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REPORT NO. R 19-0236
JUL 31 2019

REPORT RE:

**DRAFT ORDINANCE ADDING A NEW SECTION 11.5.13 TO ARTICLE 1.5 OF
CHAPTER I OF THE LOS ANGELES MUNICIPAL CODE
TO ESTABLISH A PROCEDURE FOR APPEALS TO THE CITY COUNCIL
FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATIONS
BY LOWER DECISION-MAKING BODIES**

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. 18-0066

Honorable Members:

On January 23, 2018, the City Council adopted a motion (Huizar-Koretz) instructing the City Planning Department to prepare an ordinance to allow hearings required for adoption of a Sustainable Communities Environmental Assessment (SCEA) to be held by a planning commission. In order to satisfy that request, as explained below, the City Council must first establish an appeals procedure pursuant to Section 21151(c) of the California Environmental Quality Act (CEQA). Thus, this Office has prepared and transmits for your consideration the enclosed draft ordinance approved as to form and legality. The draft ordinance would add Section 11.5.13 to the Los Angeles Municipal Code (LAMC) to allow appeals to the City Council from CEQA determinations by lower decision-making bodies, thereby allowing SCEA hearings to be held by a planning commission.

Background

CEQA mandates, through Public Resources Code Section 21151(c), that any interested party may appeal an approval of a CEQA determination by a lower decision-making body to the legislative body. While the City, in compliance with the Public Resources Code Section 21151(c), accepts and holds appeals of CEQA determinations to the City Council from lower-decision-making bodies, the City does not currently have an ordinance to codify this procedure.

The City's lack of appeal procedures prevents the City Council from delegating public hearings on SCEAs to the City's planning commissions. A SCEA is a type of environmental clearance authorized in Public Resources Code Section 21155.2 for projects with residential uses near transit that are consistent with the current Southern California Association of Government (SCAG) Sustainable Communities Strategy. The SCEA is similar to a mitigated negative declaration but provides the City a more deferential standard of review in litigation if the SCEA is challenged. Although first authorized in 2008 by Senate Bill (SB) 375, the City Council approved its first SCEA in 2018.

The procedures for a SCEA require that a public hearing be conducted by the legislative body before project approval. Public Resources Code Section 21155.2(b). The SCEA process requires a public hearing on the environmental clearance and requires the hearing to be held by the City Council before the public hearing is held on the project approval.

The SCEA rules provide an exception to the legislative body holding the hearing on the SCEA to allow the agency's planning commission to hold the hearing provided the City has an adopted ordinance implementing Public Resources Code Section 21151(c). Specifically, Section 21155.2(b)(6) provides:

...a planning commission may conduct the public hearing [on the SCEA] if local ordinances allow a direct appeal of approval of a document prepared pursuant to [CEQA statutes] to the legislative body...

Based upon this language, the City Council may only delegate its public hearings on SCEAs to the City Planning Commission or Area Planning Commissions when the City has an ordinance that effectively implements Public Resources Code Section 21151(c). Public Resources Code Section 21151(c) allows appeals from generally "all documents approved" under CEQA—that is exemptions, negative declarations, mitigated negative declarations, and environmental impact reports. The draft ordinance authorizes an appeal for all documents expressly authorized under Public Resources Code Section 21151(c), including SCEAs.

On August 23, 2018, the City Planning Commission (CPC) recommended that the City Council adopt staff's proposed ordinance, as modified by the CPC. On October 30, 2018, the Planning and Land Use Management Committee of the City Council requested that the City Attorney's Office review the proposed ordinance, as further modified, for form and legality.

Summary of Ordinance Provisions

The draft ordinance would establish a new procedure in Chapter I of the LAMC providing that when a decision-maker other than the City Council certifies an environmental impact report, approves a negative declaration, a mitigated negative declaration, or a SCEA; or determines that a project is exempt from CEQA, that environmental clearance is appealable to the City Council. This codifies Public Resources Code Section 21151(c) and existing City practices.

The draft ordinance provides a 15-day time limit for filing appeals after the project is final; requires a stay on all other project-related approvals during the pendency of the appeal; requires that no CEQA appeal may be filed unless all appeals on the project approvals were exhausted; requires ten-day notice of the hearing on the appeal; and requires the City Council to hold a hearing within 75 days of the expiration of the appeal period unless continued upon the mutual agreement of the City Council and the applicant.

Charter Findings

Charter Section 558(b)(3) requires the City Council to make the findings required in Subsection (b)(2) of the same section; namely, whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Pursuant to Charter Section 558(b)(3)(A), if the CPC recommends approval of a proposed ordinance, the City Council may adopt an ordinance conforming to the CPC's recommendation. Similarly, Charter Section 556 requires the City Council to make findings showing that the action is in substantial conformance with the purposes, intent, and provisions of the General Plan. The City Council can either adopt the CPC's findings and recommendations as set forth in the CPC's Transmittal Report dated August 30, 2018, or make its own findings.

CEQA Determination

The Department of City Planning (DCP) recommends that the draft ordinance is not a "Project" under CEQA pursuant to CEQA Guidelines, Section 15378. The determination by the City Council that the draft ordinance is not a "Project" under CEQA is supported if substantial evidence shows that the draft ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. DCP recommends

this determination is supported because the draft ordinance codifies existing City practices and State law.

DCP also recommends that the draft ordinance is exempt under CEQA Guidelines Section 15308 (Class 8 Categorical Exemption) on the basis that it provides clarity and guidance to the general public as to how appeals to CEQA can be made. The City Council may determine a project is categorically exempt if substantial evidence supports that the draft ordinance consists of an action taken by a regulatory agency, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment and does not involve construction.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety, with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Parissh A. Knox at (213) 978-8191. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
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DM:PAK:lc
Transmittal