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CITY ATTORNEY

REPORT NO. RT9-0128

REPORT RE:

MAY 06 2019

**DRAFT ORDINANCE ADDING ARTICLE 4 TO CHAPTER XIX OF THE
LOS ANGELES MUNICIPAL CODE TO ESTABLISH A PROCEDURE PURSUANT TO
SECTION 21151(c) OF THE CALIFORNIA PUBLIC RESOURCES CODE FOR
APPEALS TO CITY COUNCIL FROM ENVIRONMENTAL DETERMINATIONS BY
CERTAIN NONELECTED DECISIONMAKERS**

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

Council File No. 14-0090-S1

Honorable Members:

On February 19, 2019, the City Council requested that this Office, in consultation with the City Clerk, prepare and present an ordinance establishing procedures implementing the right to appeal set forth in California Public Resources Code Section 21151(c). We have prepared and now transmit for your consideration a draft ordinance adding Article 4 to Chapter XIX of the Los Angeles Municipal Code to establish the procedures for appeal to the City Council of certain certifications, approvals, or determinations made pursuant to the California Environmental Quality Act (CEQA). These procedures are consistent with the requirements of State law.

Summary of Ordinance Provisions

The draft ordinance would implement California Public Resources Code Section 21151(c), which 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 this division [CEQA], that certification, approval, or determination may be appealed to the agency’s elected decisionmaking body, if any.”

The State Guidelines implementing the CEQA statute mandate that local agencies provide for such CEQA appeals, and that agencies may establish procedures governing the appeals. Currently, the City has no written and codified procedures for such appeals.

The draft ordinance would provide for CEQA appeals and establish procedures for filing and processing those appeals to the City Council, consistent with the requirements of State law. The ordinance would only apply when there is no other legally required review by the City Council for the approval associated with the environmental determination.

It is important to note that the scope of the draft ordinance does not extend to matters governed by Chapter 1 of the Los Angeles Municipal Code (generally consisting of approvals granted by way of private party application to the Planning Department). A separate ordinance governing such matters has been proposed by the Planning Department and is being processed separately. Furthermore, the ordinance would not apply to decisions of the Proprietary Departments.

Council Rule 38 Referral

Copies of the draft ordinance were sent to the City Clerk, Public Works, Recreation and Parks, and the Department of Transportation. Each was asked to submit any comments directly to the City Council when this matter is considered.

CEQA Determination

We believe that adoption of this ordinance is exempt from CEQA under State CEQA Guidelines Sections 15060(c)(2) and (3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. In addition, the City Council could determine that the project is covered by CEQA’s “common sense” exemption, which provides that “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA (Guideline section 15061(b)(3)).” If you concur in the

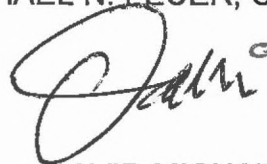
foregoing, and wish to adopt the ordinance, we recommend you make one or both of the above determinations.

If you have any questions regarding this matter, please contact Assistant City Attorney Timothy McWilliams at (213) 978-8209. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

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Transmittal