



MEMORANDUM

TO: CHAIRMAN & MEMBERS OF THE PLANNING COMMISSION
FROM: JOEL ROJAS, COMMUNITY DEVELOPMENT DIRECTOR
DATE: MARCH 9, 2010
SUBJECT: ZONE TEXT AMENDMENT - HEARING NOTICE AND APPEAL PROCEDURES (ZON2009-00375) / Citywide

Staff Coordinator: Leza Mikhail, Associate Planner

RECOMMENDATION

1) Review the proposed amendments to Chapter 17.80.030 of Title 17 of the City's Municipal Code which are necessary to implement the City Council's directive to establish deadlines for scheduling appeal hearings and decision deadlines for appealed projects; and, 2) If the proposed amendments are acceptable, adopt P.C. Resolution No. 2009-___, recommending that the City Council amend Chapter 17.80.030 accordingly.

BACKGROUND

On September 15, 2009, the City Council considered an appeal of a Planning Commission decision. While the appeal was originally filed in August 2003, the Appellant requested that the appeal be put on hold to allow the Appellant time to gather and submit additional information pertaining to the project. After many years, the appellant finally decided to move forward on the appeal and an appeal hearing before the City Council was scheduled for September 2009. During the appeal hearing the City Council raised concerns with the length of time between the date the appeal was filed and the actual appeal hearing. Staff informed the City Council that the Municipal Code is silent on the time frame for when a decision has to be made on an appeal. Furthermore, the State's Permit Streamlining Act does not apply to appeals. To address this concern, the City Council directed Staff to initiate a code amendment that establishes a decision deadline for appeals.

On February 18, 2010, a 1/8 page public hearing notice was posted in the *Peninsula News*, informing the public of the proposed code amendment. As of the preparation of this Staff Report, Staff has not received any comments in response to the notice.

Text Amendment – Hearing Notice and Appeal Procedures
March 9, 2010

DISCUSSION

TEXT AMENDMENT:

The City's Development Code addresses "Hearing Notices and Appeal Procedures" in Chapter 17.80 of the RPV Development Code (attached). Under this section of the code, the Planning Commission and City Council have the power to hear and render decisions on projects that are appealed. Although this section of the code establishes a deadline of fifteen (15) days to file an appeal once a decision is rendered, the code does not establish a deadline for when an appeal should be scheduled and/or a decision rendered.

Pursuant to the City Council's direction, Staff has drafted a new Section 17.80.140 to be added to Chapter 17.80 which establishes deadlines for hearing appeals. Specifically, Staff is proposing a 90-day deadline for scheduling an appeal hearing. The new language would be added under Section 17.80.140 (Appeal Hearing Time Periods) of Chapter 17.80 (Hearing Notice and Appeal Procedures) and would read:

17.80.140 (Appeal Hearing Time Period)

The initial appeal hearing before the Planning Commission or City Council for appeals of decision made pursuant to this Chapter shall be held within ninety (90) calendar days from the date that an appeal that meets all of the requirements of this Chapter is filed with the City.

Staff is of the opinion that a 90-day deadline to schedule an appeal hearing is a reasonable amount of time to allow an appellant to submit information to the City and provides adequate time for public noticing requirements and scheduling conflicts.

ATTACHMENTS

- P.C. Resolution No. 2009-___, recommending City Council approval of Case No. ZON2009-00375 for a Text Amendment
- Existing Municipal Code Chapters 17.80

P.C. Resolution No. 2010-__

P.C. RESOLUTION NO. 2010-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RANCHO PALOS VERDES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 17.80 (HEARING NOTICE AND APPEAL PROCEDURES) OF TITLE 17 OF THE CITY'S MUNICIPAL CODE TO ESTABLISH A DEADLINE TO SCHEDULE APPEAL HEARINGS.

WHEREAS, Chapters 17.80 of Title 17 of the Rancho Palos Verdes Municipal Code (the "Municipal Code") establishes a procedure for appeals of decisions made pursuant to Title 16 and Title 17, and,

WHEREAS, on September 15, 2009, the City Council directed Staff to initiate and bring forth a Code Amendment that establishes deadlines for scheduling appeal hearings; and,

WHEREAS, on February 18, 2010, notice of a public hearing on the proposed amendments to Chapters 17.80 of Title 17 of the Municipal Code was published in the *Palos Verdes Peninsula News*; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the Planning Commission conducted a public hearing on March 9, 2010, at which time all interested parties were given an opportunity to be heard and present evidence regarding said amendments to Title 17 as set forth in the Planning Commission Staff Report of that date; and,

WHEREAS, the Planning Commission has reviewed and considered the proposed code amendment to Title 17; and,

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

Section 1: The Planning Commission has reviewed and considered the amendments to Chapter 17.80 (Hearing Notice and Appeal Procedures) of Title 17 of the City's Municipal Code.

Section 2: The Planning Commission finds that the amendments to Title 17 of the Municipal Code are consistent with California Government Code Section 65853, zoning amendment procedures.

Section 3: The Planning Commission finds that the amendments to Title 17 are consistent with the Rancho Palos Verdes General Plan and Coastal Specific Plan in that they uphold, and do not hinder, the goals and policies of those plans.

Section 4: The Planning Commission finds that the amendments to Title 17 are necessary to preserve the public health, safety, and general welfare in the area.

Section 5: The rights given by any approval granted under the terms of Title 17 of the Rancho Palos Verdes Municipal Code prior to the effective date of this ordinance shall not be affected by the amendments to Title 17 by this ordinance and shall continue in effect until and unless the use ceases or terminates operation according to the terms of the approval or the terms of Title 17, as they existed prior to the effective date of this ordinance.

Section 6: The amendments to Title 17 of the Rancho Palos Verdes Municipal Code as identified herein shall apply to all uses submitted after the effective date of the adoption of said ordinance.

Section 8: For the foregoing reasons, and based on the information and findings included in the Staff Report, Minutes, and other records of proceedings, the Planning Commission of the City of Rancho Palos Verdes hereby recommends that the City Council adopt an Ordinance amending Chapter 17.80 (Hearing Notice and Appeal Procedures) of Title 17 of the City's Municipal Code with the addition of Section 17.80.140 (Appeal Hearing Time Period) with the following new language: "The initial appeal hearing before the Planning Commission or City Council for appeals of decision made pursuant to this Chapter shall be held within ninety (90) calendar days from the date that an appeal that meets all of the requirements of this Chapter is filed with the City."

PASSED, APPROVED, AND ADOPTED this 9th day of March 2010, by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

RECUSALS:

Bill Gerstner
Chairman

Joel Rojas, AICP
Community Development Director; and,
Secretary to the Planning Commission

**Existing Chapter 17.80
(Hearing Notice and Appeal Procedures)**

the appropriate review body. The director's written interpretation shall include a determination on whether said interpretation decision constitutes a minor, nonsubstantial revision to the approved application. Upon review of the director's interpretation, the appropriate body shall either:

1. Concur with the director's interpretation, and if the interpretation results in a minor revision to the approved application, approve the revision by minute order; or

2. Make a determination that the subject interpretation may result in a substantive revision to the originally approved application and thus require a formal review hearing; utilizing the same hearing, noticing requirements, review criteria and appeal procedures, required by this title, for consideration of the original application.

C. In cases where the interpretation review is initiated by the director, planning commission or city council, no fee shall be required. In cases where the interpretation review is initiated by an applicant/property owner or interested party, a fee, as established by resolution of the city council, shall be required. Cases in which an interpretation review shall be considered as initiated by an applicant/property owner or interested party include but are not limited to:

1. Situations in which there is a difference of opinion between the director and an applicant or interested person as to whether a subsequently revised plan is consistent of the originally approved plan; and the applicant or interested person seeks the opinion of the review body which took the final action on the approved application; and

2. Situations in which there is a difference of opinion between the director and an applicant or interested person on the interpretation of a condition of approval, and the applicant or interested person seeks the opinion of the review body which took the final action on the approved application. (Ord. 320 § 7 (part), 1997)

Chapter 17.80

HEARING NOTICE AND APPEAL PROCEDURES

Sections:

17.80.010	Title and purpose.
17.80.020	Effect of filing.
17.80.030	Appellate authority.
17.80.040	Notice of decision by director.
17.80.050	Appeal to planning commission.
17.80.060	Action by planning commission.
17.80.070	Appeal to city council.
17.80.080	Action by city council.
17.80.090	Notice of hearing.
17.80.100	Hearing transcript.
17.80.110	Denial without prejudice.
17.80.120	Appeal fee refund.
17.80.130	Appeals by city council.

17.80.010 Title and purpose.

The purpose of this chapter is to establish a procedure for appeals of decisions made pursuant to Titles 16 and 17 of this Code. (Ord. 320 § 7 (part), 1997)

17.80.020 Effect of filing.

The filing of a notice of appeal pursuant to this chapter stays all activity on the project until a final decision on the appeal. (Ord. 320 § 7 (part), 1997)

17.80.030 Appellate authority.

A. Unless otherwise expressly provided in Title 16 or Title 17 of this Code, any decision made by the director pursuant to Title 16 or Title 17 of this Code may be appealed to the planning commission and any decision made by the planning commission or view restoration commission pursuant to Title 16 or Title 17 of this Code may be appealed to the city council.

B. The director is designated as a zoning administrator pursuant to Section 65900 of the California Government Code with respect to these decisions which may be rendered by that officer or his or her designees pursuant to this Title 17. When acting as a zoning administrator pursuant to this subsection B, the director shall exercise the authority conferred by this title and authorized by Section 65901 of the California Government Code. (Ord. 320 § 7 (part), 1997)

17.80.040 Notice of decision by director.

When notice of a decision is required to be given in accordance with the provisions of this section, the written notice shall:

- A. Provide a general explanation of the decision;
 - B. Provide a general description of the property involved;
 - C. Inform recipients of the notice of the right of any interested person to appeal the decision to the planning commission or city council and explain how that right may be exercised; and
 - D. Be given by first class mail to:
 - 1. The project applicant and property owner,
 - 2. Any person who submitted written comments concerning the applicant's request,
 - 3. Any person who has filed a written request with the city to receive such notice,
 - 4. Any homeowner association on file with the city that has jurisdiction over the subject property.
- (Amended during 11-97 supplement; Ord. 320 § 7 (part), 1997)

17.80.050 Appeal to planning commission.

A. Power to Hear and Decide. The planning commission shall have the power to hear and decide appeals of decisions of the director.

B. Filing of Appeal. Unless otherwise specified in this Code, any interested person may file an appeal of a director's decision with the planning commission; provided, the appeal is filed in writing within fifteen calendar days after the notice of the director's decision is issued and the appropriate fee, as established by resolution of the city council, is paid. The appeal shall set forth the grounds for appeal and any specific action being requested by the appellant. The director's decision is final if not appealed to the planning commission within fifteen calendar days.

C. Hearing and Notice. The director shall set a hearing on the appeal, which shall be conducted as provided in Section 17.80.060 of this chapter. Notice of the hearing shall be given as specified in Section 17.80.090 of this chapter. (Ord. 320 § 7 (part), 1997)

17.80.060 Action by planning commission.

In conducting an appeal hearing, the planning commission may:

- A. Approve an application upon finding that all applicable findings have been correctly made and all of provisions of Title 16 and Title 17 of this Code have been complied with; or
- B. Approve an application but impose additional or different conditions or guarantees as it deems necessary to fulfill the purposes of Title 16 and Title 17 of this Code; or
- C. Deny the application without prejudice upon a finding that all applicable findings have not been correctly made or all provisions of Title 16 and Title 17 of this Code

have not been complied with but that, in either case, the application has merit and may possibly be modified to conform with the provisions of Titles 16 and 17 of this Code; or

D. Disapprove the application upon finding that all applicable findings cannot be made or all provisions of Title 16 and Title 17 of this Code have not been complied with; or

E. Refer the matter to the director with instructions. (Ord. 320 § 7 (part), 1997)

17.80.070 Appeal to city council.

A. Appeal of a Planning Commission Decision. Any interested person may file an appeal of a planning commission's decision to the city council; provided, the appeal is filed in writing within fifteen calendar days after final action by the planning commission and the appropriate fee, as established by resolution of the city council, is paid. The appeal shall set forth the grounds for appeal and any specific action being requested by the appellant. The planning commission's decision is final if no appeal is filed within fifteen calendar days.

B. Notice of Appeal. A notice of appeal shall be filed in writing with the city clerk or the director and shall set forth the grounds for the appeal and any specific action, being requested by the appellant.

C. Hearing Date. The city manager or city clerk shall fix the time for hearing the appeal.

D. Notice. The city clerk or director shall notice the hearing as required by Section 17.80.090 of this chapter.

E. Record on Appeal. All materials on file with the director shall be part of the city council appeal hearing record. In addition, any person may offer supplemental evidence during the appeal hearing.

F. De Novo Review. The city council appeal hearing is not limited to consideration of the materials presented to the planning commission. Any matter or evidence relating to the action on the application, regardless of the specific issue appealed, may be reviewed by the city council at the appeal hearing. (Ord. 320 § 7 (part), 1997)

17.80.080 Action by city council.

A. In conducting an appeal hearing, the city council may:

- 1. Approve the application upon finding that all applicable findings have been correctly made and all provisions of Title 16 and Title 17 of this Code are complied with; or
- 2. Approve the application but impose additional or different conditions or guarantees as it deems necessary

to fulfill the purposes of Title 16 and Title 17 of this Code; or

3. Deny the application without prejudice, upon a finding that all applicable findings have not been correctly made or all provisions of Title 16 and Title 17 of this Code have not been complied with but that, in either case, the application has merit and may possibly be modified to conform with the provisions of Title 16 and Title 17 of this Code; or

4. Disapprove the application upon finding that all applicable findings cannot be made or all provisions of Title 16 and Title 17 of this Code have not been complied with; or

5. Refer the matter to the planning commission with instructions.

B. Vote Required. A simple majority of the city council members voting shall be required to overrule or modify a decision by the director and/or planning commission which is appealed, or to grant an appealed application where the director and/or commission has failed to act within the time permitted by law.

C. Effective Date. A decision of the council sustaining, overruling or modifying any decision, determination or requirement of the planning commission shall be final and conclusive when rendered unless otherwise provided by the council in rules of procedure or elsewhere. In cases where the city council adopts a resolution memorializing the council's decision, final action shall be the adoption of the resolution. (Ord. 320 § 7 (part), 1997)

17.80.090 Notice of hearing.

Unless another provision of this Code defines the notice required for a public hearing on an application or appeal, notice shall be provided as set forth in this section.

A. Time. Notice of public hearing shall be given at least fifteen calendar days before the hearing date.

B. Content. A notice of hearing shall include:

1. The date, time and place of hearing;
2. The identity of the hearing body or officer;
3. A general explanation of the matter to be considered; and
4. The address or general location of the project site.

C. Publication. Notice shall be published in a newspaper of general circulation in the city of Rancho Palos Verdes. If no such newspaper exists when notice is required to be given, such notice shall be posted in at least three public places in the city designated by the city council.

D. Notice to Owners of Property Within Five Hundred Feet.

1. Written notice shall be given to all owners of property within five hundred feet of the external boundaries of the subject property. Such written notice shall be made by first class mail or personal delivery to all persons, including businesses, corporations or other public or private entities, shown on the last equalized assessment roll as owning real property within five hundred feet of the external boundaries of the subject property.

2. In the event that the number of owners to whom notice would be sent pursuant to Section 17.80.090(D)(1) of this chapter is greater than one thousand, as an alternative to such notice, notice may be given by placing a display advertisement of at least one-eighth page in a newspaper of general circulation within the city.

E. Notice to Persons Requesting Notice. In all cases, in addition to other notices, notice shall be given by first class mail to any person who has filed a written request with the city to receive notices of public hearings. Such a request may be submitted at any time and shall apply for the balance of the calendar year. A reasonable fee may be imposed on persons requesting such notice to recover the cost of such mailing.

F. Notice to Affected Homeowner Associations. In all cases, in addition to all other notices, notice shall be given by first class mail to any homeowner association(s) on file with the city that have jurisdiction over the subject property and any property located within five hundred feet of the subject property.

G. Property Owner. In all cases, in addition to other notices, notice shall be given by first class mail to the owner of the subject property and the applicant, if different from the owner. (Ord. 320 § 7 (part), 1997)

17.80.100 Hearing transcript.

Nothing in this Title 17 shall require the keeping of a verbatim hearing transcript where such a transcript is not otherwise required by law. (Ord. 320 § 7 (part), 1997)

17.80.110 Denial without prejudice.

Notwithstanding the application filing restrictions for a conditional use permit application [Section 17.60.020(A)]; variance application [Section 17.64.020(A)]; extreme slope permit application [Section 17.76.060(C)(1)]; special animal permit application [Section 17.76.110(B)(1)]; and a zone change/code amendment petition [Section 17.68.030(C)], a land use application that has been denied without prejudice on appeal may be refiled at any time. The refiled application must be accompanied by the standard filing fee, unless the fee is waived by the city council, pursuant to Section 17.78.010 (Miscellaneous) of this title. (Ord. 320 § 7 (part), 1997)

17.80.120 Appeal fee refund.

All appeal fees shall be refunded to a successful appellant. An appellant is considered successful if a final decision is rendered granting his/her appeal. If an appeal results in a modification to the project, other than changes specifically requested in the appeal, then one-half of the appeal fee shall be refunded to the successful appellant. (Ord. 320 § 7 (part), 1997)

17.80.130 Appeals by city council.

A commission's final decision on an application may be appealed by the city council in the following manner:

A. Any one city council member may contact the city manager and request that an item be placed on the next city council agenda so that the entire city council can consider whether to appeal a commission's decision on an application. The request from the council member must be made in writing within fifteen calendar days of the commission's final decision on an application.

B. If an appeal request from a council member is received by the city manager, the appeal period for the city council shall be automatically extended by thirty additional calendar days. This extended appeal period shall apply only to city council appeals in order for the city council to determine whether to appeal the commission's decision.

C. An applicant or any other interested person may file an appeal with the city before or after an appeal request has been made by a council member, provided the appeal is filed within the standard fifteen day appeal period. An applicant or any other interested party may not file an appeal during the city's extended thirty day appeal period.

D. The city council shall determine by a majority vote whether to appeal the commission's decision. (Ord. 340 § 8 (part), 1998; Ord. 320 § 7 (part), 1997)

Chapter 17.82

PROCESSING OF DEVELOPMENT AGREEMENTS

Sections:

- 17.82.010 Purpose.**
- 17.82.020 Application.**
- 17.82.030 Notification.**
- 17.82.040 Action by planning commission.**
- 17.82.050 Action by city council.**
- 17.82.060 Required findings for approval.**
- 17.82.070 Recordation.**
- 17.82.080 Ongoing review.**
- 17.82.090 Amendments or repeal of approved development agreements.**

17.82.010 Purpose.

This chapter establishes the procedures and requirements for the consideration of development agreements for the purposes specified in and as authorized by Section 65864 et seq. of the California Government Code. (Ord. 327 § 1 (part), 1997; Ord. 326U § 1 (part), 1997)

17.82.020 Application.

A. Only a qualified applicant may file an application for a development agreement. A qualified applicant is a person who has a legal or equitable interest in the real property which is the subject of the development agreement, or an authorized agent of a person who has a legal or equitable interest. The director may require an applicant to submit a title report or other evidence satisfactory to the director to verify the applicant's interest in the real property and of the authority of the agent to act for the applicant.

B. An application for a development agreement may be filed concurrently with any other application(s) having a direct relationship to the property which is the subject of the proposed agreement. However, an application will not be accepted by the director if the application is substantially the same as an application upon which final action has been taken by the city council within twelve months prior to the date of the subsequent application, unless accepted by motion of the city council, or the prior application was denied without prejudice by the city council.

C. An application for a development agreement shall contain full and complete information and shall be made on a form provided for that purpose by the department of planning, building and code enforcement, along with the applicable fee established by resolution of the city council.