



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 45.400, 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