



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 8 - 0 4 2 3
NOV 1 0 2008

REPORT RE:

**DISCUSSION DRAFT OF ORDINANCE ADDING SECTION 11.12 TO THE
LOS ANGELES MUNICIPAL CODE ESTABLISHING PROCEDURES
FOR APPEALS TO THE CITY COUNCIL OF CEQA DETERMINATIONS**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

We are transmitting to you for your consideration and direction prior to finalizing, a draft ordinance adding Section 11.12 to the Los Angeles Municipal Code to establish the procedures for appeals to City Council of certifications, approvals or determinations pursuant to the California Environmental Quality Act (CEQA).

Summary of Ordinance Provisions

The draft ordinance would implement California Public Resources Code Section 21151(c), which provides that:

"[i]f a nonelected decisionmaking 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 this division [CEQA], that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."

The draft ordinance would establish procedures for filing and processing CEQA appeals to the City Council. The ordinance would apply only when there is no appeal available

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for the approval associated with the environmental clearance. The draft ordinance also proposes a fee for the processing of the ordinance; however, the amount has not been determined, and such a fee is not required by CEQA. If you wish to impose a fee, you must comply with additional procedures outlined below.

Council Rule 38 Referral

A copy of this draft ordinance was sent, pursuant to Council Rule 38, to the City Clerk, the Departments of Building and Safety, Environmental Affairs, Planning, Public Works, Recreation and Parks, Water and Power, the Harbor Department and the Airport Department, and their associated commissions. They have been asked to submit their comments directly to you.

Fee Notice

Prior to adopting a new fee or increasing an existing fee, the Council must conduct a public hearing concerning the matter, as required by Government Code Section 66016. Notice of the time and place of the meeting at which the hearing will be held, including a general description of the matter to be considered, must be published in accordance with Government Code Section 6062a. At least ten days prior to the meeting, data indicating the amount of the cost, or estimated cost, required to provide the service for which the fee is levied and the revenue source anticipated to provide the service, must be made available to the public. After conducting the hearing, the Council should determine whether the amounts of the fees contained in the ordinance are appropriate. The Council may impose such fees so long as they do not exceed the expected cost of implementing this City program. Once finalized, if a fee is included, notice of the hearing to consider the proposed fee, as required by applicable law, will need to be provided.

CEQA Findings

If you wish to adopt the ordinance, you must first comply with CEQA. We believe that adoption of this ordinance is exempt from CEQA under State CEQA Guidelines section 15060(c)(2) and (3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, since it merely establishes procedures for consideration of project approvals, and is therefore not a project approval as defined in section 15378. In addition, City Council could determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If the City Council concurs, it may comply with CEQA by making one or both of these findings prior to or concurrent with its action on the ordinance.

If you have any questions, please feel free to contact Assistant City Attorney Susan D. Pfann at (213) 978-8253. She or another member of this office will be available to answer any questions you may have when you consider this matter.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM/SDP:pc/mrc
Transmittal

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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 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 decisionmaking bodies, such as Boards, Commissions, Departments and officials other than City Council; and

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

"If a nonelected decisionmaking 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 decisionmaking body, if any"; and

WHEREAS, the Statute and the applicable regulations, Section 15090(b) of Title 14 of the California Code of Regulations, 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 decisionmaking bodies, such as Boards, Commissions, Departments and officials other than 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:

Appellants. Any person who objected to the approval of the project ("Project Approval") orally or in writing during the public comment period provided with respect to the project in accordance with the California Environmental Quality Act (CEQA), or prior to the close of the final public hearing on the project before the issuance of a Notice of Determination by the nonelected

decisionmaking body may appeal to the City Council the: (1) certification of an environmental impact report; (2) approval of a negative declaration or mitigated negative declaration; or (3) determination that a project is not subject to CEQA (collectively "Environmental Determinations"); provided that this Section does not apply when the Project Approval is made appealable to City Council by any other provision of law.

Time to File an Appeal. An appeal of an Environmental Determination by a nonelected decisionmaking body ("CEQA Appeal") must be filed in accordance with this Section not later than ten (10) calendar days after the Environmental Determination, or such longer period of time as may be provided by State law. For purposes of determining whether a CEQA Appeal has been timely filed, the appeal will be deemed filed on the date upon which appellant has both filed the appeal and paid the filing fee, if any, to the nonelected decision making body that made the Environmental Determination, and filed a copy of the appeal with the City Clerk.

Filing Fee. Appellant shall pay a filing fee of \$_____ to the nonelected decision making body that made the Environmental Determination, which shall be submitted concurrently with the CEQA Appeal.

Place to File. The CEQA Appeal must be filed with the nonelected decisionmaking body that made the Environmental Determination being appealed and a copy must be filed with the City Clerk

Contents of CEQA Appeal. All CEQA Appeals shall be in writing on forms provided by the nonelected decisionmaking body that made the Environmental Determination. Where a nonelected decisionmaking body does not provide forms, the CEQA Appeal shall 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 decisionmaking body that made the Environmental Determination; and
 - (c) Identifies the Environmental Determination being appealed and the date on which the nonelected decisionmaking body made such Environmental Determination.

- (2) The name, address and telephone number of the person filing the CEQA Appeal (the "Appellant").

(3) All grounds for the CEQA Appeal, specifying in detail why the Appellant contends that the Environmental Determination does not comply with CEQA.

(4) Evidence that each ground for the CEQA Appeal was submitted to the nonelected decisionmaking body before the Environmental Determination was made.

Hearing. Before the City Council acts on the CEQA Appeal, a hearing on the matter shall be held. 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 ten (10) calendar days before the hearing. If the original hearing or action required notice, then the City Clerk shall provide notice to the same parties receiving notice of the original hearing or action. If the original hearing or action did not require notice, then the City Clerk shall provide notice to the Appellant and the nonelected decisionmaking body.

City Council Decision. Not later than sixty (60) 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 decisionmaking body for its reconsideration; or (3) grant the Appellant's request to withdraw its CEQA Appeal.

Finality of Project Approval. Notwithstanding provisions of the Los Angeles Municipal Code or Charter to the contrary, if a CEQA Appeal of the Environmental Determination has been properly filed under this Section, then the Project Approval by the nonelected decisionmaking body is not final, but becomes conditional, until a decision is made on the CEQA Appeal by the City Council.

If the decision of the City Council is to ratify the nonelected decision making body's Environmental Determination, or to allow or grant the Appellant's request to withdraw its CEQA Appeal, then the Project Approval becomes final. If the decision of the City Council is to set aside the Environmental Determination, then the nonelected decisionmaking body may reconsider its decision on the Project Approval, if necessary, in light of the City Council's action on the CEQA Appeal, and the Project Approval becomes final upon the subsequent Environmental Determination by the nonelected decisionmaking body.

Sec. 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

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By  _____

Chief Asst. City Attorney

Date 11/6/08 _____

File No. _____