

Article 2: Required Steps in Processing

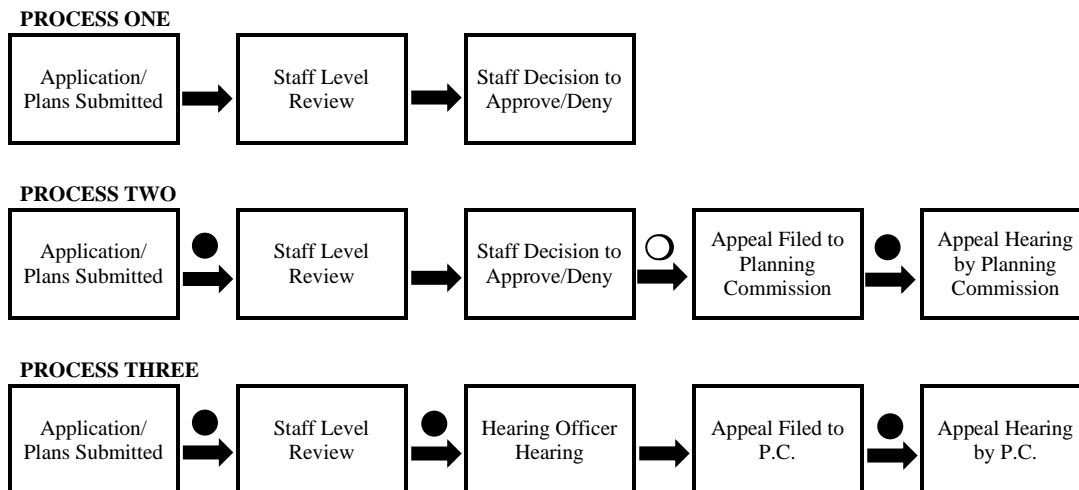
Division 5: Decision Process

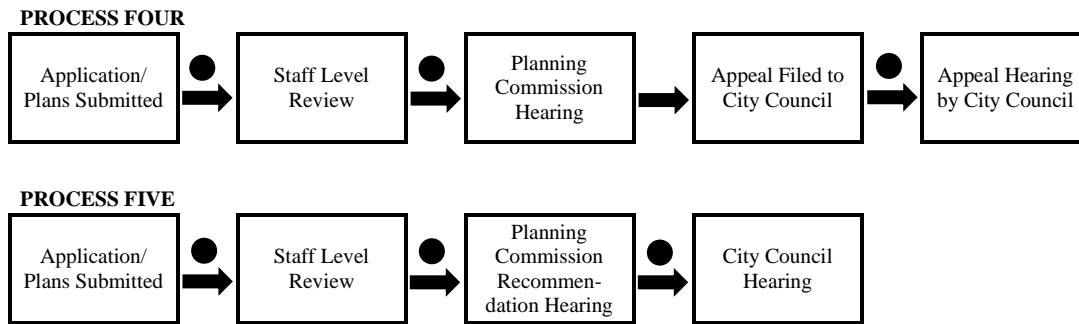
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§ 112.0501 Overview of Decision Process

Application for permits, maps, or other matters shall be acted upon in accordance with one of the five decision processes established in this division and depicted on Diagram 112-05A, except that applications for *capital improvement program projects* shall be acted upon in accordance with Chapter 11, Article 2, Division 6 and Sections 112.0505 and 112.0506. The subject matter of the *development* application determines the process that shall be followed for each application. The provisions of Chapter 12 that pertain to each permit, map, or other matter describe the decision process in more detail. Diagram 112-05A is provided for convenience of reference only and does not define, describe, or limit the scope, meaning, or intent of any provision of the Land Development Code. This diagram describes the City of San Diego's processes only and does not describe other decision processes that may be required by other agencies, such as the State Coastal Commission.

Diagram 112-05A
Decision Processes with Notices





Key

- Public Notice to all Property Owners, Tenants, Community Planning Groups within 300 Feet of the *development*, and Anyone Requesting Notice
- Public Notice to Applicant, Community Planning Groups within 300 Feet, and Anyone Requesting Notice

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

(Amended 11-28-2005 by O-19444; effective 2-9-2006.)

(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)

(Amended 3-7-2023 by O-21618 N.S.; effective 5-6-2023.)

§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held, and a Process One decision may not be appealed except as otherwise set forth in Section 141.0418.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 8-7-2015 by O-20555 N.S.; effective 9-6-2015.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner:

- (a) Notice. The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.
- (b) Decision Process. The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

Notification of the decision shall be given to the *applicant* and to those persons who request notification in accordance with this section, no later than 2 *business days* after the *decision date*.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

(Amended 10-12-2022 by O-21546 N.S.; effective 11-11-2022.)

§112.0504 Process Two Appeal Hearing

- (a) The Planning Commission shall hear appeals of Process Two decisions subject to the following requirements, unless otherwise specified in the Land Development Code.
 - (1) Persons Who Can Appeal. The following persons may request an appeal hearing after the designated staff person's decision:
 - (A) An *applicant*; or
 - (B) Any other person who files an application for a Process Two appeal hearing in accordance with Section 112.0504(a)(2).

- (2) Request for a Process Two Appeal Hearing.
 - (A) A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 10 *business days* after the *decision date*.
 - (B) Pursuant to the *Subdivision Map Act*, an *applicant* may file an appeal of a decision to deny its application for an Extension of Time for a map waiver or *tentative map* no later than 15 calendar days after the *decision date*.
- (3) Grounds for Appeal. A Process Two decision may be appealed on any of the following grounds:
 - (A) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;
 - (B) New Information. New information is available to the *applicant* or the *interested person* that was not available through reasonable efforts or due diligence at the time of the decision;
 - (C) *Findings* Not Supported. The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
 - (D) Conflicts. The decision to approve, conditionally approve, or deny the permit is in conflict with a *land use plan*, a City Council policy, or the Municipal Code.
- (4) The appellant(s) may withdraw an appeal at any time prior to the commencement of the appeal hearing before the Planning Commission. The withdrawal of the appeal must be filed in writing with the City Manager. If all appellants withdraw their appeals, no appeal hearing shall be conducted. The withdrawal of the appeal does not entitle the appellant(s) to any refund of appeal-related costs or fees incurred as of the date of the withdrawal.

- (5) Scheduling an Appeal Hearing. Within 30 calendar days after the date on which an application for the appeal hearing is filed with the City Manager, the City Manager shall assign a date for an appeal hearing before the Planning Commission. The appeal hearing shall be held no later than 60 calendar days after the date on which the application for an appeal is filed, unless there are more than 60 calendar days until the next regularly scheduled Planning Commission meeting, in which case the appeal hearing shall be held at the first regularly scheduled meeting after the 60 calendar days have passed. Failure to hold the hearing within the 60 calendar days shall not limit the Planning Commission's authority to consider the appeal. The appeal hearing shall be noticed in accordance with Section 112.0308.
- (6) Power to Act on the Decision at Appeal Hearing. At the conclusion of the appeal hearing, the Planning Commission may affirm, reverse, or modify the staff decision.
- (b) Exception. Where the Land Development Code specifies that the City Council is the appeal body for a Process Two decision Sections 112.0504(a)(5) and 112.0504(a)(6) shall not apply. Instead, the scheduling of the appeal hearing and the power to act on the decision at the appeal hearing shall be in accordance with Sections 112.0508(d) and 112.0508(e).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

(Amended 10-25-2017 by O-20863 N.S.; effective 11-24-2017; O-20863 was readopted on 3-19-2019.)

(Amended 3-22-2018 by O-20917 N.S.; effective 4-21-2018.)

§112.0505 Process Three

An application for a permit, map, or other matter acted upon in accordance with Process Three may be approved, conditionally approved, or denied by a Hearing Officer in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Decision Process. The Hearing Officer may approve, conditionally approve, or deny the application at a public hearing noticed in accordance with Section 112.0301(c), 112.0302, and 112.0303.

(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)

§112.0506 Process Three Appeals

The Hearing Officer's decision may be appealed to the Planning Commission, as specified in Chapter 12, Article 6 for the type of *development* and review required. An appeal from a Hearing Officer's decision that involves applications consolidated in accordance with Section 112.0103 shall be heard by the Planning Commission. An appeal from a Process Three decision shall be made in the following manner.

- (a) Persons Who Can Appeal. A Process Three decision may be appealed by the following persons:
 - (1) An *applicant*; or
 - (2) An *interested person*.
- (b) Time for Filing an Appeal. A Process Three decision may be appealed by filing an application with the City Manager no later than 10 *business days* after the date of the Hearing Officer's decision.
- (c) Grounds for Appeal. A Process Three decision may be appealed on any of the following grounds:
 - (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;
 - (2) New Information. New information is available to the *applicant* or the *interested person* that was not available through that person's reasonable efforts or due diligence at the time of the decision; or

- (3) *Findings Not Supported.* The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
 - (4) *Conflicts.* The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a *land use plan*, a City Council policy, or the Municipal Code.
- (d) The appellant(s) may withdraw an appeal at any time prior to the commencement of the appeal hearing before the Planning Commission. The withdrawal of the appeal must be filed in writing with the City Manager. If all appellants withdraw their appeals, no appeal hearing shall be conducted. The withdrawal of the appeal does not entitle the appellant(s) to any refund of appeal-related costs or fees incurred as of the date of the withdrawal.
- (e) *Scheduling the Appeal Hearing.* The appeal hearing before the Planning Commission shall be held no later than 60 calendar days after the date on which the application for an appeal is filed, unless there are more than 60 calendar days until the next regularly scheduled Planning Commission meeting, in which case the appeal hearing shall be held at the first regularly scheduled meeting after the 60 calendar days have passed. However, appeal hearings regarding tentative maps shall be held no later than 30 calendar days after the date on which the application for the appeal is filed, unless no regularly scheduled Planning Commission meeting will be held within the 30 days for which notice can be provided pursuant to Section 112.0208 and to any tenant, in which case the hearing shall be held as follows: (1) at the next regularly scheduled Planning Commission meeting for which the above notice can be provided, or (2) within 60 calendar days of the date on which the application for the appeal is filed, whichever is shorter. Failure to hold the hearing within the 60 calendar days shall not limit the authority of the Planning Commission to consider the appeal. The appeal hearing shall be noticed in accordance with Section 112.0308.
- (f) *Power to Act on Appeal.* After the conclusion of the public hearing, the Planning Commission may affirm, reverse, or modify the decision being appealed.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-05 by O-19444 N.S.; effective 2-9-2006.)

(Amended 10-25-2017 by O-20863 N.S.; effective 11-24-2017; O-20863 was readopted on 3-19-2019.)

§112.0507 Process Four

An application for a permit, map, or other matter acted upon in accordance with Process Four may be approved, conditionally approved, or denied by the Planning Commission in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Decision Process. The Planning Commission may approve, conditionally approve, or deny the application at a public hearing noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)

§112.0508 Process Four Appeals

The Planning Commission's decision may be appealed to the City Council in the following manner.

- (a) Persons Who Can Appeal. A Process Four decision may be appealed to the City Council by the following persons:
 - (1) An *applicant*; or
 - (2) An *interested person*.
- (b) Time for Filing an Appeal. A Process Four decision may be appealed by filing an application with the City Clerk's office no later than 10 *business days* after the date of the Planning Commission's decision.
- (c) Grounds for Appeal. A Process Four decision may be appealed on any of the following grounds:
 - (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;

- (2) New Information. New information is available to the *applicant* or the *interested person* that was not available through that person's reasonable efforts or due diligence at the time of the decision;
 - (3) *Findings* Not Supported. The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker;
 - (4) Conflicts. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a *land use plan*, a City Council policy, or the Municipal Code; or
 - (5) Citywide Significance. The matter being appealed is of citywide significance.
- (d) The appellant(s) may withdraw an appeal at any time prior to the commencement of the appeal hearing before the City Council. The withdrawal of the appeal must be filed in writing in the Office of the City Clerk. If all appellants withdraw their appeals, no appeal hearing shall be conducted. The withdrawal of the appeal does not entitle the appellant(s) to any refund of appeal-related costs or fees incurred as of the date of the withdrawal.
- (e) Scheduling Appeal Hearings. The appeal hearing before the City Council shall be held no later than 60 calendar days after the date on which the application for an appeal is filed, unless there are more than 60 calendar days until the next regularly scheduled City Council meeting, in which case the appeal hearing shall be held at the first regularly scheduled City Council meeting after the 60 calendar days have passed. However, appeal hearings regarding tentative maps shall be held no later than 30 calendar days after the date on which the application for the appeal is filed, unless no regularly scheduled City Council meeting will be held within the 30 days for which notice can be provided pursuant to Section 112.0208 and to any tenant, in which case the hearing shall be held as follows: (1) at the next regularly scheduled City Council meeting for which the above notice can be provided, or (2) within 60 calendar days of the date on which the application for the appeal is filed, whichever is shorter. Failure to hold the hearing within the 60 calendar days shall not limit the authority of the City Council to consider the appeal. The appeal hearing shall be noticed in accordance with Section 112.0308.

- (f) Power to Act on Appeal. After the conclusion of the public hearing, the City Council may affirm, reverse, or modify the decision being appealed.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 10-25-2017 by O-20863 N.S.; effective 11-24-2017; O-20863 was readopted on 3-19-2019.)

§112.0509 Process Five

A Process Five decision on a permit, map, or other matter shall be made by the City Council in the following manner.

- (a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which an application for a permit, map, or other matter is *deemed complete*.
- (b) Planning Commission Recommendation. Before the City Council decision, the Planning Commission shall hold a public hearing to consider the application. The hearing shall be noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303. The hearing may be continued if desired by the Commission to solicit and obtain information needed to make a recommendation. However, the hearing shall be concluded no later than 60 calendar days after the initial hearing date.

At the conclusion of the public hearing, the Planning Commission shall make a written recommendation to the City Council to approve, conditionally approve, or deny the application. If the Planning Commission fails to act within this 60-day period the matter shall proceed to City Council without a recommendation.

- (c) Decision Process. After receiving the Planning Commission's recommendation or expiration of the 60-day time period with no recommendation, the City Council shall hold a public hearing to consider the application. The hearing shall be noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303. The City Council may approve, conditionally approve, or deny the application at the conclusion of the hearing.

- (d) Exception to Process Five. The City Council may waive the requirement of Section 112.0509(b) that the Planning Commission make a recommendation before a decision by the City Council when the City Council determines that action is required by a provision of the Municipal Code or is required to facilitate timely action by the City on a matter in accordance with state law.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0510 Contents of Appeal Applications

- (a) An application for an appeal of a Process Two decision shall include the following information:
 - (1) The name, address, and telephone number of the person filing the appeal;
 - (2) The name of the *applicant*;
 - (3) The decision being appealed and the date of the decision;
 - (4) The grounds for the appeal; and
 - (5) Any information or exhibits supporting the appeal that are available at the time the appeal is filed.
- (b) An application for an appeal of a Process Three or Process Four decision shall include the information required in Section 112.0510(a) and information that establishes the basis on which the appellant is an *interested person*.
- (c) An application for an appeal of an *environmental determination* shall include the following information:
 - (1) The name, address, and telephone number of the person filing the appeal;
 - (2) The name of the *applicant*; and
 - (3) The specific grounds, clearly identified, upon which the appellant claims the lower decision maker's *environmental determination* was made in error. All grounds must be specified in the appeal. Any grounds not stated in the appeal will not be considered.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 7-26-2004 by O-19303 N.S.)

§112.0511 No Development During Appeal Period

Development authorized by a permit, map, or other matter may not occur before the *date of final action*, except that actions necessary to address an emergency can proceed to the minimum amount necessary to protect public health and safety.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 2-12-2014 by O-20348 N.S.; effective 3-14-2014.)

§ 112.0520 Environmental Determination Appeals

(a) Persons Who Can Appeal

Notwithstanding other provisions of this Code, any person may appeal an *environmental determination* not made by the City Council.

(b) Time for Filing an Appeal

An application to appeal an *environmental determination* shall be filed with the City Clerk as follows:

(1) Within 10 *business days* for *environmental determinations* that involve a *development permit*, *tentative map*, or other discretionary action pursuant to the Land Development Code and within 5 *business days* for *environmental determinations* that do not involve a *development permit*, *tentative map*, or other discretionary action pursuant to the Land Development Code, from the date of the posting of the Notice of Right to Appeal Environmental Determination; or

(2) Within 10 *business days* from the date of a decision by a Hearing Officer or the Planning Commission to adopt or certify an environmental document.

(c) Scheduling Appeal Hearings. The appeal hearing before the City Council shall be held no later than 60 calendar days after the date on which the application for an appeal is filed, unless there are more than 60 calendar days until the next regularly scheduled City Council meeting, or unless the Council President determines that the item cannot be heard within the 60 calendar days, in which case the appeal hearing shall be held at the first regularly scheduled City Council meeting after the 60 calendar days have passed or when the Council President determines that the item can be heard. Failure to hold the hearing within the 60 calendar days shall not limit the authority of the City Council to consider the appeal. The appeal hearing shall be noticed in accordance with Section 112.0308.

- (d) The appellant(s) may withdraw an appeal at any time prior to the commencement of the appeal hearing before the City Council. The withdrawal of the appeal must be filed in writing in the Office of the City Clerk. If all appellants withdraw their appeals, no appeal hearing shall be conducted. The withdrawal of the appeal does not entitle the appellant(s) to any refund of appeal-related costs or fees incurred as of the date of the withdrawal.
- (e) Power to Act on Appeal. After the conclusion of the public hearing, the City Council may take action as follows:
 - (1) By majority vote deny the appeal, approve the *environmental determination* and adopt the CEQA findings and statement of overriding considerations of the previous decision-maker, where appropriate; or
 - (2) By majority vote grant the appeal and set aside the *environmental determination*, in accordance with Section 112.0520(f).
- (f) If the City Council grants the appeal under Section 112.0520(e)(2):
 - (1) The lower decision-maker's decision to approve the project shall be held in abeyance. The City Council shall retain jurisdiction to act on the revised environmental document and associated project at a subsequent public hearing.
 - (2) The Planning Director shall reconsider the *environmental determination* in accordance with Section 128.0103 and prepare a revised environmental document as appropriate, in consideration of any direction from the City Council.
 - (3) At a subsequent hearing, the City Council shall again consider the *environmental determination* and associated projects, and may take action as follows:
 - (A) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; and affirm the previous decision to approve the associated project;

- (B) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; condition and approve the associated project as modified; or
- (C) Find that the environmental document is insufficient, in which case the document shall not be certified. The associated project shall be denied and the decision shall be deemed the final administrative action.
- (g) The appeal and any appeal hearings of an *environmental determination* that a project is not subject to the California Environmental Quality Act pursuant to California Public Resources Code Section 21080(b)(2)-(4) because it is an emergency action shall occur in accordance with Section 112.0520. The emergency action may proceed during the pending of the appeal period and any later appeal hearings.

(Added 7-26-2004 by O-19303 N.S.; effective 8-25-2004)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

(Amended 2-12-2014 by O-20348 N.S.; effective 3-14-2014.)

(Amended 10-25-2017 by O-20863 N.S.; effective 11-24-2017; O-20863 was readopted on 3-19-2019.)

(Amended 2-1-2021 by O-21288 N.S.; effective 3-3-2021.)