



AGENCY: City Council
MEETING DATE: April 26, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Direction to Staff on How to Interpret Existing Language in the Coastal and Inland Land Use and Development Codes

ISSUE:

Several provisions of the City's land use and development codes allow an "interested person" to request a hearing prior to the granting of various types of a permits. For example, Section 18.71.060(E)(2) of the Inland Land Use and Development Code ("Inland Code") that applies to applications for minor use permits provides that a hearing:

"...will be held only if requested in writing by any interested person before the specified date for the decision." (emphasis added)

Similar language is found in Section 18.71.070(E)(2) of the Inland Code that applies to variances and Section 17.71.045(c)(2)(b) of the Coastal Land Use and Development Code ("Coastal Code") that applies to coastal development permits.

If no hearing is requested, completed applications can be approved at the staff level. Until recently, staff has interpreted the term "interested person" to refer to any member of the public who is interested in the application, including those who are not involved in the project and those who are not affected by it. Staff became concerned about the cost of providing public hearings and the delay to issuing permits on permit applications when neither the applicant nor those within close proximity to the project requested a hearing. This unlimited interpretation of the term "interested person" allows any person anywhere to require the City to provide a hearing on an uncontested and non-controversial permit application. The City attorney advised staff that the term "interested person" generally refers to those who have a legal interest that may be affected by the project. This typically includes the applicant, neighboring property owners, neighboring tenants, and those who could be adversely affected by the project.

This interpretation is bolstered by the fact that different language is contained in Section 17.71.045(K)(2) of the Coastal Code. This section provides that public hearings on a coastal permit for minor developments are waived if both (1) persons with a defined legal interest in the property and (2) "any other persons known to be interested in receiving notice" do not request a hearing. In this section, the City Council made clear that any person who is interested in receiving notice of a hearing can request one, instead of using the same "interested person" language discussed above. We can infer that the Council intended the term "interested person" to refer to those with a legal interest that could be affected by the permit because it used a much broader standard in a similar context.

However, because the term “interested person” is not defined in either the Coastal, Inland, or Municipal Codes, interpretation of this term is subject to disagreement and confusion. The goal of any inquiry into the meaning of statutory language is to ascertain the intent of the legislative body in enacting the statute. The purpose of this item is to allow the City Council the opportunity to express its intent with respect to who this term refers to and secondarily who should bear the costs and City resources spent on public hearings.

ANALYSIS:

The term “interested person” and variants of this term can be found in several legal contexts that involve due process hearings. For example, the Probate Code contains a detailed definition that generally limits its application to an enumerated list of individuals.¹ In the more closely analogous context of subdivision approval, the term refers to “any interested person *adversely affected*”² by an agency decision (emphasis added). In both contexts, the term is limited by some additional language that prevents its application to uninvolved individuals. While staff has not always interpreted this term with any limitations on who it applies to, doing so allows the City to appropriately allocate public funds and prevent abuse of the hearing process.

If the intent of the City Council is to allow uninvolved persons to require the City to provide a hearing, staff requests that the Council make that clear and staff will revert to its prior practice. However, if this is not the Council’s intent, staff requests direction on how to appropriately limit the scope of those who can request a hearing.

Costs of Appeals and Hearings

In addition to determining who may request a hearing or an appeal, is the matter of who should bear the costs. There are three payment sources and they are not necessarily exclusive: 1) permit applicant, 2) person requesting the hearing or appeal, or 3) the taxpayers. Typically, the City charges a fee to the applicant if a hearing is required as part of the process to issue a permit. When the need for a hearing is unknown, which is typically the case with a ministerial permit like a minor use permit, it is not always clear who should bear the cost of the hearing. If requested by an “interested party” recent practice has been to not charge for this hearing, although as set forth on the next page, there is an established fee of \$1,018 for such a hearing.

Charging a fee for a hearing covers at least a portion of the cost of conducting the hearing. There are provisions in the City Code that allow for refund of a hearing fee if the requestor is successful. The City’s current Fee Schedule (2019-20) clearly establishes the intent that the costs of appeals and requested hearings are borne by the appellant. There are provisions in the City Code that allow for refund of a hearing fee if the requestor is successful.

Payment of a fee provides some assurance that the requestor has a valid interest in the permit or hearing and is not using a request for a hearing to delay issuing a permit, to increase the costs, or to harass the applicant or City staff. The chart below lists the current fees associated with hearings adopted by the City Council.

¹ Prob. Code § 48.

² Gov. Code § 66452.5(d).

FEE TYPE	DEPARTMENT	AMOUNT
Appeal of Water Bill	Miscellaneous	\$200
Appeal of Administrative Decisions	Miscellaneous	\$445
Appeal of a Planning Commission Decision to City Council	Planning	\$1,000
Additional Fee for Appeal to City Council for Permits requiring CEQA	Planning	\$10,000
Appeal of Code Enforcement Action	Planning	\$3,000
Appeal of Code Enforcement Case	Planning	\$440
Appeal of Administrative Permit to Planning Commission	Planning	\$375
Appeal of Sign Permit to Planning Commission	Planning	\$218
Public Hearing (requested for Administrative Permit)	Planning	\$1,018
Hearing Costs before Planning Commission	Planning	\$935

Costs associated with hearings include the following:

- Staff costs associated with preparing the documentation;
- City Clerk’s administrative processing and filing of the action;
- Cost of Hearing Officer (hourly or staff salary), transcription costs, clerical staff and IT for broadcasting; and
- Publishing notices in the newspaper and mailing to neighboring property owners.

The individual costs of a hearing vary widely depending on the type of permit, the complexity of the issue, the level of opposition and the need for outside staff or consultants. This is part of the reason for the number and complexity of fees on the chart above – trying to match the actual costs to the action. In some cases, staff have relied on Developer Deposit Accounts (DDAs), so that the developer pays actual costs but this adds more uncertainty to what can already be an uncertain process. The set fees create more certainty for a developer regarding the costs of a permit process, but may result in the taxpayers bearing the costs of development when the expenses exceed the fees. When hearing fees are not paid by the requestor or the developer, the taxpayers bear the costs and those resources are not used to provide other services such as trails, parks, police, streets, etc.

This is part of a larger issue than the definition of “interested person” or who should bear the costs of a hearing, namely the desire for a planning and development process that is predictable and consistent. No one more than staff want to be able to clearly set forth to a potential applicant the costs, the timeframes and whether the project will likely be approved. Consistent application of definitions, processes and costs supports consistency in the development process.

RECOMMENDED ACTION:

1. Provide direction to staff on how to interpret the term “interested person” as it is used in Sections 18.71.060(E)(2) and 18.71.070(E)(2) of the Inland Code and Section

17.71.045(c)(2)(b) of the Coastal Code.

2. Provide direction to staff on who should bear the cost of a hearing when a party other than permit applicant is requesting a review or appealing a decision.

ALTERNATIVE ACTION(S):

1. Direct staff to interpret “interested person” as referring to any person without any limiting language.
2. Direct staff to interpret “interested person” as referring to an “interested person adversely affected” by the decision.
3. Direct staff to interpret “interested person” as referring to an “interested person with a legal interest that may be adversely affected” by the decision.
4. Direct staff to prepare an ordinance that codifies a detailed definition of “interested person” for future Council consideration.
5. Direct staff to revise the City’s Fee Schedule to be consistent with direction regarding who is responsible for paying fees.
6. Provide other direction.

FISCAL IMPACT:

City costs in terms of staff preparation time, out of pocket costs, consultant fees and/or attorney’s fees would decrease if Council interprets “interested person” more narrowly and clarifies what fees or portion of fees should be borne by the party requesting the hearing.

GREENHOUSE GAS EMISSIONS IMPACT:

No impact.

CONSISTENCY:

Providing direction on how to interpret “interested persons” would allow staff to schedule and charge for public hearings consistently.

IMPLEMENTATION/TIMEFRAMES:

Staff would apply the Council’s interpretation immediately.

ATTACHMENTS:

N/A

NOTIFICATION:

1. Jacob Patterson