

MICHAEL N. FEUER  
CITY ATTORNEY

REPORT NO. R 1 4 - 0 0 2 1  
JAN 2 1 2014

**REPORT RE:**

**DRAFT ORDINANCE TO ADD SECTION 11.13 TO THE  
LOS ANGELES MUNICIPAL CODE ESTABLISHING PROCEDURES  
FOR APPEALS TO THE CITY COUNCIL OF CEQA DETERMINATIONS  
CONSISTENT WITH STATE LAW REQUIREMENTS**

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

Honorable Members:

This Office has prepared and now transmits for consideration by your Honorable Body a draft ordinance adding Section 11.13 to the Los Angeles Municipal Code to establish the procedures for appeals to City Council of certifications, approvals or determinations made pursuant to the California Environmental Quality Act (CEQA). These procedures are consistent with the requirements of State law as set forth in Public Resources Code Section 21151(c).

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 State Guidelines implementing the CEQA statute provide that local lead agencies must provide for such CEQA appeals, and may establish procedures governing the 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 Council for the approval associated with the environmental clearance. The draft ordinance references a potential fee for processing a CEQA appeal. Since no decision has been made whether or not to impose a fee and as to the amount thereof, no fee is included in this ordinance. A subsequent ordinance would be required to impose a fee.

#### Background of Proposed CEQA Appeals Ordinance

In 2008, this Office submitted a discussion draft of an ordinance addressing this subject. (Council File No. 08-3074.) The prior draft ordinance was discussed by your Honorable Trade, Commerce and Tourism Committee in January, 2010, at which time the matter was continued with a request that the City Attorney continue working on a final draft of the ordinance, which is transmitted herewith.

#### Council Rule 38 Referral

Copies of this draft ordinance were sent, pursuant to Council Rule 38, to the City Clerk, the Departments of Building and Safety, Planning, Public Works, Recreation and Parks, Transportation, Water and Power, Harbor, and Airports. They have been asked to submit their comments directly to Council or Council Committees when this matter is considered.

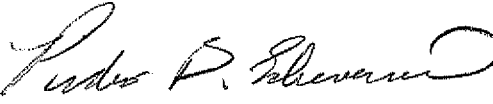
#### CEQA Determination

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. Moreover, the ordinance merely establishes procedures for consideration of appeals, 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 you concur and wish to adopt the ordinance, you may comply with CEQA by making one or both of these findings prior to or concurrent with action on the ordinance.

If you have any questions regarding this matter, please contact Deputy City Attorney Timothy McWilliams at (213) 978-8239. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE/TM/gl  
Transmittal

**ORDINANCE NO. \_\_\_\_\_**

An ordinance adding Section 11.13 to Chapter 1, Article 1, of 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 otherwise final 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**, neither the Statute nor the applicable regulations, Sections 15074(f) and 15090(b) of Title 14 of the California Code of Regulations, specify a procedure for such appeals; and

**WHEREAS**, the City Council desires to establish procedures governing appeals of otherwise final environmental determinations made by 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. Chapter 1, Article 1, of the Los Angeles Municipal Code is amended to add Section 11.13 to read as follows:

**SEC. 11.13. CEQA APPEALS.**

(a) **Appellants.** Any person who objected to the approval of a 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, may appeal to the

City Council, with respect to such Project Approval, the: (1) certification of an environmental impact report; (2) adoption of a negative declaration or mitigated negative declaration; or (3) determination that a project is not subject to CEQA (each an "Environmental Determination"), provided that this Section does not apply when the Project Approval is made appealable to, or is required to be reviewed by, City Council by any other provision of law. If no public hearing or other opportunity was provided to members of the public to raise objections, either orally or in writing, to the Project Approval, then the requirement set forth in this Subsection of having previously objected shall not apply.

(b) **Time to File an Appeal.** Unless otherwise mandated by State law, an appeal of an Environmental Determination made by a nonelected decisionmaking body ("CEQA Appeal") shall be filed the earliest of: (i) within ten (10) days of the filing of the notice set forth in CEQA Guidelines Sections 15062 or 15075 or 15094; (ii) within ten (10) days of the nonelected decisionmaking body's mailing of a written notice of decision containing an Environmental Determination; or (iii) within 180 days of the Environmental Determination. 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 filed the appeal, provided that the appeal complies with the requirements set forth in this Section, and paid the filing fee, if any, to the City Clerk. An appeal that is not timely or fails to comply with the requirements of this section shall not be heard by City Council, in which event the City Clerk shall mail the Appellant a notice advising that its CEQA Appeal was rejected by operation of this section.

(c) **Filing Fee.** Appellant shall pay a filing fee as specified by ordinance, if any, to the Office of the City Clerk, which shall be submitted concurrently with the CEQA Appeal.

(d) **Place to File.** The CEQA Appeal and all supporting documents must be filed in the Office of the City Clerk, and a complete copy filed concurrently in the office of the nonelected decisionmaking body whose Environmental Determination is being appealed.

(e) **Contents of CEQA Appeal.** All CEQA Appeals shall be in writing on a form provided by the City Clerk or, if no such form is made available, shall contain the following:

1. A cover sheet that:

(a) Identifies the filing as a CEQA Appeal under Los Angeles Municipal Code Section 11.13;

(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, and all supporting documentation.

(f) **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 and mail to the Appellant written notice of the hearing not less than fifteen (15) calendar days before the hearing. If the Environmental Determination being appealed was made at or following a hearing or meeting that required notice to any individual or entity, then the City Clerk shall also provide notice to the same parties to which notice of the earlier hearing or meeting was required. If the Environmental Determination was not made at or following a noticed hearing or meeting, then the City Clerk shall provide notice to the Appellant, the recipient of the Project Approval and the nonelected decisionmaking body. City Council shall conduct a de novo review of the Environmental Determination.

(g) **Time to File Additional Documentation.** Any additional documents, whether evidence or argument, submitted by Appellant, and any other parties supporting the Appeal, relative to the CEQA Appeal must be filed with the City Clerk no later than seven (7) calendar days prior to the date set for the hearing by the City Council. The City department, board or commission whose Environmental Determination is being appealed, and any other parties opposing the CEQA Appeal, shall have until four (4) calendar days prior to the date set for the City Council hearing to file with the City Clerk any documents in response to the evidence and arguments submitted by Appellant or other parties. Documents submitted after these deadlines will be accepted for filing, but the City Council will not consider those documents in ruling on the CEQA Appeal unless, in its sole discretion, it votes to consider them. For purposes of this subsection, "documents" shall mean and include any and all forms of communications other than oral presentations made to the City Council at the time of the hearing on the CEQA Appeal.

(h) **Exhaustion Requirement.** All grounds for a CEQA Appeal must have been presented to the nonelected decisionmaking body orally or in writing by the Appellant during the public comment period provided by CEQA, or prior to the close of the public hearing on the Project Approval by the nonelected decisionmaking body (Exhaustion Requirement). The failure to comply with this Exhaustion Requirement shall be grounds for denial of the CEQA Appeal. The foregoing Exhaustion Requirement shall not apply where there was no public hearing regarding, or other opportunity for the Appellant to raise objections to, the Project Approval.

(i) **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 mandated by State law, the City Council shall: (1) deny the appeal, thereby affirming the nonelected decisionmaking body's Environmental Determination, and in so doing, Council shall make the same findings which were required under CEQA to have been made by the nonelected decisionmaking body; (2) grant the appeal, specify the deficiencies (Deficiencies) in the Environmental Determination and remand the Environmental Determination to the nonelected decisionmaking body for reconsideration of the Environmental Determination and Project Approval in light of Council's action (Reconsideration); or (3) grant the Appellant's request to withdraw its CEQA Appeal.

(j) **Finality of Project Approval.** If a timely CEQA Appeal has been filed that complies with the provisions of this section, then the Project Approval by the nonelected decisionmaking body shall be stayed pending resolution of the CEQA Appeal as set forth herein:

1. If the decision of the City Council is to deny the CEQA Appeal and thereby affirm the nonelected decision making body's Environmental Determination, or to allow or grant the Appellant's request to withdraw its CEQA Appeal, then such decision by Council shall have the effect of immediately lifting the stay of the Project Approval.

2. If the decision of the City Council is to grant the CEQA Appeal and remand the Environmental Determination to the nonelected decisionmaking body as set forth herein in Subsection (i), then the stay of the Project Approval shall be lifted at the time of the Reconsideration.

3. If, upon remand, the nonelected decisionmaking body takes further action on the Project, and such action is limited solely to the modification of the Project and/or Environmental Determination in a manner that remedies each of the Deficiencies identified by City Council as set forth in Subsection (i) (Remedial Action), then Council hereby, in accordance with Charter Section 245(b), prospectively waives its right to assert jurisdiction over either the Environmental Determination or the Project following Reconsideration. In all other respects, Council retains its rights under Charter Section 245. Council may, but is not required to, assert jurisdiction under Charter Section 245 for the purpose of determining whether the Remedial Action substantially addresses the Deficiencies.

4. Following Reconsideration, there shall be no further right to appeal under Section 21151(c) of the California Public Resources Code.

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 \_\_\_\_\_.

HOLLY L. WOLCOTT, Interim City Clerk

By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

By \_\_\_\_\_  
Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  \_\_\_\_\_  
TIMOTHY MCWILLIAMS  
Deputy City Attorney

Date 1-21-14

File No. \_\_\_\_\_