

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**Agenda Item No. 14
August 10, 2004

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
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**SUBJECT: Revisions to Appeal and Call for Review Procedures – Code Amendment
No. 2004-002 (PA 2004-028)**

ISSUE:

Should the call for review procedures be revised?

RECOMMENDATION:

1. Review options;
2. Provide direction to staff on appeal and review procedures;
3. Provide direction to staff on combining appeal and review procedures;
4. Continue hearing to August 24, 2004.

DISCUSSION:**Introduction:**

This item was continued from June 8, 2004. The City Council directed staff to return with a list of options.

Background:

Currently, decisions of the Planning Director and the Modifications Committee may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council by any interested person. In addition, decisions of the Planning Director and the Modifications Committee may be called up for review by either the Planning Commission or the City Council. Decisions of the Planning Commission may be called up for review by the City Council. Presently, any one member of the City Council or Planning Commission may call an item for review.

On January 27, 2004, the City Council initiated an amendment to the Zoning Code that would require two members to call for the review of a decision. The stated objective of the proposed amendment was to ensure that decisions are not subject to additional review unless there is substantial concern or interest on the part of the review body.

Options:

As directed, staff has prepared a list of options for the City Council to consider; these options are discussed below and summarized in the attached table:

Pre-1994 Procedure. This procedure existed prior to the 1994 amendment, which reduced the appeal/review period from 21 days to 14 days, and the 1998 amendment, which allowed a single City Council or Planning Commission member to call for the review of a decision.

Under this procedure, the City Council or Planning Commission could review a decision only after a motion was adopted by four affirmative votes. Consequently, this action had to be taken at a City Council or Planning Commission meeting.

This approach would meet the objective of ensuring substantial interest by the reviewing body. Also, because initiation of the review would have to occur at a meeting, there is no increased

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risk of violating the Brown Act . However, a majority would be required just to initiate the review and a super majority would be required if one or more members are absent. Finally, the 21-day appeal/review period is contrary to previous actions intended to reduce the processing time for development applications.

Current Procedure. This procedure has been in effect since 1998. Under this procedure, any member of the City Council or Planning Commission may call for the review of a decision.

When the Zoning Code was updated in 1997, any member of the Planning Commission was given the authority to call for the review of a decision. This was deemed necessary because there are times when a regular meeting of the Planning Commission occurs after the end of the 14 day appeal/review period. At the time, this authority was not given to City Council members because City Council meetings typically occur within five days of a Planning Commission meeting and within 14 days of a Modifications Committee meeting. Nevertheless, the City Council considered it inappropriate for one Planning Commissioner to have authority equal to four members of the City Council. Therefore, the Zoning Code was amended in 1998 to allow any member of the City Council to call for the review of a decision.

The current procedure does not present the risk of members discussing the initiation of the review outside of open meetings and thereby violating the Brown Act. However, the review can be initiated without substantial concern or interest on the part of the review body.

Planning Commission Recommendation. Calls to review a decision would require initiation by two City Council members through a request to the City Clerk. The City Clerk would deem a review initiated upon the receipt of requests from two members of the City Council. The Planning Commission procedures would remain unchanged.

Requiring two members to initiate a review would demonstrate increased support by the review body. However, this would also present the risk of members discussing the initiation of the review outside of open meetings, and thereby potentially violating the Brown Act.

Alternate Two-Member Option. This option would require that a call to review a decision be initiated by two members of either the Planning Commission or the City Council at a regularly-scheduled meeting. The City Attorney recommends that this action be taken at a regularly-

scheduled meeting in order to avoid potential violations of the Brown Act. This would also require extending the appeal/review period to 21 days in order to avoid situations in which the next regular meeting of the Planning Commission or City Council is scheduled more than 14 days after the date of a decision.

Requiring two members to initiate a review would demonstrate increased support by the review body. Also, because initiation of the review must occur at a meeting, there would be no increased risk of violating the Brown Act. However, the 21-day appeal/review period is contrary to previous actions intended to reduce the processing time for development applications.

Alternate Single-Member Option. Staff is suggesting a new option, which would require that a call to review a decision be initiated by a simple majority vote at a regularly-scheduled meeting. In order to avoid situations where the next regular meeting is scheduled more than 14 days after the date of a decision, a single member would have the authority to extend the time limit to the next regularly-scheduled meeting. Any member seeking to extend the time limit would have to do so within the 14-day appeal/review period by written request to the City Clerk or Planning Director.

Requiring a simple majority vote achieves the goal of ensuring that decisions are not subject to additional review unless there is substantial concern or interest on the part of the review body. Also, potential Brown Act violations are avoided since this action must occur at a regularly-scheduled meeting. Furthermore, the 14-day appeal/review period would be retained, unless a member requests that it be extended to the next regularly-scheduled meeting. Finally, this approach solves the problems associated with meetings scheduled more than 14 days after the date of a decision, due to tricks of the calendar and meeting cancellations due to holidays or the lack of business.

The negative consequences to this approach would be that a single member could extend the appeal/review period from 1 to 13 days, depending on the date of the decision, the decision-making body, and the reviewing body:

Planning Commission review of Modifications Committee	1 to 8 days
City Council review of Modifications Committee	6 to 13 days
City Council review of Planning Commission	5 to 12 days

Extending the appeal/review period may not have a significant effect on the overall length of the process, however. Under the current system, a single member can initiate a review of a decision and a public hearing is required. Due to notification requirements, the hearing could not be held for at least two weeks following the end of the appeal/review period. Thus, the effect is minimal. Of course, if the Planning Commission or City Council votes to review the decision, then the process would require a minimum of two additional weeks to take the call for review to hearing.

Calls for Review:

Staff also requests direction on whether the proposed amendment should revise Chapter 20.95 (Appeals and Calls for Review) to remove the call for review provisions. With this revision, any review of a decision by either the Planning Commission or City Council would be regarded as an appeal. This revision was not part of the amendment initiated by the City Council. This was proposed later to avoid potential confusion between appeals and calls for

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review . The City Attorney's office believes that it would be clearer to use one term to describe the various levels of appeal through to the City Council. However, this would also remove the current distinction in the Zoning Code between an appellant and a reviewing body.

Environmental Review:

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA) because it involves general policy and procedure making activities not associated with a project or a physical change in the environment (Section 15378 of the CEQA Guidelines).

Public Notice:

Since this item was continued to a specific date, no additional public notice was required.

Prepared by:

Submitted by:

Patrick J. Alford
Senior Planner

Patricia L. Temple
Planning Director

Attachment:

- A. Appeal/Call for Review Options

B.

OPTION	WHO	WHERE	HOW	WHEN	PROS/CONS
Pre-1994 Procedure	4 Council members	City Council meeting	On a motion adopted by 4 affirmative votes	21 days	Pros: Requires substantial support; no risk of Brown Act violations.
					Cons: Simple majority or greater required; min. 21-day appeal/review period needed.
Current Procedure	Any Council member	City Clerk or Planning Director	Verbal or written	14 days	Pros: No risk of Brown Act violations.
					Cons: Review can be initiated without substantial support.
PC Recommendation	2 Council members	City Clerk	Verbal or written	14 days	Pros: Requires more support.
					Cons: Risk of Brown Act violations.
Note: Procedures for the Planning Commission would not be changed.					
Alternate Two-Member Option	2 Council members	Regular meeting	Verbal or written	21 days	Pros: Requires more support; no risk of Brown Act violations.
					Cons: Min. 21-day appeal/review period needed.
Alternate Single-Member Option	1 Council member to extend time limits Simple majority	City Clerk City Council meeting	Written request to extend time limits On a motion adopted by simple majority vote	14 days	Pros: Single member may extend appeal/review period, but simple majority required to initiate; 14-day appeal/review period retained; no risk Brown Act violation; written request required.
					Cons: Appeal/review period could be extended 1 to 13 days.

C.

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**Agenda Item No. 25
June 8, 2004

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Patrick J. Alford, Senior Planner
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palford@city.newport-beach.ca.us

SUBJECT: Revisions to Appeal and Call for Review Procedures – Code Amendment No. 2004-002 (PA 2004-028)

ISSUE:

Should the City revise the Call for Review procedures for use permits, variances, site plan review, modification permits, and Planning Director decisions?

RECOMMENDATION:

Introduce Ordinance No. 2004-_____ (Attachment A) approving Code Amendment No. 2004-002 and pass to second reading on June 22, 2004.

DISCUSSION:**Introduction:**

Decisions of the Planning Director and the Modifications Committee may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council by any interested person. In addition, decisions of the Planning Director and the Modifications Committee may be called up for review by the Planning Commission or by the City Council and decisions of the Planning Commission may be called up for review by the City Council. Presently, any one member of the City Council or Planning Commission may call an item for review.

On June 24, 2003, the City Council discussed amending the Zoning Code to require two members to call for the review of a decision. The City Council initiated the amendment on January 27, 2004.

On April 22, 2004, the Planning Commission voted unanimously to recommend that the City Council adopt the proposed code amendment with the provision that the procedures of the Planning Commission would remain the same.

The Proposed Amendment:

The stated objective of the proposed amendment is to ensure that decisions are not subjected to additional review unless there is substantial concern or interest on the part of the review body.

Calls for Review

The proposed amendment would revise Chapter 20.95 (Appeals and Calls for Review). The call for review provisions would be deleted. A review of a decision would be regarded as an appeal. Members of the Planning Commission could appeal the decisions of the Planning Director and Modifications Committee to the Planning Commission and members of the City Council could appeal decisions of the Planning Director, Modifications Committee, and Planning Commission to the City Council.

Initiation by Two Members

The proposed amendment would require that an appeal of a decision be initiated by two members of the City Council. This would be accomplished through a request to the City Clerk. The City Clerk would deem an appeal initiated upon the receipt of requests from two (2) members of the City Council.

As stated above, the Planning Commission is recommending that their procedures remain unchanged. Only one (1) member of the Planning Commission would be needed to initiate an appeal of a decision. This would be accomplished through a request to the Planning Director.

Other Provisions

A new provision has been added that will require the Planning Director to report decisions to the Planning Commission and City Council at the next regular meeting or within 5 days of the decision, whichever occurs first.

Alternatives:

Two Member Option

The City Council may wish to consider the amendment proposed to the Planning Commission. The original amendment required that an appeal would have to be initiated by two members of the Planning Commission or the City Council at a regularly scheduled meeting. Because appeals must be initiated by two members, the City Attorney recommended that the action be taken at a regularly scheduled meeting in order to avoid potential violations of the Brown Act.

There will be times when the next regular meeting of the Planning Commission or City Council is scheduled more than 14 days after the date of a decision. For example, in 2005, there will be four occasions when there will be three weeks between regular Planning Commission meetings and three weeks between regular City Council meetings. The cancellation of regular meetings due to holidays or the lack of business will also result in additional times when a regular meeting of the Planning Commission or City Council is scheduled after the 14-day time limit for filing appeals has expired. In order to avoid such situations, the time limit for filing appeals would have to be extended to at least of 21 days if the appeal must be made at a meeting of the appeal body. Consequently, the effect date of the decision (i.e., a modification permit, use permit, or variance) would have to be extended to 21 days.

It should be noted that extending the appeal period and effective date of the decision is contrary to previous actions intended to reduce the processing time for development applications. At the recommendation of the Economic Development Committee, the City reduced the appeal period from 21 days to 14 days in 1994, as part of an effort to streamline the development review process, and this amendment would eliminate that benefit.

One Member Option

The City Council also has the option of retaining the current procedure, which allows any member of the City Council to initiate the appeal.

Environmental Review:

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA) because it involves general policy and procedure making activities not associated with a project or a physical change in the environment (Section 15378 of the CEQA Guidelines).

Public Notice:

Notice of this hearing was published in the Daily Pilot a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

Submitted by:

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Senior Planner

Patricia L. Temple
Planning Director

Attachments:

- A. Draft ordinance.
- B. April 22, 2004 Planning Commission staff report.
- C. April 22, 2004 Planning Commission minutes.

- D.

[1] The Ralph M. Brown Act establishes the basic requirements for open meetings and notice of hearings for commissions, boards, councils, and other public agencies.

[2] This issue arose due to recent litigation against the City where the court was uncertain whether an issue was an appeal or a call for review. The case involved an appeal of an interpretation by the Planning Director to the Planning Commission. The Planning Commission upheld the Planning Director's interpretation and this decision was called for review by a City Council member. The call for review was continued more than once and eventually removed from calendar.