can be called	Within 10 days of decision, a City Councilmember can call up a PC decision.

	up by Planning Commission or City Councilmember. There is a presumption that the reason for the review is that the action has significant and material effects on the quality of life within the city. No inference of bias shall be made or implied due to such a request for review being filed. De novo public hearing must occur within 30 days of appeal filing.	There is a presumption that the reason for the review is that the action has significant and material effects on the quality of life within the city. No inference of bias shall be made or implied due to such a request for review being filed. De novo public hearing must occur within 30 days of appeal filing.
Santa Clarita	A “certification of review” may be initiated for a decision on any discretionary application by one (1) or more of the members of the next level of designated review authority. For decisions of the Director or Hearing Officer a certification of review may be requested by any one (1) member of the Commission submitted no later than one (1) day prior to the day on which an appeal of the decision is due (15 days after decision) Certification shall not require any statement of reasons, and shall therefore not represent opposition to or support of an application. No fee shall be required.	Decisions of the Commission would require a “certification of review” requested by any one (1) member of the Council no later than one (1) day prior to the day on which an appeal of the decision is due (15 days after the decision). Certification shall not require any statement of reasons, and shall therefore not represent opposition to or support of an application. No fee shall be required.
Tiburon		City Council can call up decision with 2 members of Council.
Winters	Place on next PC agenda within 10 days of the decision so the PC confirms the zoning administrator decision	No special Council call up provisions in code, just regular public appeal process.

In addition to compiling the above information from other jurisdictions, staff also reviewed various materials discussing the appeals process, including a manual provided by the Institute for Local Government (“ILG”) called, [“An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions”](#), wherein Chapter 9 discusses appeals policy. The City Attorney and Assistant City Attorney also conducted research and provided feedback to staff on the legal requirements for planning appeals.

Based on the survey results, discussions with counsel, and a study of best practices, staff makes the following recommendations for Council consideration:

1. Consider as a threshold matter whether the Council wants to retain the “Council call up” process. While many jurisdictions have a process to allow for Councilmembers to appeal a planning decision, a few jurisdictions, such as Pinole and Redding, have no Council call up procedure, instead requiring a Councilmember to follow the same appeal process required of any member of the public, including payment of an appeal fee. The result of this limitation is that a Councilmember does not have the prerogative of calling a matter up, without being subject to the same rules and procedures required of a member of the public, including payment of appeal fees. On the other hand, a Councilmember, utilizing the same process as a member of the public (which may include paying appeal fees), could bring a planning matter before the full Council for review, without needing the approval of a quorum of his or her Council colleagues.
2. If the Council call up procedure is retained, staff recommends limiting the Council call up to major administrative approvals, with no Council call up for minor administrative approvals. Such minor approvals not subject to Council call up could include approval of business uses in existing buildings, zoning compliant signage, home-occupations, patio/accessory structure/home additions, temporary use permits, and the like. Similar to the appeal process in many cities that distinguishes between minor and major approvals, staff recommends that minor approvals made by the Planning Director be made appealable to the Planning Commission only and not City Council. Currently, any decision of the Planning Director or Planning Commission can be called up by the City Council. Under the current call up process, an applicant cannot act upon a staff approval until the Council appeal and call up timeframes have lapsed. The ILG manual referenced above suggests that the scope of an appeal “be limited to key decisions along the process, to avoid a result where every small determination may be appealed.” The practical reason for adopting a limited call up process for minor administrative approvals is to avoid excessive delay for minor administrative approvals, and encourage economical use of staff resources.
3. If the Council call up procedure is retained, staff recommends modifying the current process whereby a matter is called up by the Council “at the meeting at which the notice of decision is presented to it” (PC 44.500). As discussed at the September 25, 2018 Council meeting, the current process is confusing, as the manner in which the notice of decision is to be presented is not specified. In the alternative, staff recommends requiring a Councilmember to call the matter up in the same manner as any member of the public, by filling out and submitting an appeal request form. This should be required whether or not the appeal fee is waived or reduced for an item called up by a Councilmember. The request can then be placed on the published agenda by the City Clerk for consideration at the next Council meeting, in full compliance with the Brown Act. By publishing the call up request in the Council agenda, the full Council as well as the public would be provided at least 72 hour notice of the upcoming discussion regarding the call up.

4. If the Council call up procedure is retained, staff recommends that the Council call up period be ten (10) calendar days from when the decision is posted, consistent with the time frame for members of the public as provided for in PC 44.600. Having a separate time frame for an appeal by a Councilmember is confusing, and to avoid confusion and promote consistency, staff recommends that a Councilmember be subject to the same process and time frame for call up as a member of the public is required to follow for an appeal. This is not to suggest that the discussion whether to approve the call up request must be heard within ten (10) calendar days; only that the call up request (appeal request) should be submitted within that time frame. The actual Council discussion would take place at a subsequent Council meeting that may or may not be convened within ten (10) calendar days from when the planning decision in question was posted.
5. If the Council call up procedure is retained, staff recommends requiring less than a Council quorum to approve a request to call up a planning decision. Staff discovered that very few call-up proceedings by other jurisdictions require a majority vote of the Council. Counsel has expressed concern that the current process requiring a quorum to approve a Councilmember's request to review a lower decision might create the appearance of bias if the Council as a body discusses in any detail the merits of the underlying decision that is subject to review. This is likely the reason that many jurisdictions that have Council call up procedures require less than a quorum of Councilmembers to schedule an appeal of a planning decision. The ILG manual states that a Council review of a lower decision must not create the appearance that the governing body is prejudging the matter by assuming jurisdiction and must avoid unconstitutional commingling of functions in an adversarial proceeding. This can be avoided by providing that less than a quorum (either a single Councilmember or two Councilmembers) be required for call up.
6. If the Council call up procedure is retained, staff recommends that Council review of a planning decision should be de novo. While the reasons for requesting an appeal can be required to be stated on the appeal form developed by staff, the appeal hearing should be de novo (not limited to the reasons stated on the appeal form). Having a de novo hearing eliminates potential due process issues, as staff and Council would not be in a position of having to determine, in the course of an open discussion, that certain evidence will not be heard.
7. If the Council call up procedure is retained, staff has no recommendation whether to require the Councilmember requesting the appeal to pay the appeal fee. Based on Council's direction during the last discussion, it appeared that Council did not want to have a Councilmember pay the appeal fee. Pinole seems to be an outlier as it is the only jurisdiction staff polled that specifically requires a Councilmember who calls up a planning matter to pay an appeal fee.

CONCLUSION:

Staff makes the above recommendations for Council consideration based on practical concerns with the current process, a review of the appeal process in other jurisdictions, best practices as advised by the Institute for Local Government (ILG) and other sources, and advice of counsel. Staff notes that any amendment to the planning appeal process would first require Planning Commission review and recommendation, pursuant to Section 52.200 of the Hercules Zoning Regulations.

ATTACHMENTS:

1. September 25, 2018 Staff Report – Appeals Process



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of September 25, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Review of City's Appeal Policy Related to Planning Decisions

RECOMMENDED ACTION:

Discuss and provide direction if any.

FISCAL IMPACT OF RECOMMENDATION:

None at this time.

BACKGROUND:

At the June 12, 2018 City Council meeting, the Council requested scheduling of a future agenda item to discuss the appeal process under the planning code.

DISCUSSION:

As with most cities, the Hercules Zoning Ordinance differentiates between categories of permits, with minor and ministerial permits subject to final approval by staff, more complex and discretionary permits subject to Planning Commission review, and major permits subject to City Council review. The attached table outlines the various application types, states who normally has the final approval, and which body has appeal oversight.

Section 44.400 of the Zoning Ordinance states that the Community Development Director shall prepare a notice of decision for actions taken by the Community Development Director, Planning Commission, and City Council. The notice is required to be posted "within City Hall and mailed to (the) applicant" within 10 working days of the decision.

Pursuant to Section 44.600, appeals of actions taken by the Community Development Director, Planning Commission, and City Council can be filed by the applicant or a member of the public as follows:

"Any discretionary decision made by the Community Development Director where such decision is not designated as final by the Zoning Ordinance may be appealed to the Planning Commission by the applicant or any person affected by a determination or decision. An appeal requires filing a written appeal with the Community Development Director **within 10 working days** of the mailing or posting of the notice of decision.

Any determination or decision made by the Planning Commission may be appealed to the City Council by the applicant or any person affected by a determination or decision. An appeal requires filing a

written appeal with Community Development Director within 10 working days of the mailing or posting of the notice of decision.

The written appeal shall include the name and address of the person filing the appeal, the decision that is being appealed, a description of the grounds upon which the appeal is based, and applicable filing fees.”

In addition to the general appeal process discussed above, the City Council can appeal a decision by “calling up” the decision pursuant to the process provided for in Section 44.500. This section states:

“The Council, through majority vote, may call up for review any decision of the Community Development Director or Planning Commission. **The determination to call up for review shall be made by the Council at the meeting at which the notice of decision is presented to it**, and the Council shall specify the issues to be reviewed. The Council shall hear and determine a decision that is called up for review in the same manner as an appeal.”

Unlike the general appeal process delineated in Section 44.600, the language in Section 44.500 appears to link the Council’s privilege to call up a decision to a “presentation” of the notice of decision, to occur at the same meeting where the item could be called up by the Council. Staff suggests, in order to avoid confusion and promote consistency, that Section 44.500 be made consistent with the requirements for posting a notice of decision provided in Section 44.400, so that Section 44.500 would read,

“The Council, through majority vote, may call up for review any decision of the Community Development Director or Planning Commission. The determination to call up for review shall be made by the Council at the meeting **following the posting of the notice of decision pursuant to Section 44.400**, and the Council shall specify the issues to be reviewed. The Council shall hear and determine a decision that is called up for review in the same manner as an appeal.”

Staff also suggest that it may be beneficial to change the appeal period in Section 44.600 to 14 calendar days to more closely tie the appeal period to the usual 14 day cycle for Planning Commission and Council meetings. Additionally, Council may want to address timing as it relates to its “call-up” policy when the Council is dark for any period of time.

A summary of the types of applications, the approval authority, and the appeal process is provided below to assist the City Council in reviewing the appeal process.

Type of Application	Detail Description	Applicability Zoning Section	APPROVING BODY		
			Planning Director	Planning Commission	City Council
Administration Use Permit	Home Occupations, new businesses in existing bldgs.	35.270 50.000	Final approval	On appeal 44.600 or 50.400	Appeal/Calling up 44.600/44.500
Administrative Design Review Permit	Conforming sign permits and additions to single-family homes, accessory structures or fences	34.102 42.200	Final approval	On appeal per 42.600 or 34.103	Calling Up 42.600 or 44.500
Small Family Daycare	-Up to 8 children -7-14 children	State pre-empts 35.260	Non-discretionary Confirming letter	On appeal	Calling Up 42.600
Minor Exceptions (Admin Variance)	10% max variation from lot dimensions, setbacks, heights, site area, parking, landscaping	45.300	Final approval	On appeal per Chapter 44	Appeal/Calling up 44.600/44.500
Minor Modification	Modify an existing approvals parking, fencing, architectural features, colors, increase size by < 5%, reduced density, landscaping	46.300	Final approval	On appeal per Chapter 44	Appeal/Calling up 44.600/44.500
Temporary Use Permit	Activities occurring < 30 days / year (outdoor retail sales)	5.350 35.290	Final approval	On appeal 50.400	Appeal/Calling up 44.600/44.500
Temporary Use Permit	Activities occurring > 31 days/ year			Final approval	Appeal/Calling up 44.600/44.500
Design Review	New or modified commercial bldgs., Master Sign Programs, Pylon signs, Sign Variance,	34.103 42.200		Final approval	42.600 / 44.500 or 44.600 Appeal
Conceptual Planned Development Plan	Conceptual review of large complex projects that may be subject to controversy (no environmental review)	48.300	staff meetings but no formal action	Can include, but no formal action	Can include but no formal action
Initial Planned Development Plan	Focuses on review of a project's subdivision plan and/or site	48.400		Recommendation to CC	Final approval
Final Planned Development Plan	Planned Development Plan	48.500		Recommendation to CC	Final approval
Variance	Minor exception that exceeds the 10% limitation	51.300 45.300		Final approval	44.600 Appeal 44.500/51.500 Call up
Conditional Use Permit	Mini-storage facilities, permanent outdoor sales, service stations,	35.280, 35.290 35.330, 50.000		Final approval	44.600 Appeal 44.500/50.400 Call up
Special Use Permit (SUP)	Admin SUP allowed for limited facilities while PC approval for new Telecommunication Facilities		Limited to Modifications of existing	Final approval	44.600 Appeal 44.500/50.400 Call up
Zoning Text Amendments	Zoning Text or Map Amendments	52.300		Recommending Reso to CC	Final approval by Ordinance
General Plan Amendment or Specific Plan	General Plan Amendment			Recommendation to CC	Final approval by Resolution
Tentative Subdivision Maps	Tentative Subdivision Maps			Recommendation to CC	XX

RESOLUTION NO. 19-02

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE UPDATING THE ZONING CODE RELATED TO APPEALS PROCESS

WHEREAS, on January 22, 2019, January 8, 2019, September 25, 2018 the City Council of the City of Hercules discussed the current appeal process initiated by Council call up and wanted to clarify the language to be less confusing and give adequate time for the Council to decide if a call up is needed; and

WHEREAS, according to Zoning Ordinance Section 13-52.200, City Council action can request the Planning Commission to consider an amendment to the Zoning Ordinance at a public hearing; and

WHEREAS, at January 22, 2019 Regular Council Meeting, the City Council provided a framework of policy modification they would like to see considered to ultimately incorporated into the Zoning Ordinance; and

WHEREAS, it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is thus categorically exempt from the California Environmental Quality Act ("CEQA") [State CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the Planning Commission did hold a properly noticed public hearing on March 18, 2019 to consider Council's direction to modify the Appeal provisions of the Zoning Ordinance requiring Zoning Text Amendment #ZTA 19-02, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth;

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission, based on its independent judgment and analysis, finds that there is no substantial evidence that the project will have no significant effect on the environment based on the whole record before it.
3. After due study, deliberation, and public hearing, the Planning Commission finds and determines that the Zoning Text modification is:
 - a) consistent with the General Plan
 - b) would not be detrimental to the health, safety, welfare, and public interest of the City, and
 - c) is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.
4. The Planning Commission recommends that the City Council approve an Ordinance approving and adopting Zone Text Amendment #ZTA 19-02 updating the Zoning Ordinance related to the appeal process per the attached document (Exhibit A).

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 18th day of March 2019, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Irena Galieva, Chairperson

ATTEST:

Holly P. Smyth, AICP
Planning Director & Planning Commission Secretary

Exhibit A - Proposed Modification to Hercules Municipal Code (Zone Text Amendment #ZTA
19-02)

EXHIBIT A

Proposed Modifications to Hercules Municipal Code (Zone Text Amendment #ZTA 19-02)

TITLE 13. ZONING ORDINANCE

Chapter 13-44. Hearings, Appeals and Judicial Review

Sec. 13-44.400 Notice of Decision.

The Community Development Director shall prepare a notice of decision for actions on zoning applications by the Community Development Director, Planning Commission and City Council. The decision shall include findings, any conditions of approval (including date of effect) as needed to mitigate any impacts and protect the health, safety and welfare of the community, and the appeal period allowed by the Zoning Ordinance. The notice of decision shall be posted within a public area of City Hall and mailed by the Community Development Director to the applicant at the address on the application within ~~10-working~~14 calendar days of the decision. ~~{Ord. 515 § 2, 2018; ZO § 44.400.}~~

Sec. 13-44.500 Review by Council.

The Council, through majority vote, may call up for review any decision of the Community Development Director or Planning Commission. The determination to call up for review shall be made by the Council ~~at the meeting at which the notice of decision is presented to it, at its first~~ at a regular meeting following the posting of the notice of decision pursuant to Section 44.400, unless that meeting would be within 2 calendar days of the posting of the notice, in which case the Council may make the determination to call up for review at the second regular meeting following posting of the notice. and~~at~~ The Council shall specify the issues to be reviewed when it determines to call an item up for review. The Council shall hear and determine a decision that is called up for review in the same manner as an appeal hearing. ~~{Ord. 515 § 2, 2018; ZO § 44.500.}~~

Sec. 13-44.600 Filing of Appeals.

Any discretionary decision made by the Community Development Director where such decision is not designated as final by the Zoning Ordinance may be appealed to the Planning Commission by the applicant or any person affected by a determination or decision. An appeal requires filing a written appeal with the Community Development Director within ~~10-working~~14 calendar days of the mailing or posting of the notice of decision.

Any determination or decision made by the Planning Commission may be appealed to the City Council by the applicant or any person affected by a determination or decision. An appeal requires filing a written appeal with Community Development Director within ~~10-working~~14 calendar days of the mailing or posting of the notice of decision.

The written appeal shall include the name and address of the person filing the appeal, the decision that is being appealed, a description of the grounds upon which the appeal is based, and applicable filing fees.

~~{Ord. 515 § 2, 2018; ZO § 44.600.}~~

Chapter 13-42. Design Review - Sec. 13-42.600 Hearings and Appeals.

The procedures for hearings and appeals by the public or Council call up are specified in Chapter 13-44, Hearings and Appeals. ~~The Council may call up for review any design review decision of the Planning Commission. The determination to call up for review shall be made by the Council at the meeting where the notice of decision is presented to it. If a design review decision is called up for review by the Council, the Council shall hear and determine the matter in the same manner as an appeal. {Ord. 515 § 2, 2018; ZO § 42.600.}~~

Chapter 13-45. Minor Exceptions - Sec. 13-45.500 Hearings and Appeals.

The Community Development Director shall make a determination regarding a minor exception application within 10 working days of notification to the applicant that the application is complete. A public hearing is not required for a minor exception unless an appeal is filed. The procedures for appeals and subsequent hearings by the public or Council call up are as per Chapter 13-44, Hearings and Appeals. ~~{Ord. 515 § 2, 2018; ZO § 45.500.}~~

Chapter 13-46. Minor Modifications - Sec. 13-46.400 Hearings and Appeals.

The Community Development Director shall make a determination regarding a minor modification application within 10 working days of notification to the applicant that the application is complete. A public hearing is not required for a minor modification unless an appeal is filed. The procedures for appeals and subsequent hearings by the public or Council call up are as per Chapter 13-44, Hearings and Appeals. ~~{Ord. 515 § 2, 2018; ZO § 46.400.}~~

Chapter 13-48. Planned Development Plans - Sec. 13-48.700 Hearings and Appeals.

The procedures for hearings and appeals by the public or Council call up are as per Chapter 13-44, Hearings and Appeals.

A planned development plan application along with the Community Development Director's report shall be submitted to the Planning Commission for review. The Planning Commission shall forward its recommendation to the City Council for final action.

If the planned development plan includes a proposed subdivision, the proceedings for the review of the tentative subdivision map may be undertaken concurrently with the proceedings with respect to the planned development plan. ~~{Ord. 515 § 2, 2018; ZO § 48.700.}~~

Chapter 13-49. Specific Plans - Sec. 13-49.400 Hearings, Adoption and Appeals.

A specific plan shall be reviewed and adopted in the same manner as a general plan, except that a specific plan may be adopted by resolution or by ordinance. No specific plan may be adopted unless the proposed plan is consistent

with the General Plan. The procedures for hearings and appeals by the public or Council call up are as per Chapter 13-44, Hearings and Appeals. ~~{Ord. 515 § 2, 2018; ZO § 49.400.}~~

Chapter 13-50. Use Permits - Sec. 13-50.400 Hearings and Appeals.

The procedures for hearings and appeals by the public or Council call up are as per Chapter 13-44, Hearings, Appeals and Judicial Review.

~~The City Council may call up for review by it any action of the Community Development Director or Planning Commission in granting or denying a use permit. The determination to call up for review shall be made by the Council at the meeting at which the notice of decision is presented to it. If a decision is called up for review by the City Council, the City Council shall hear and determine the matter according to the required findings of this Chapter in the same manner as an appeal. {Ord. 515 § 2, 2018; ZO § 50.400.}~~

Chapter 13-51. Variances - Sec. 13-51.500 Hearings and Appeals.

The procedures for hearings and appeals by the public or Council call up are as per Chapter 13-44, Hearings and Appeals.

~~The City Council may call up for review by it any action of the Planning Commission in granting or denying a variance. The determination to call up for review shall be made by the City Council at the meeting at which the notice of decision is presented to it. If a decision is called up for review by the City Council, the City Council shall hear and determine the matter in the same manner as an appeal. {Ord. 515 § 2, 2018; ZO § 51.500.}~~

Chapter 13-52. Zoning Amendments - Sec. 13-52.500 Hearings and Appeals.

The procedures for hearings and appeals by the public or Council call up are as per Chapter 13-44, Hearings and Appeals. ~~{Ord. 515 § 2, 2018; ZO § 52.500.}~~