



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of February 12, 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