



**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT**

DATE: May 26, 2021

TO: Planning Commission

FROM: Carrie Tai, AICP, Director of Community Development

THROUGH: Talyn Mirzakhanian, Planning Manager

SUBJECT: Discussion of Public Noticing Requirements

BACKGROUND

At the November, 18, 2020 Planning Commission meeting, the Planning Commission received a status report from staff on the Planning Division's Work Plan items and provided input regarding the Work Plan for the upcoming year. During that discussion, the Commissioners requested scheduling a discussion item on a future Planning Commission agenda, which would focus on evaluating the City's existing public noticing requirements pertaining to land use entitlements. The request to conduct this discussion revolves around whether the City's public noticing requirements are effectively informing the community of proposed development. Elements include the timing of the public notice and the scale (i.e. the required distance from the subject property). As demonstrated in the "Discussion" section of this staff report, there are many variations among public noticing requirements for the different types of permits processed by the Planning Division, which in and of itself, could generate a certain level of unpredictability experienced by the public.

Note that governing State regulations, as described below, specify the minimum requirements associated with the timing, type and scale of public notification for projects requiring public hearings, with the intent to notify the public that a hearing will be conducted and public commentary will be considered. The deadlines for delivery of public notices are tied to the date of the scheduled public hearing rather than the date of submittal of the application, as a significant amount of revision and review occurs between the time an application is submitted and the time a public hearing is conducted. Given that the City's regulations evolve from State

law, the City's public notification requirements for projects that require public hearings are also tied to the date of a scheduled public hearing. There are unique circumstances where a notice of application (as opposed to a notice of public hearing) is required, and those exceptions are further described below.

The "Discussion" section below and the accompanying table (Attachment I) summarize existing public noticing requirements for various types of land use permits.

DISCUSSION

Standard Development Permits and Zoning Code/Map Amendments

California Government Code Sections 65090 and 65091 establish minimum public noticing requirements for projects that require public hearings pursuant to the State's Planning and Zoning laws. Where local jurisdictions, through the adoption of local ordinances, may require more public noticing than what is required by the State, they cannot adopt less stringent requirements. The State's minimum requirements include, but are not limited to:

1. Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property as shown on the latest equalized assessment roll, to the owner's duly authorized agent, if any, to the project applicant, and to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. If the number of owners to whom notice would be mailed or delivered to is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.
2. The notice shall also either be: (A) published in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing; or (B) posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

Pursuant to Section 10.84.040 of the City's Planning and Zoning Code, standard development permits such as Variances, non-administrative Site Development Permits, and Use Permits shall be publicly noticed via a mailed or delivered notice pursuant to the requirements of Government Code 65091, except that the notice is extended to real property owners within 500 feet of the subject site at least 10 days prior to the hearing; this notification radius is 200 feet in excess of the State's minimum requirement. Notice shall also be posted at City Hall and published in a newspaper of general circulation at least 10 days prior to the hearing. Examples

of applications discussed in this section, and subject to these public noticing requirements include: a Variance from a rear setback requirement for a new single-family residence; a Use Permit for operation of a restaurant; a Use Permit for alcohol sales at an existing restaurant; or a Use Permit for construction of a new, mixed-use building in downtown with proposed office floor area in exceedance of 2,500 square feet. On average, staff processes 20 of these types of applications during a two-year timeframe.

Pursuant to Section 10.96.040 of the City's Planning and Zoning Code, notice of zoning code text amendments shall be given in accordance with Sections 65090 and 65091 of the California Government Code (i.e. 10 days prior to the hearing to properties within 300 feet of the subject area; or published in a newspaper of general circulation if the affected property count exceeds 1,000 properties). However, amendments to the zoning map require a notification for all properties within a 500-foot radius at least 10 days prior to the hearing, or published in newspaper of general circulation if the count exceeds 1,000 properties; once again, this notification radius is 200 feet in excess of the State's minimum requirement. On average, staff processes two of these types of applications during a two-year timeframe.

Minor Exceptions are a staff-level decision, generally applicable to remodels and additions to smaller, older legal non-conforming homes, for which public notification occurs only for a certain subset of projects. This permit is unique in that, because no public hearing is required, the required notices, when applicable, are in the form of a notice of application and a notice of decision. After receipt of a completed Minor Exception application, and prior to making a decision, the notice of application is mailed to the owner of record of each lot within 300 feet of the boundaries of the property and includes a project description, information regarding where and when project plans can be viewed, a request for comments regarding said exception, and a commenting deadline date. After the commenting deadline date, and within 30 days of receipt of a completed application, the Director approves, conditionally approves, or denies the required exception and sends a notice of decision to the same mailing list and includes an appeal deadline. On average, staff processes 50 Minor Exceptions during a two-year timeframe, and the public notice is triggered on very rare occasions.

Pursuant to Section 11.12.020 of the City's Municipal Code (Subdivisions) if a public hearing is conducted by a local jurisdiction for consideration of a tentative map, then the public notice shall be given pursuant to Section 66451.3 of the State's Subdivision Map Act, which refers to the public noticing provisions in Sections 65090 and 65091 of the California Government Code (i.e. 10 days prior to the hearing to properties within 300 feet of the subject property; or published in a newspaper of general circulation if the affected property count exceeds 1,000 properties). An example of a subdivision request for which a public notice would be given is one where four condominium parcels are proposed in a medium-density residential district; this project would require a Use Permit in addition to the Parcel or Tentative Map and would

therefore require a public hearing with a public notice. On average, staff processes eight of these types of applications during a two-year timeframe.

Coastal Development Permits

Coastal Development Permits are subject to a different series of public noticing requirements, pursuant to the City's Local Coastal Program Implementation Program. These noticing requirements are in accordance with the governing noticing requirements provided in Article 17 of the California Code of Regulations (Local Coastal Program Implementation Regulations). The City's Coastal Development Permit public noticing requirements are outlined below:

Coastal Development Permits for projects that require a public hearing and are located within the appealable area. Pursuant to Section A.96.100 of the City's Local Coastal Program Implementation Program, a public notice for these projects shall be mailed at least 10 days prior to the public hearing to the owner of the subject property, the applicant, all property owners and residents within 100 feet from the perimeter of the subject parcel, all persons or agencies that have expressed an interest in Coastal applications, and the Coastal Commission. The notice shall also be published in a newspaper of general circulation at least once within the same timeframe. An example of a project that would qualify for this scenario is commercial operation located within the appealable area of downtown seeking a Use Permit and Coastal Development Permit to expand retail square-footage beyond an established threshold into a space previously occupied by a personal service use, thereby intensifying the use.

Coastal Development Permits for projects that require a public hearing and are located within the non-appealable area. Pursuant to Section A.96.110(A) of the City's Local Coastal Program Implementation Program, a public notice for these projects shall be mailed at least 10 days prior to the public hearing to property owners within 300 feet and residents within 100 feet from the perimeter of the subject parcel, all persons that have expressed an interest in Coastal applications, and the Coastal Commission. If the matter is to be heard by a board or Commission, the notice shall also be published in a newspaper of general circulation within the same timeframe.

Coastal Development Permits for projects that do not require a public hearing and are located within the non-appealable area. Pursuant to Section A.96.110(B) of the City's Local Coastal Program Implementation Program, a public notice for these projects shall be mailed within 10 days of acceptance of the application or at least seven days prior to the local decision date to the owner of the subject property, the applicant, all property owners and residents within 100 feet from the perimeter of the subject parcel, all persons who have expressed an interest in Coastal applications or that particular application, and the Coastal Commission. An example of a project that would qualify

for this scenario is construction of a new single-family residence that conforms to all development regulations in a residential zoning district on a property that is not located within the appealable area.

The City's Coastal Development Permit noticing requirements align with those mandated by the State. On average, staff processes 50 Coastal Development Permit applications during a two-year timeframe; most do not require a public hearing.

Wireless Telecommunication Facility (Telecom) Permits

Wireless telecommunication facilities are regulated by Title 13 (Public Utilities) of the Manhattan Beach Municipal Code (MBMC). The regulations in this section were developed in accordance with governing federal policies and procedures, developed and executed by the Wireless Telecommunications Bureau of the Federal Communications Commission in an attempt to preserve efficient and fair licensing of wireless services. The public noticing requirements for Telecom Permits account for the federally-mandated, short processing timeframes local jurisdictions must adhere to.

Pursuant to Section 13.02.060 of the MBMC, Telecom Permits for facilities proposed to be located on City property require a public notice provided to all property owners located within 500 feet of the proposed telecommunication facility at least 10 calendar days prior to the date on which the proposed telecommunication facility application is to be considered by the City Council. No published notice shall be required.

Pursuant to Section 13.02.090 of the MBMC, Telecom Permits for facilities on private property or on public property not owned by the City, a notice disclosing the proposed location of the facility shall be given both prior to and after the final decision of the Director of Community Development only if the facility is located on a non-commercially zoned site or if the proposal does not employ "stealth" technology. The first notice of the pending application shall be given at least 10 calendar days prior to the decision of the Director. The second notice, informing of the decision of the Director shall be given within five days of the decision. The notices shall be mailed to all property owners located within 500 feet of the proposed location. No published notice is required. Note that this is a notice of application and not a notice of public hearing, as a public hearing is not required for the decision.

Pursuant to Section 13.04.070 of the MBMC, any application requesting a Telecom Permit for a wireless facility in the public right-of-way shall include proof that a notice of the application, identifying the project and proposed location, has been mailed to owners and occupants of real property, and the resident manager for any multi-family dwelling unit that includes 10 or more units, within 300 feet of the proposed wireless facility. Note that this is a notice of

application and not a notice of public hearing, as a public hearing is not required for the decision.

As codified, the City's public noticing requirements for Telecom Permits accommodate the abbreviated processing timeframes mandated by federal regulations. On average, staff processes 35 Telecom Permit applications during a two-year timeframe, most of which do not require a public hearing.

Public Notice Processing Fees

It is important to note that the City charges a Public Notice Processing Fee with applications that require a public notification by the City. The Public Notice Processing Fees for the various applications factor in the required radius of notification (more properties equates higher cost), the cost of publication in a newspaper of general circulation, and postage, printing and envelope costs. Accordingly, the greater the required radius of notification, the higher the fee. Current Public Notice Processing Fees are outlined below for reference:

Coastal Development Permit - 100 ft. Radius	\$182
Minor Exception - 300 ft. Radius	\$129
Other Permits - 300-500 ft. Radius	\$263
Code, General Plan, or Zoning Amendments	\$588

Any potential increases in the required notification radius or types of notices would have to be accompanied by a change to the fee schedule to capture the additional cost of noticing.

RECOMMENDATION

Staff recommends that the Planning Commission receive this report on existing public noticing requirements for land use entitlements and provide input to the staff and City Council regarding any modifications to the requirements that merit consideration.

ATTACHMENTS

Attachment I: Public Noticing Summary Table

PUBLIC NOTICING SUMMARY TABLE

Type of Permit	Timeframe	Notice Type & Radius	Notice of Public Hearing or Application/Decision
Standard Development Permit (Use Permit, Variance)	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to 500' radius Posted at City Hall Published in newspaper 	Notice of Public Hearing
Zoning Code Map or Text Amendment	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to 300' radius, or published (if property count exceeds 1,000) 	Notice of Public Hearing
Minor Exceptions (if notice is applicable)	After complete application submittal and after decision	<ul style="list-style-type: none"> Mailed to 300' radius 	Notice of Application/Decision
Subdivisions (Tentative or Parcel Map)	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to 300' radius, or published (if property count exceeds 1,000) 	Notice of Public Hearing
CDP in appealable area with public hearing	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to applicant, owner, owners and residents within 100', interested parties and public agencies, Coastal Commission Published in newspaper 	Notice of Public Hearing
CDP in non-appealable area with public hearing	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to property owners within 300' & residents within 100', interested parties and Coastal Commission If applicable, published in newspaper 	Notice of Public Hearing
CDP in non-appealable area without public hearing	Within 10 days of acceptance of the application or minimum 7 days prior to local decision	<ul style="list-style-type: none"> Mailed to applicant, owner, owners & residents within 100', interested parties, and Coastal Commission 	Notice of Application
Telecom Permits – City Property	Minimum 10 days prior to hearing	<ul style="list-style-type: none"> Mailed to 500' radius 	Notice of Public Hearing
Telecom Permits – Private Property	Minimum 10 days prior to Director's decision and 5 days after decision	<ul style="list-style-type: none"> Mailed to 500' radius 	Notice of Application/Decision
Telecom Permits – City Right-of-Way	Before application is deemed complete	<ul style="list-style-type: none"> Mailed to owners and occupants of real property, and the resident manager for any multi-family dwelling unit that includes 10 or more units 300' radius 	Notice of Application