

Los Angeles City CEQA Appeal Ordinance
Environmentalists' and Local Activists' Proposed Alternative

This proposed City of Los Angeles CEQA Appeal Ordinance is an alternative to the version proposed by the Los Angeles City Attorney in its Report No. R08-0423, dated November 10, 2008. This alternative ordinance was prepared by the Sierra Club and the NRDC. The following organizations support the adoption of this alternative ordinance by the city: EnviroDefenders, Latino Urban Forum, Law Offices of Sabrina Venskus, NRDC, San Pedro and Peninsula Homeowners Association. This text, as well as more information on the proposed ordinance is available online at <http://www.EnviroDefenders.org/laceqa>.

ORDINANCE NO. _____

AN ORDINANCE of the City of Los Angeles to amend the Los Angeles Municipal Code to establish a procedure pursuant to Section 21151(c) of the California Public Resources Code for appeals to the City Council from environmental determinations by boards, commissions, departments and officials other than the City Council.

WHEREAS, the Charter and the Los Angeles Municipal Code provide that certain decisions, including decisions subject to the California Environmental Quality Act (CEQA) can be made on behalf of the City of Los Angeles by nonelected decision-making bodies such as boards, commissions, departments and officials other than the City Council; and

WHEREAS, Section 21151(c) of the California Public Resources Code (the "Statute") provides that:

If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to [CEQA], that certification, approval or determination may be appealed to the agency's elected decision-making body, if any.

and

WHEREAS, the Statute and the applicable regulations, California Code of Regulations, title 14, section 15090(b), do not specify a procedure for such appeals; and

WHEREAS, the City Council desires to establish a procedure for conducting appeals of environmental determinations of nonelected decision-making bodies such as boards, commissions, departments and officials other than the City Council.

NOW THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. The Municipal Code is amended to add Section 11.12 as follows:

(a) Definitions. For the purposes of this section, the definitions in California Public Resources Code sections 21060–21072 and California Code of Regulations, title 14, sections 15350-15387 shall apply. In addition, the following definitions shall apply to this section:

CEQA is the California Environmental Quality Act, California Public Resources Code sections 21000–21177.

ENVIRONMENTAL DETERMINATION An Environmental Determination is the (1) certification of an environmental impact report (“EIR”); (2) adoption of a mitigated negative declaration (“MND”); (3) adoption of a negative declaration (“ND”); (4) determination that a project is exempt from CEQA (“Exemption Determination”); or (5) an implicit environmental determination, which is the determination that a project requires no further CEQA review, or the discretionary approval of a project for which no EIR was certified, no MND or ND was adopted, and no Exemption Determination was made (“Implicit Determination”).

(b) Notice of Decision. When a nonelected decision-making body makes an Environmental Determination other than an Implicit Determination, it must provide a dated notice of the Environmental Determination in writing (“Notice of Decision”). This notice shall be mailed to persons who have requested notifications with respect to the project that is the subject of the Environmental

Determination, and shall be posted for at least ten days on the Internet Web site of the nonelected decision-making body, and in the following three places: the bulletin board located at the Main Street entrance to the Los Angeles City Hall, the bulletin board located at the Main Street entrance to the Los Angeles City Hall East, and the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

(c) Appellants. Any person may appeal to the City Council, on any grounds, an Environmental Determination made by a nonelected decision-making body of the City of Los Angeles (“CEQA Appeal”).

(d) Time to File an Appeal. A CEQA Appeal must be filed in accordance with this section: (1) in the case of an EIR, MND, ND or Exemption Determination, within 30 calendar days after the Environmental Determination was made by the nonelected decision-making body and the Notice of Decision was posted and mailed to all interested persons; (2) in the case of an Implicit Determination or where no Notice of Decision is provided, within 180 calendar days after approval of the project or, if the project was undertaken without formal approval or where no public notice was given of project approval, within 180 calendar days after its commencement. For purposes of determining whether a CEQA Appeal has been timely filed, the appeal will be deemed filed on the date upon which Appellant filed the appeal with the City Clerk.

(e) Filing Fee. The Appellant shall be charged no filing fee to file a CEQA Appeal.

(f) Place to File. The CEQA Appeal must be filed with the City Clerk and a copy must be filed with the nonelected decision-making body that made the Environmental Determination being appealed.

(g) Contents of CEQA Appeal. All CEQA Appeals shall be in writing and may be filed (1) using forms provided by the nonelected decision-making body that made the Environmental Determination; or (2) in another form chosen by the Appellant. The CEQA Appeal should contain the following:

(1) A cover sheet that

(a) identifies the filing as a CEQA Appeal under Los Angeles Municipal Code Section 11.12;

(b) identifies the nonelected decision-making body that made the Environmental Determination; and

- (c) identifies the Environmental Determination being appealed and the date, if any, on which the nonelected decision-making body made such Environmental Determination.
- (2) The name, address and telephone number of the person filing the CEQA Appeal (the “Appellant”).
- (3) The grounds for the CEQA Appeal, specifying in detail why the Appellant contends that the Environmental Determination does not comply with CEQA.

(h) City Council Hearing. Before the City Council acts on the CEQA Appeal, the City Council shall hold a hearing on the matter. The City Clerk shall set the hearing on the CEQA Appeal on the agenda of the full City Council and provide written notice of the hearing not less than twenty-one calendar days before the hearing. The City Clerk shall provide notice of the hearing to the Appellant, the nonelected decision-making body, and to any parties who received notice of the original hearing or action on the Environmental Determination. Notice to the Appellant shall be sent by certified or registered mail with return receipt and signature delivery confirmation. City Council staff shall prepare a report on the CEQA Appeal and shall make the report publicly available ten calendar days in advance of the hearing. The City Council shall allow Appellants a reasonable amount of time during the City Council hearing to present their objections to the Environmental Determination, and shall allow the nonelected decision-making body and project proponents an equal amount of time for oral presentations. Appellants may reserve a portion of their time for rebuttal.

Sub-committees of the City Council may hold hearings on the CEQA Appeal in advance of the City Council’s hearing on the appeal. The City Clerk shall provide notice of any sub-committee hearing on the CEQA Appeal not less than twenty-one calendar days before the sub-committee hearing, to the same parties entitled to notice of the City Council hearing. Notice to the Appellant shall be sent by certified or registered mail with return receipt and signature delivery confirmation.

(i) City Council Decision. Not later than sixty calendar days after the filing of the CEQA Appeal, or such longer period of time as may be provided by state law, the City Council shall either: (1) ratify the nonelected decision-making

body's Environmental Determination; (2) set aside the Environmental Determination and remand the Environmental Determination to the nonelected decision-making body for its reconsideration; or (3) grant the Appellant's request to withdraw its CEQA Appeal. If the decision of the City Council is to set aside the Environmental Determination and remand the determination to the nonelected decision-making body, that body shall reconsider its decision on the Environmental Determination in light of the City Council's action on the CEQA Appeal. Any subsequent Environmental Determination on the same project by the nonelected decision-making body may be appealed to the City Council under the provisions of this section.

(j) Finality of Approval of Environmental Determination.

Notwithstanding provisions of the Los Angeles Municipal Code to the contrary, an Environmental Determination made by a nonelected decision-making body, other than an Implicit Determination, is conditional and does not become final until thirty days after the Environmental Determination was made. If a CEQA Appeal of an Environmental Determination made by a nonelected decision-making body has been properly filed under this section, the Environmental Determination remains conditional until the City Council either ratifies the Environmental Determination or grants the Appellant's request to withdraw its CEQA Appeal. The City shall not file a CEQA Notice of Determination or Notice of Exemption related to the Environmental Determination until the CEQA Appeal period has ended, any CEQA Appeals are resolved, and the Environmental Determination is final. The City's approval of the project that is the subject of the Environmental Determination shall not become effective until the Environmental Determination is final.

Section 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles at its meeting of _____.

Karen E. Kalfayan, City Clerk

By _____

Deputy

Approved _____

By _____

Mayor