

BACKGROUND

Staff is forwarding this report on existing public noticing requirements and procedures for certain public hearings and administrative cases decided by the Zoning Administrator. In April of this year staff brought forward a similar report to the Policy and Procedures Committee for review and was directed to move forward with outlining a process that would provide for one on site posting rather than the current process of multiple posters within a 300 foot radius for Planning Commission Cases. This report outlines Oakland's process, as well as general procedures for other cities, highlights key issues and possible procedural changes for a more effective notification process in Oakland. An attachment is included that shows a sample of the necessary Planning Code amendments that would be required in order to alter the current public notification process, which includes the new proposed standards for poster size, location and maintenance.

EXISTING NOTIFICATION PROCEDURES

The Zoning Regulations requires that the City publicly notice all development applications heard before the City Planning Commission or Landmarks Board, as well as the numerous administrative cases acted on by the Zoning Administrator. This totals approximately 700 to 800 cases per year. The existing procedures for public notice involve mailings, via US mail, to all owners of property located within a 300-foot radius of the project site, as well as physical posting on the project site and its surrounding area.

Specifically, copies of the Planning Commission Agenda and Landmark's Board Agenda are mailed for cases heard by those bodies; Applications-on-File, a weekly list of applications received and complete for consideration by the Zoning Administrator, are mailed for administrative cases. All public notice mailings rely on the most current and available data from the Alameda County Assessor and include all owners of record, include condominium ownership. In addition to the mailed notices, site-specific notices are posted on and within 300 feet (approximately one block) of the project site for all case types. (Notices are mailed and posted within 500 feet of the project site or in the local newspaper for applications involving large geographic areas or that have city-wide impact, such as rezoning, general plan amendments or redevelopment areas.)

All mailed and posted notification takes place at least ten days prior to a public hearing or Zoning Administrator action as required by the Zoning Regulations, however projects involving environmental review may require advanced noticing. Current procedures satisfy requirements of the State Planning and Zoning Laws, CEQA, the State Subdivision Map Act, the Ralph M. Brown Act, as well as the Public Records Act and the City's Sunshine Ordinance. Noticing activities are currently carried out by Planning and Zoning Division staff.

Issues with Existing Process

The main issues that have been raised by the public as well as public officials about the notification process over the years have largely been to the physical posting procedure. The main concerns include:

- Low visibility due to small size of posters;
- Unclear project site location, due to lack of a public utility pole for posting;
- Litter caused by signs being torn down or deteriorating from weather;
- Ineffective posting due to signs being torn down by vandalism and/ or weather;
- Reduced resources and the large amount of staff time required to post signs around various sites throughout the city.

MINIMUM STATE REQUIREMENTS

Whenever a Public Hearing is Required

California Government Code Section **65091** requires that notification shall be given by mail to all property owners within 300 feet of the subject property ten days prior to the hearing. If the number of recipients exceeds 1,000, a local agency, in lieu of a mailed notice, may place an advertisement of at least one-eighth page in a newspaper of general circulation ten days prior to the public hearing. In addition, the notice shall either be advertised in a newspaper of local circulation or posted in three public places within the boundaries of the local agency; one of which shall be a public place in the area directly affected by the proceeding. Both shall be administered at least ten days prior to the subject hearing. In addition to the above mentioned minimum requirements a public agency may give notice of the hearing in any other manner it deems necessary or desirable.

NOTIFICATION PROCEDURES IN NEIGHBORING JURISDICTIONS

The key notification issues that tend to vary throughout different local jurisdictions are:

- Posting maintenance and mailing responsibility
- Size/ type of poster
- Inclusion of residents in mailing
- Notification period

City and County of San Francisco

Administrative Permits: Public notification is required for additions to structures within residentially zoned districts or Neighborhood Commercial districts. Mailed notices include a set of reduced plans with the permit information sent to residents residing within, and property owners owning property within 150 feet of the subject property. In addition to the mailed notice a posted notice is required at the site, which is an enlarged version (11"x 17") of the mailed notice. The applicant is responsible for posting and maintaining the notice throughout the duration of the 30-day notification period.

Public Hearings: Applications that require public hearings must be noticed by a mailer that is sent to property owners within 300 feet of the subject property. Except for Variances, notification of any public hearing is submitted to a local newspaper for publishing at least 20 days prior to the hearing. The applicant is required to post a notice, provided by the Planning Department, at the subject property at least 20 days prior to the required public hearing. The posted notice must be in accordance with the Code required standards¹ to ensure visibility by residents within the neighborhood. Once again, the applicant is responsible for posting and maintaining the notice throughout the duration of the 20-day notification period.

City of San Jose

Administrative Permits

The San Jose Zoning Ordinance requires mailed notification to all owners owning property and residents residing within 300 feet of the subject property for tree removal permits and additions to single family dwellings.

Two Tier Notification Process for Cases Requiring Public Hearings

A Standard Development Proposal: requires a mailed notice to owners and occupants within 500 feet of the subject property, a published advertisement in the *San Jose Mercury News*, or smaller local newspapers if the project is determined to be of a small enough scale. All notification must take place at least two weeks prior to the public hearing.

A Large Development Proposal includes 50+ residential units, 60,000 square feet of commercial space, or 100,000 square feet of office space. This type of proposal requires a mailed notice to all occupants and owners within 1,000 feet of the subject property, an advertisement must be published in the *San Jose Mercury News*, and On-site posting is required as well. The applicant is responsible for posting and maintaining the on-site posted notice throughout the duration of the notification period, which is at least two weeks prior to the hearing.

City of Berkeley

Administrative Decisions

Before the issuance of an administrative permit, a notice of a decision by the Director of Planning is posted in three visible locations in the vicinity of the subject property for a period of 20 days. And if the property is located in or adjacent to a residential zone a notice is mailed to owners and occupants within 300 feet of the subject property.

Public Hearings

A mailed notice to owners and occupants within 300 feet of the subject property, and a posted notice in three visible locations, both 14 days prior to the hearing.

¹ The required standards are a poster size of no less than 30" x 30", minimum letter size, and specific posting standards that are based upon the building location in reference to its visibility from the street.

City of Richmond

Administrative Permits

No Public Notice Required.

Public Hearing

The City of Richmond has notification standards that Co-reference State of California Government Code Section 65091, which are the minimum notification standards required by State law.

City of Hayward

Administrative Permits

The notice includes a decision by the Planning Director for site plan review, an administrative use permit, or a variance. The Administrative decision is mailed to all owners and occupants within 300 feet of the subject property no later than five days after the decision.

Public Hearings

Notification standards meet the minimum requirements of California State Government Code Section 65091.

Possible Modifications to Address Key Issues

After reviewing the posting procedures of other neighboring local jurisdictions and looking at the main source of complaints about the current Notification procedure for the City of Oakland, staff feels that many of the concerns could be addressed by changing notification requirements to include the following:

1. Proposed Notification Process for Administrative Cases

- a) **One large on-site poster** rather than numerous posting around the area. This would cut down on problems with posters falling due to vandalism or weather, and would provide for a large visible sign that should be of a color to attract attention of anyone passing by.
- b) **Require applicant responsibility** for posting and maintaining the public notification poster. This would create a responsible body for ensuring that the posted notice is maintained throughout the duration of the notification process, as there is not enough Department staff to keep a routine check on a poster over a period of time. A signed affidavit by the applicant and a photo of the on-site poster would be required as proof of completion.
- c) **Place “Applications on File” on the City website.** This would be a process that would be easily accomplished, and would provide easy access to

information to members of the public and people within other City Departments.

2. Proposed Notification Process for Planning Commission Cases

- a) One large on-site poster and numerous postings throughout the neighborhood. The large on-site poster could be placed by Department Staff while the other smaller posters could be placed by the applicant.
- b) Require applicant responsibility for maintaining the on-site public notification poster. This would create a responsible body for ensuring that the posted notice is maintained throughout the duration of the notification process, as there is not enough Department staff to keep a routine check on a poster over a period of time. A signed affidavit by the applicant and a photo of the on-site poster would be required as proof of completion.

STAFF RECOMMENDATION

Direct staff to draft specific procedural changes and relevant text amendments to the Zoning Regulations based on preferred direction of the Policies and Procedures Committee for review by the full Planning Commission. A Draft Text Amendment is included as an attachment.

ATTACHMENT “A”

The following is a sample of a text amendment of the Oakland Planning Code that would be required in order to alter the existing notification process. This is a sample of Planning Code Section 17.134.040, Conditional Use Permit Procedures for Consideration. Public Notice subsections of other permit procedures would also require text amendments.

A. Major Conditional Use Permits.

1. In All Zones Except the S-11 Zone. An application for a major conditional use permit shall be considered by the City Planning Commission which shall hold a public hearing on the application. ***Notice of the hearing shall be posted at the subject property in accordance with subsection (a) of this section.*** ~~Notice of the hearing shall be given~~ and by posting notices thereof within three hundred (300) feet of the property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date set for the hearing. The Commission shall determine whether the proposal conforms to the general use permit criteria set forth in Section 17.134.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed conditional use permit or require such changes or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The determination of the Commission shall become final ten calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.
 - a) ***Posting Standards for Major Cases.***
 - I. ***The City shall post a sign on the property that is the subject of the application, which shall be maintained by the applicant through the date of the hearing or notification period. The sign shall be posted in a manner so that it will not be obstructed from public view and be clearly seen along any abutting street, alley or sidewalk. The on-site sign shall consist of one 24” by 36” poster for each frontage of the subject property meeting the following standards:***
 - i. ***If the building on the subject property contains a façade that is no more than six feet away from a property line, then the sign shall be posted within a storefront window. The bottom of the sign shall be no lower than four feet from grade and the top of the sign shall be no higher than eight feet from grade.***
 - ii. ***Or, in the case of a building not containing any of the required window dimensions and the façade of the building is no more than nine feet from a property line, the sign shall be posted on the façade of the building. The bottom of the sign shall be no lower than five feet from grade and the top of the sign shall be no higher than nine feet from grade.***
 - iii. ***In a situation where there is a vacant lot, a downslope lot exceeding 20%, or a façade of a building is located more than nine feet from a property line, then the required posted sign shall be placed on the property line of any such frontage. The bottom of the sign shall not exceed five feet from grade and the top of the sign shall not exceed nine feet from grade.***
 - iv. ***The required sign shall contain the property address, project description, property description (i.e. zoning, general plan area, council district, etc.), Case Planner contact information, the expiration of the notice, and in the case of a Public Hearing Notice the date time and location of the hearing. All information shall be provided in letters at least one half inch for uppercase letters and one quarter inch for lowercase letters.***
2. In the S-11 Zone. The procedure for consideration of major conditional use permits in the S-11 zone shall be as set forth in the site development and design review procedure in Chapter 17.142.
3. Alcoholic Beverage Sales Activities in Alcoholic Beverage Sales License Overconcentrated Areas. In addition to following the provisions of subsection (A)(1) of this section, the City Planning Commission shall also

determine whether the proposal conforms to the criteria for findings of "Public Convenience and Necessity" set forth in Section 17.102.210(B)(3).

4. In the OS Zone. Applications for conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

B. Minor Conditional Use Permits.

1. In All Zones Except the S-11 Zone. An application for a minor conditional use permit shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. In this case, the application shall be processed as a major conditional use permit pursuant to subsection A of this section. At his or her discretion, an administrative hearing may be held. ~~Notice shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application~~ **Notice of the hearing shall be posted at the subject property in accordance with subsection (a) of this section;** notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the general use permit criteria set forth in Section 17.134.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed conditional use permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.134.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

a) Posting Standards for Minor Cases.

- I. The applicant shall post and maintain a sign, provided by Planning Department staff, on the property that is the subject of the application through the date of the hearing or notification period. The sign shall be posted in a manner so that it will not be obstructed from public view and be clearly seen along any abutting street, alley or sidewalk. The on-site sign shall consist of one 24" by 36" poster for each frontage of the subject property meeting the following standards:**
 - i. If the building on the subject property contains a façade that is no more than six feet away from a property line, then the sign shall be posted within a storefront window. The bottom of the sign shall be no lower than four feet from grade and the top of the sign shall be no higher than eight feet from grade.**
 - ii. Or, in the case of a building not containing any of the required window dimensions and the façade of the building is no more than nine feet from a property line, the sign shall be posted on the façade of the building. The bottom of the sign shall be no lower than five feet from grade and the top of the sign shall be no higher than nine feet from grade.**
 - iii. In a situation where there is a vacant lot, a downslope lot exceeding 20%, or a façade of a building is located more than nine feet from a property line, then the required posted sign shall be placed on the property line of any such frontage. The bottom of the sign shall not exceed five feet from grade and the top of the sign shall not exceed nine feet from grade.**
 - iv. The required sign shall contain the property address, project description, property description (i.e. zoning, general plan area, council district, etc.), Case Planner contact information, the expiration of the notice, and in the case of a Public Hearing Notice the date time and location of the hearing. All information shall be provided in letters at least one half inch for uppercase letters and one quarter inch for lowercase letters.**
2. In the S-11 Zone. The procedure for consideration of minor conditional use permits in the S-11 zone shall be as set forth in the site development and design review procedure in Chapter 17.142.
3. In the OS Zone. Applications for conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

C. Period of Consideration. Should a decision not be rendered pursuant to subsection A or B of this section within sixty (60) days after filing, the application shall be deemed approved except when, pursuant to the California Environmental Quality Act, an environmental document is required prior to decision, in which case should a decision not be rendered within sixty (60) days after final action on the environmental document, the application shall be deemed approved. In any case, however, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning or the City Planning Commission and the applicant.

D. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections A and B of this section. (Ord. 12237 § 4 (part), 2000; Ord. 12073 § 5 (part), 1998; Ord. 11904 §§ 5.92, 5.93, 1996; Ord. 11831 § 5, 1995; prior planning code § 9203)