**From:** Jacob Patterson
**To:** Lemos, June
**Cc:** Miller, Tabatha
**Subject:** Public Comment -- 4/26/21 City Council Meeting, Item No. 8B
**Date:** Monday, April 26, 2021 10:48:09 AM

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City Council [via BCC],

Please consider my public comments regarding my opinion on the interpretation of "interested person" in the context of permit review procedures for minor use permits and the relevant fees. I am very concerned about the intended and unintended consequences of potentially making the recommended changes and respectfully request that the City Council decline to do so at this time or by these means rather than making any policy decisions and procedural adjustments through an ordinance amending the existing code, which would require noticed public hearings to ensure that all people are aware of the proposed changes and have an opportunity to be heard before such significant changes are implemented. In short, this almost feels like a "bait and switch" because public discussions about past and pending ordinances were premised on the City treating minor use permits as they had in the past rather than this new and novel interpretation that would prevent many people for voicing their concerns about proposed projects unless they have a direct and personal legal interest at stake that could be impacted by the permit decision.

## I. Interpretation of "Interested Person" for Minor Use Permit Review Procedures

Within the land use and planning context in California, "interested Person" is generally defined as the permit applicant, the property owner of the location of the proposed project, nearby property owners and residents, and any other person who participated in one or more public meetings or hearings held to consider an application for a land use decision for a specific project. "Participation" includes providing oral or written testimony at a meeting or hearing, submission of questions at a meeting or hearing, or attendance at a meeting or hearing. In this case, the City Manager is proposing that the City Council reverse course on all past practices that are consistent with that general definition and redefine "interested person" in a very limited way that would shortcut the local minor use permit review process because this definition is going to be used to determine if a public hearing is going to be held at all because someone can't participate in a hearing that never happens. If someone becomes an interested person by virtue of participating in the public hearing (in effect, someone who took an interest in the subject matter of the proposed permit to bother participating), then it is questionable at best to say that they should not have the ability to even request a public hearing be held in the first place. This is because there will be no opportunity to raise objections or appeal permit decisions (even very valid concerns like improper review procedures or recommendations that are contrary to legal requirements) with if no one else within close proximity to the proposed project requests a public hearing (e.g., the applicant or a direct neighbor) . If you redefine this term now, what are we going to do concerning the ordinances that were adopted with the understanding that only requiring a minor use permit rather than a major use permit would involve a public hearing if someone raises an issue, concern, or objection to the project? What about people who have an interest in the fair, objective, and consistent application of the code using the same standards across different projects? All members of the public have an interest in ensuring the city applies our local regulations in an unbiased an consistent manner but redefining this term now would mean that someone whose own prior permit was treated inconsistently to a subsequent similar permit application wouldn't be able to request a public hearing for the subsequent permit to object to

their unfair treatment by the city compared to the other applicant. I don't believe that is something the City Council should support.

Importantly, we are only being asked to consider this definition because staff is claiming that potentially having to hold a public hearing is burdensome for staff but we are not talking about a significant number of permit applications since most years only have a handful of applications for minor use permits and nearly all of the staff-level work for a minor use permit has to happen regardless if a public hearing is held or not, with the only significant incremental cost increase being the second set of public notices for the public hearing after it was requested.

Just as importantly, even if you did desire to redefine this term now, the City Council would need to establish clear and objective thresholds to determine who has a legal interest sufficient to be deemed an interested person. Staff has proposed no such standards in their recommendations leaving the process open to arbitrary and capricious application. For conflicts of interest purposes, a member of the City Council or Planning Commission is presumed to have a sufficient legal interest in the outcome of a permit hearing if they reside in or own property within 500 feet of a proposed project.

Under the Political Reform Act, public officials may not make, participate in making, or attempt to use their official positions to influence a governmental decision in which they know or have reason to know that they have a disqualifying interest. A public official has a disqualifying interest if the governmental decision at issue will have a reasonably foreseeable, material effect on the official's financial interests. The Fair Political Practices Commission (FPPC) has amended the standard for determining whether a decision will have a material effect on a public official's interest in real property.

The materiality standard for decisions that affect ownership interests in real property include a presumption that a decision involving property within 500 feet of an official's property will have a material impact on the official's interest. In addition, there is now a presumption that a decision involving property 1,000 feet or more from the official's property will not have a material impact on the official's interest. For decisions involving property located between 500 and 1,000 feet from the official's property, whether the decision creates a conflict now depends on a number of factors. Under FPPC regulations, a decision will have a material impact on the official's property interest if it would change the parcel's development potential, income-producing potential, highest and best use, market value, or, if it would change the parcel's "character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality."

The City staff have already applied this new definition to deny to written requests for a public hearing, including in one instance where the requesting party resides a little more than 300 feet from the location of the proposed minor use permit, presumably on the assumption that by being outside the 300 foot radius for mailed public notice there isn't any protected interest at stake. That kind of arbitrary decision-making is not only illogical but it appears to be contrary to the law. If the City only needed to consider the views and concerns of property owners or nearby residents within 300 feet of a proposed project (if that is even the standard City staff intends to use), why is the city required by the State of California to mail public notices to those people but also to publish the public notice in a local paper of general circulation so other people know what is being proposed? If a project requiring a minor use permit in the Central Business District (e.g., cannabis-related businesses) or one of our other commercial

areas is proposed, do we only care about the opinions and concerns of the immediate neighbors and property owners? Doesn't the entire community have an interest in what goes on downtown? Is anyone who is not a resident within one block of downtown left out of the discussion? I don't believe that is the opinion or expectation of any member of the public. Do parents not have an interest in what kind of land uses are proposed next to their children's schools? Do members of the public getting their mail at the post office not have an interest in what is being proposed across the street? Do local residents or even visitors not have an interest in projects that are proposed near to the hospital that might generate traffic problems impeding timely access to the emergency room? If you redefine this term now with little practical reason to do so and minimal staff time "savings", then you are saying yes to all those questions for any project that requires a minor use permit if the concerns are coming from someone who doesn't live or own property in the immediate vicinity of the project. Redefining this term in this context is also inconsistent with applicable provisions in our two general plans that require the City to foster and facilitate public participation. The City Council can't make decisions that are inconsistent with the applicable general plan and redefining this term would do just that.

Moreover, as a General Law city, California law doesn't permit Fort Bragg to deprive any members of the public their opportunity to be informed and participate in all stages of the planning process or for the City to deprive a person interested in appealing a decision on a permit their ability to appeal that decision (although appeal procedures may regulate how appeals are conducted and how many appeals must be offered). Here, City staff are proposing something that would effectively prevent a person who disagrees with a permit decision their ability to appeal that decisions because an appeal can only be made if there was a public hearing in the first place and some people would be prevented from requesting that initial public hearing. That was never the intent of the past city councils who adopted the ordinances that included the language at issue based on the City's own legislative history from the relevant City meetings as well as the City's consistent past practices of defining the term more broadly to mean any person who takes an interest in the subject matter of the proposed permit rather than being strictly limited to only those people with a protected property or other legal interest at stake.

Finally, even if the City Council had actually intended to limit “interested person” to “those persons with a legal interest in the matter” when your predecessors adopted ILUDC section 18.71.060, or if the current City Council wants to make that change, your preferences likely would not be permissible based on California Government Code sections 65033, 65905, and relevant case law.

**II. Public Hearing (requested for Administrative Permit)**

Regarding the fees associated with when a public hearing is requested for an administrative permit, the fee schedule suggests that this fee is one that could be imposed on the project applicant not the person requesting the hearing, as is the case with many other fees including fees associated with appeals involving a CEQA document that are charged to the permit applicant even though they are potentially triggered by some other person filing the appeal in question. Unlike appeal fees for the person filing the appeal, this is not an appeal of anything but is only changing a review process from a purely administrative staff-level review without public transparency into a staff-level review process involving a public hearing. The only incremental cost difference between holding a public hearing and not holding a public hearing is the second set of public notices that are required because there is now a public hearing.

(Technically, that incremental cost could be eliminated if the City always just holds administrative public hearings and mails the notice of the public hearing at the same time as the notice of pending action that happens regardless if a public hearing is requested.) Public noticing costs are generally charged to the permit applicant, not the people receiving the notice. It is also odd that the fee to appeal a staff-level administrative decision to the Planning Commission is less than half as much as the fee to hold the initial staff-level administrative hearing. How does the City justify this disparity when a Planning Commission public hearing involves just as much preparation and the same noticing expenses as a staff-level administrative public hearing? The City's worksheets for these respective fees show that the city included staff time preparing the supporting analysis for their recommendations and their staff report, which is required whether or not a public hearing is held and improperly inflates this particular fee if it is imposed on the person requesting the hearing rather than the permit applicant. These unresolved issues concerning the justification of the fee and the identity of the person responsible for paying the fee are likely one of the reasons the City has not historically collected this fee. If the City Council wishes to begin imposing a fee for a public hearing for a minor use permit when a public hearing is requested, then we should only do so after the fee schedule is next updated to resolve these ambiguities and open issues in the context of adopting the fees rather than after-the-fact changes because no person interested in challenging the adequacy of the fee would have been on notice the fee might even apply to them based on the City's past practices not imposing this fee. (As an aside, why does City staff sometimes not impose a fee listed in the fee schedule and then claim that only the City Council can waive fees they adopted when someone requests a fee waiver?) Imposing this fee on a person interested in requesting a public hearing so they can have the opportunity to be heard by the review authority before a permit is issued and preserve their right to appeal permit decisions they feel are incorrect presents a substantial barrier to public participation and the City should adopt a consistent fee-waiver policy and process to allow for anyone to be able to participate and advocate for their positions and their rights without having those rights impinged simply because they cannot afford to pay the associated fee

## III. Pending Appeal

In addition to the substantive concerns discussed above, I am particularly concerned about the apparent procedural irregularity of bringing this agenda item to the City Council when there is a pending appeal of an administrative decision because staff proactively implemented this change without first asking the Planning Commission or City Council to interpret the code language in question. (Although, I agree it would have been appropriate for staff to have asked either the Planning Commission or City Council to provide guidance on the interpretation of "interested person" before they implemented the change without such guidance but it is too late to so now because an appeal has already been filed.) The appellate body for this staff-level interpretation appears to be the Planning Commission and then the City Council so I believe it is improper for the City Council to first hear or decide on this matter in general when you may very well be asked to rule on an appeal of a specific application of this novel interpretation of the City's code. That pending appeal is likely prejudiced by the City Council first hearing this agenda item outside the context of an appeal hearing, which requires an objective and unbiased appellate body, as well as the opportunity for the appellant or other interested persons to present evidence and testimony during the hearings. Such evidence and testimony could impact how the City Council chooses to interpret the language in question tonight but it is not available to you because staff did not include it in the agenda materials and omitted reference to the substantial legislative history concerning this provision of the City's code that indicates the intent was to treat any person who takes an interest in the subject matter of the

minor use permit as an interested person for purposes of requesting a public hearing on an administrative permit. This agenda item does not provide that opportunity, in part because of the much shorter notice between publication of the agenda and your consideration of the matter tonight. That said, if the Council directs staff to continue to interpret "interested person" as the City always has in the past, then the appellant would not be prejudiced by this item coming forward before the appeal is potentially heard by the City Council, which probably would probably no longer be necessary.

Thank you for your consideration of this important matter with broad implications.

Best regards,

--Jacob

**From:** ajregister@yahoo.com
**To:** Lemos, June
**Subject:** RE: Minor Use Appeals and Standing
**Date:** Monday, April 26, 2021 8:19:33 PM

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Correction: Keith Collins

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**From:** ajregister@yahoo.com <ajregister@yahoo.com>
**Sent:** Monday, April 26, 2021 8:17 PM
**To:** 'Lemos, June' <Jlemos@fortbragg.com>
**Subject:** Minor Use Appeals and Standing

Dear Ms. Lemos:

Regarding who should be heard on minor use appeals, I think that the 300 feet criteria is good, but also one that includes those who will actually suffer injury (and not just have strong feelings).

I think the issue is very much like that of “legal standing” that counsel Keith Ellison may be familiar with.

Thank you.

Best Regards,

Andrew Jordan
Fort Bragg, CA

**From:** Jenny Shattuck
**To:** Lemos, June
**Subject:** 8B public comment
**Date:** Monday, April 26, 2021 7:40:24 PM

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I am very concerned with this recommendation. Public participation should never be hampered, regardless of who is participating, or trying to participate. How many minor use permits are processed each year? How many minor use hearings are there each year? Deciding who is considered an interested party seems far reaching and nearly god-like. The city council and staff are supposed to be working for the residents of Fort Bragg. I see this as working against them. Community participation should not be limited to a private club of whom is deemed worthy enough to be "interested" or have the opportunity to have their concerns heard.
Changing the way the public can participate currently will only cost citizens appeal fees to actually have a chance for public participation.
Given that staff reports already have to be written, and the hearings I have watched have been less than 15 minutes on average this seems like it will be more of an inconvenience to the public vs the staff, who have already been hired to do this work if this is revised. This would effectively exclude myself from any of the minor use permits, however we are all interested and impacted by what happens in our community. Particularly our down town commercial business district, where few of us live or own property. Please leave it open and how the public has been able to participate.
Jenny Shattuck
Fort Bragg