



CITY OF ENCINITAS
505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2600

Date/Time Received

Information contained in this document is
deemed a public record

APPEAL REQUEST - \$406 FEE (effective July 1, 2022)

ALL APPEALS MUST BE FILED AT CITY CLERK'S OFFICE

APPELLANT MUST COMPLETE THE FOLLOWING IN DETAIL
(Please type or print)

Appellant's Name _____

Mailing Address _____

Daytime Phone _____

Appealing the decision of the:

Director Of _____ To City Council

Planning Commission to City Council

Other (Please explain) _____

Relative to the action taken on _____ 20____ for the project known as:

Project Name: _____ Case No. _____

Project Address: _____

Cross Streets: _____

Applicant(s): _____

Identify your interest in the challenging determination:

Specify exactly what is being appealed. Identify each issue which you believe was wrongly determined together with every argument and a copy of every item of evidence submitted to the subordinate entity that supports your allegations:

Action you wish to be taken:

(You may attach additional documentation but all blanks on this form must be completed)

NOTE: An incomplete appeal and fee shall be returned to you and considered to be inappropriately filed. The appeal period expires 15 days after the determination and cannot be extended for you to adequately complete the appeal.

Appellant's Signature

Date

Once your issue has been scheduled before the City Council, you will be notified of the date and time it will be on the agenda as indicated below.

ADMINISTRATIVE HEARING: Any person who wishes to submit a written position with arguments, documents, exhibits, letters, photos, charts, diagrams, videos, etc., addressing the challenged determination must submit these to the City Clerk by 5:00 P.M. seven (7) calendar days prior to the hearing date. NO NEW INFORMATION WILL BE CONSIDERED BY THE CITY COUNCIL AFTER THIS DEADLINE. NO OTHER MATERIALS SHALL BE RECEIVED OR CONSIDERED AT THE HEARING. Upon filing with the City Clerk, those items will be available to the public. Any questions, please contact the City Clerk at 633-2601.

Filing of an appeal must comply with Chapter 1.12 of the Municipal Code (attached). The following application must be complete or the appeal will be returned to the appellant. An appeal must be delivered to the City Clerk by 5:00 p.m. of the 15th calendar day following the determination.

Note: Pursuant to Section 66452.5 of the State Map Act, a 10 day appeal period is required for subdivisions, tentative maps and tentative parcel maps. A public hearing is required to be held within 30 days of the appeal.

PLEASE SEE ATTACHED MUNICIPAL CODE SECTION 1.12 WHICH EXPLAINS THE APPEAL PROCESS.

MEDIATION: The City offers a mediation program as an alternative to appeals. If you are interested in resolving project issues or disputes through mediation, please view the City's Mediation Program webpage at <http://www.encinitasca.gov/mediation>. You may also contact the Code Enforcement Department at 760-633-2685 or via email at code@encinitasca.gov.

PLEASE SEE ATTACHED MUNICIPAL CODE SECTION 1.10 WHICH EXPLAINS THE MEDIATION PROCESS FOR LAND USE AND DEVELOPMENT PROJECTS.

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Chapter 1.12 APPEALS

1.12.010 Scope.

- A. As used in this chapter, "determination" refers to a final, non-recommending determination by a board, committee, commission, or department subordinate to the City Council. Unless otherwise provided by law, or this Code, or an action of the City Council, an appeal of a determination shall be made and processed in accordance with the provisions of this chapter.
- B. The procedures in this chapter shall also apply when this Code authorizes an appeal to a superior authority (other than the City Council) of a final determination by a subordinate authority. In such case, "City Council," as used in this chapter, shall be deemed to refer to the superior authority.
- C. The decision by the City Council is the final action of the City.
- D. Whenever a time limit provided for in this chapter falls upon a City holiday, the limit shall be extended to 5:00 p.m. of the next business day of the City. (Ord. 98-03)

1.12.020 Filing an Appeal.

- A. Appellant. One or more persons may file an appeal objecting to a determination.
- B. Sufficiency of Appeal. To be sufficient for filing, an appeal must be:
 1. Delivered to the City Clerk, by 5:00 p.m. of the 15th calendar day following the determination which is challenged. Except, an appeal of the approval or denial of a subdivision map, a lot line adjustment, or certificate of compliance reviewed pursuant to Title 24 of the Municipal Code must be delivered by 5:00 p.m. of the 10th calendar day following the date of the determination;
 2. Accompanied by a proper filing fee as established by City Council resolution; and
 3. In writing and legibly set forth:
 - a. The appellant's full name, address and phone number;
 - b. The board, commission, committee or department which rendered the determination;
 - c. The date of the determination;
 - d. The determination to which the appeal is made;
 - e. The appellant's interest in the challenged determination; and
 - f. Each issue which the appellant alleges was wrongly determined together with every argument and a copy of every item of evidence submitted to the subordinate entity that supports the appellant's allegations.
- C. An insufficient appeal shall be returned to the person without filing.
- D. When the time for filing an appeal has expired and a person has filed a timely appeal, the City Clerk shall notify the appropriate department director who shall:
 1. Notify the real party in interest (unless the real party in interest filed the appeal) that an appeal has been filed and that the determination has been suspended;

2. Set the matter on an agenda for public hearing by the City Council; and
3. Notify the parties involved of the date and time of the public hearing.
4. Exception: If the appeal concerns a determination involving a subdivision map, a lot line adjustment or certificate of compliance determination reviewed pursuant to Title 24 of the Municipal Code, the department director shall set the appeal for a public hearing. The public hearing shall be set within 30 days of the appeal being filed and shall be conducted in accordance with City Council procedures for public hearings. (Ord. 98-03; Ord. 2001-09; Ord. 2003-08)

1.12.030 Material for Public Hearing.

- A. **Material From Other Persons.** On or before 5:00 p.m., seven calendar days prior to the public hearing, any person may submit to the City Clerk for filing a written position with arguments, documents, and information, and also may file exhibits, letters, photos, charts, diagrams, videos, etc., addressing the challenged determination. Written positions with arguments, documents, information, exhibits, letters, photos, charts, diagrams, or videos, etc., will not be filed, submitted to or considered by the City Council for public hearing, unless they are timely filed with the City Clerk. Upon filing with the City Clerk, those items will be available to the public.
- B. **Appeal Documents.** The appellant's appeal documents shall be available to the public, and will be submitted at the public hearing.
- C. **Staff Report.** The City department may prepare and submit to the City Council a public hearing staff report which may include a proposed resolution setting forth proposed findings, conclusions and determinative actions. It shall incorporate materials submitted to the subordinate entity. The public hearing staff report will be made available to the public no less than three calendar days prior to the public hearing.
- D. **Staff Review of Material Submitted From Other Persons.** The City department may review and respond in writing to the material submitted pursuant to subsection A of this section. The City department response may be provided to the City Council up to the time of the public hearing. (Ord. 98-03; Ord. 2005-07)

1.12.040 Public Hearing to Consider Appeal.

The public hearing to consider the appeal shall be conducted in accordance with the following:

- A. **Materials.** At the public hearing, the City Council shall only receive and consider the following materials:
 1. Public hearing staff report which will include the materials submitted to the subordinate entity. The report may include a proposed resolution setting forth proposed findings, conclusions and determinative actions.
 2. Each timely filed written position with arguments, documents, information, exhibits, letters, photos, charts, diagrams, or videos, etc. (required to be submitted seven calendar days prior to the hearing pursuant to Section 1.12.030A).
 3. Any written response provided by a City department pursuant to Section 1.12.030D.
 4. No other materials shall be received or considered at the public hearing.
- B. **Oral Presentations.** At the public hearing, the City Council shall only receive and consider the following oral presentations:

1. The oral staff report, if any. The City Council may ask questions of City staff in order to clarify information;
 2. An oral presentation from the appellant and the appellant's representative, if any. The City Council may ask questions of the speaker in order to clarify information;
 3. An oral presentation from any member of the public who submits a "request to speak" slip to the City Clerk, prior to the Mayor calling the public hearing item at the meeting. The City Council may ask questions of the speaker in order to clarify information; and
 4. An oral rebuttal/summation from the appellant and the appellant's representative, if any. The City Council may ask questions of the speaker in order to clarify information.
- C. Determination. Applying City standards to the information presented at the public hearing, the City Council shall make a final determination affirming, overruling, or modifying the subordinate entity's determination; and may direct that such action be taken as the City Council deems necessary. (Ord. 2001-09; Ord. 2005-07)
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Chapter 1.10 VOLUNTARY MEDIATION FOR LAND USE AND DEVELOPMENT PROJECTS

1.10.010 Declaration of Purpose.

The City Council finds there is a need for mediation as a form of alternative dispute resolution for purposes of maintaining and fostering good will and cooperation among community members when faced with potentially divisive land use and development proposals. The City Council recognizes and acknowledges that mediation may not be appropriate for all land use and development proposals in dispute and, in fact, may prove unsuccessful at times. However, the City Council believes that mediation can be an effective tool between willing parties to resolve land use and development disputes consistent with the City's General Plan and Municipal Code, pursuant to this chapter. (Ord. 2015-16)

1.10.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Days" shall mean consecutive calendar days and not business days.

"Director" shall mean the Director of the Planning and Building Department of the City of Encinitas, or designee.

"Disputing parties" shall mean any person that has received approval for a permit or other entitlement for a land use or development project from either the Director or Planning Commission, and any person who has appealed such approval.

"Mediation" shall mean a voluntary confidential meeting, conducted within a three-day timeframe, between or among disputing parties and stakeholders with an impartial mediator to clarify their differences and discuss the possibility of a mutually acceptable outcome to resolve their differences. Mediation in this context is not intended to result in a decision or to be legally binding upon the disputing parties and stakeholders; instead, it is intended to facilitate dialogue regarding a dispute in a respectful, positive and productive manner.

"Mediator" shall mean a person who attempts to make people involved in a conflict come to an agreement.

"Stakeholder" shall mean any person, organization or association that is affected by and maintains an interest in the approval of a permit or other entitlement for a land use or development that is the subject of mediation between disputing parties. Stakeholders shall be identified by the disputing parties in the application for mediation pursuant to Section 1.10.030 of this chapter. (Ord. 2015-16)

1.10.030 Mediation—Request for—Application—Cost Paid by Applicant.

Upon request to the Director, by application, on a form provided by the Planning and Building Department, executed and signed by the disputing parties, the disputing parties shall be entitled to mediation pursuant to this chapter and City Council Resolution No. 2015-58. The project applicant shall pay all costs related to mediation pursuant to this chapter. The Director shall maintain a schedule of the costs in the Planning and Building Department. (Ord. 2015-16; Ord. 2017-07)

1.10.040 Completed Application—Hearings/Processing and Related Time Lines—Stayed.

Upon receipt of a completed application pursuant to this chapter, any further hearings, related processing, and applicable time lines shall be stayed pending written notice of the Director, which in no case shall exceed 30 days subsequent to the completion of mediation. (Ord. 2015-16)

1.10.050 Mediation Results—Remand to Decision Making Authority—Director Determination.

Within 10 days of completion of mediation pursuant to this chapter, the disputing parties shall provide the written results of the mediation (e.g., agreement) to the Director. Within 10 days of the receipt of the same, the Director shall notify the disputing parties as to the consequences of the results on the project application; such as, the compromises reached are: (1) consistent with the current approval and may be implemented; (2) inconsistent with the current approval and the project application will be remanded to the approving authority for further review and consideration; or (3) violates the General Plan, Municipal Code or other applicable rules or regulations, and must be disregarded. (Ord. 2015-16)

1.10.060 Refund of Appeal Fees—Completion to Mediation—Prevail on Appeal.

The City shall refund any appeal fees paid by any person, organization or association that: (1) appealed an approval of a permit or other entitlement for a land use or development project, completed mediation pursuant to this chapter and withdrew the subject appeal; or (2) appealed an approval of a permit or other entitlement for a land use or development project, completed mediation pursuant to this chapter, and ultimately prevailed on the subject appeal. (Ord. 2015-16)

1.10.070 City Council—Referral to Mediation.

Nothing in this chapter is intended to prevent or restrict the Director, Planning Commission or City Council from referring parties to mediation at any time, in any manner and by whatever means the Director, Planning Commission or City Council and parties deem appropriate or necessary. (Ord. 2015-16)

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