

# Agenda Report

November 3, 2014

**TO:** Honorable Mayor and City Council  
**FROM:** Planning & Community Development Department  
**SUBJECT: MUNICIPAL CODE AMENDMENTS: ADOPTION/CERTIFICATION  
AUTHORITY OF CALIFORNIA ENVIRONMENTAL QUALITY ACT  
REVIEWS AND PROCESS ON APPEALS**

## **RECOMMENDATION:**

It is recommended that the City Council take the following actions:

1. Adopt a determination that the proposed Pasadena Municipal Code Amendments are exempt from environmental review under Section 15061(b)(3) (general rule) of the California Environmental Quality Act (CEQA);
2. Approve a finding of consistency with the General Plan as contained in this report;
3. Approve the proposed Municipal Code Amendments relating to the adoption/certification authority of California Environmental Quality Act reviews and process on appeals as contained in this report; and
4. Conduct first reading of an ordinance codifying these amendments.

## **PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission held a public hearing on October 8, 2014 to consider the proposed Municipal Code Amendments. The Commission voted to recommend the City Council approve the proposed Municipal Code Amendments.

## **EXECUTIVE SUMMARY:**

There are two proposed Pasadena Municipal Code (PMC) Amendments, initiated by the City Manager, to memorialize current City procedure related to the adoption/certification authority of environmental reviews conducted consistent with the California Environmental Quality Act (CEQA), and to change procedures regarding approval of CEQA documents during appeals.

Per the California State CEQA Guidelines all discretionary decisions made by a decision-making body (City Council, City Commissions, Hearing Officer, etc.) must include the adoption of an environmental determination. This can be in the form of an exemption from environmental review as allowed by Section 15300 (Categorical Exemptions) of the State CEQA Guidelines, a Negative Declaration, or Environmental Impact Report. Current City practice is for the applicable approval authority for an entitlement application (Conditional Use Permit, Design Review, etc.) to adopt the environmental determination at the same time a decision is made on the requested entitlement.

Recent CEQA case law now requires the City Council expressly delegate this authority to non-elected decision-makers such as the Planning Commission, Design Commission, Historic Preservation Commission, Hearing Officer, etc., even when the non-elected decision-maker has already been designated authority to decide the requested entitlement. The first proposed Municipal Code Amendment would expressly delegate the authority to adopt/certify a CEQA document to designated non-elected decision-makers when a decision is made on an entitlement application. This Amendment would also change parallel provisions in Title 2 of the PMC. All such decisions would continue to be appealable to the City Council.

The second proposed amendment would require that an appeal review body take an affirmative action with regard to adoption/certification or rejection of a CEQA document, doing away with the review body's current authority to uphold a lower body's decision by not taking any action on the CEQA portion of the appeal. The review body could still uphold a lower body's decision by not taking action on the remainder of the appeal, thereby "deeming affirmed" the lower body's action. As a result of both proposed amendments, there would not be a change in the processing of CEQA environmental reviews from current practice.

## **BACKGROUND AND ANALYSIS:**

### *Adoption/Certification Authority of CEQA Reviews*

In late August of 2014, a new CEQA case was published which held that a non-elected decision making body cannot take action on a CEQA document unless it has been expressly given that authority by the elected body, even though the nonelected body has the authority to approve the underlying entitlement. [See *Citizens for Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4<sup>th</sup> 240.] Pasadena, like most cities in California, has complied with CEQA by processing projects consistent therewith, namely requiring that its non-elected decision makers make CEQA findings prior to taking action on a discretionary application. For the first time, a court has held that actions so taken are beyond the authority of non-elected decision makers if not specifically authorized by local law, and are therefore invalid.

The Municipal Code Amendment necessary to bring Pasadena into compliance with this new case law will authorize the Planning Commission, Design Commission, Historic

Preservation Commission, Hearing Officer, Zoning Administrator, and Director of Planning and Community Development, as well as their designees, to take action pursuant to CEQA. Similarly, other provisions of the PMC will need to be amended to authorize the City Manager to take action pursuant to CEQA when, as one example, approving a tree removal permit or lease agreement. Other bodies who are proposed to receive the authorization to take action on a CEQA document are the Pasadena Community Access Corporation Board, Pasadena Center Operating Company Board, and Rose Bowl Operating Company.

#### *Review of CEQA Documents During Appeals*

The Municipal Code, through the Zoning Code, must be amended to address a procedural defect regarding consideration of CEQA decisions during the administrative appeal process. Currently, per Section 17.72.070 (Processing and Action on Appeals or Calls for Review) of the Zoning Code, subsection B.5 (Failure to Act) authorizes an appellate body to “deem affirmed” a lower body’s decision by failing to act on an appeal or call for review. In such a circumstance the lower body’s decision would stand, or be upheld.

However, in recent litigation regarding the CEQA and land use approvals for the ‘DusitD2 Constance Pasadena’ hotel development project, a trial court and an appellate court have found the “deemed affirmed” procedure to be in violation of CEQA, and have held that the appellate body must affirmatively vote on all CEQA decisions. That case is still pending with regard to other causes of action. Nonetheless, it is necessary to amend the Municipal Code to fix the procedural defect now so as to avoid putting future CEQA decisions at risk.

#### **GENERAL PLAN CONSISTENCY:**

The proposed amendments to the PMC are consistent with the following objectives and policies of the City’s General Plan. Objective 26 (Information) calls for providing clear, understandable information to encourage more citizen involvement in planning processes while Objective 27 (Participation) encourages opportunities for citizens to become involved in planning decisions.

#### **ENVIRONMENTAL REVIEW:**

These PMC amendments have been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (CEQA) Section 15061.b.3. This section specifically applies to an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Amendments proposed herein pertain only to authorizing current City procedure as it relates to the authority to adopt CEQA documents in the Zoning Code and changing requirements for review body

action with regard to CEQA documents on appeal. There is no new development or changes to development standards proposed as part of the Municipal Code Amendments.

**FISCAL IMPACT:**

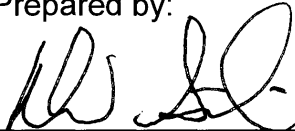
There is no fiscal impact as a result of this action nor will it have any indirect or support cost requirements.

Respectfully submitted,



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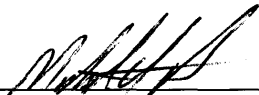
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