



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.