



Initiative - Elections Code Section 9212 Report

City Council Meeting
January 15, 2020

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BACKGROUND

On December 17, 2019, the City Clerk certified as sufficient petitions for four initiatives. Pursuant to Elections Code Section 9215, the City Council chose to order reports for the initiatives (9212 reports) to address impacts or effects of the initiatives on the City, including fiscal impacts. Under state law, these 9212 reports are required to be prepared within 30 days after the City certified to the City Council the sufficiency of the petition.

The purpose of this report is to address the Council's request for a review of impacts of one of the four initiatives, the "Expedited Processing of Certain City-Issued Development Permits If Projects Meet Specific Requirements and Project Applications Are Filed By Specified Professionals Who Have Received Required Training Pursuant to the New Program; Program Includes Audits of Approved Permits and Appeals of Certain Denied Permits and Adverse Certification Actions of the Specified Professionals to Newly Created Appeals Board and to the City Council" (hereafter, the "Initiative"). This report will summarize the key provisions of the Initiative and describe its impacts on two areas of the City's operations: (1) Administration and (2) Fiscal.

SUMMARY OF INITIATIVE

The following is a summary of the key provisions of the proposed Initiative.

Eligible Projects

The Initiative includes no limits on eligible projects; therefore, any request for a building permit that satisfies the submittal and certified professional requirements of this Initiative would be eligible.

Professionals Eligible for Certification

Eligible professionals for certification are any one of the following: (1) professional architect or civil engineer, (2) professional landscape architect, (3) professional soils engineer, geotechnical engineer or geologist, (4) mechanical, fire protection or electrical engineer, or (5) licensed professional, such as a contractor or certified interior designer

Further, to be a certified professional, one must also be licensed and in good standing with the State of California at the time of application, and continuously for the five years prior to application and successfully complete a training program approved by the City.

“Permit Simplicity” Training

The City shall facilitate a training class as part of the “Permit Simplicity Certified Professionals” program. The class shall provide instructions about: (1) The “Permit Simplicity Certification” permit process; (2) Examining plans for compliance with the City's building codes, and other applicable laws pertaining to public health and safety; and (3) The administrative aspects of permit processing for which the “Permit Simplicity Certified Professional” is responsible when certifying plans.

Structural Peer Review

The Initiative creates a “Structural Peer Reviewer” requirement. This means a reviewer who is on an approved list expressly for the purpose of providing structural peer reviews for the Permit Simplicity Certification Program. The City shall have the sole discretion to determine who shall be included on the list, and all structural peer reviewers must: (1) be a licensed structural engineer in the state of California, and (2) have attended either the Permit Simplicity Certification training class or another class approved by the City.

Building Board of Appeals

A Building Board of Appeals shall be appointed. Adverse audit results, suspensions or revocations of Permit Simplicity Certified Professional status are subject to appeal to the Building Board of Appeals. If the Permit Simplicity Certified Professional has reason to believe that adverse audit results, or the suspension or revocation of Permit Simplicity Certification privileges is not warranted, the Permit Simplicity Certified Professional has the right to request in writing, within ten (10) business days of the date on which notice is mailed, a hearing before the Building Board of Appeals. If adopted, the process for appointment of the Board of Appeals will need to be approved separately by the City Council.

Certification Statement

A Certification statement, which shall be wet-inked in black or plotted shall be included on the plan cover sheet as follows: "I hereby certify that any and all included drawings are prepared by me, under my supervision, or reviewed by me and to the best of my professional knowledge conform to the City's building codes, and other applicable laws pertaining to public health and safety."

Field Revisions

There are different procedures that must be followed for making field revisions. The procedure that must be followed is dependent on whether it is a voluntary change due to a change in construction material, design, or in response to field conditions; or a mandatory change due to an inspector identifying a code violation or plans missing critical information.

Application Submittal System

The Community Development Department shall establish a system for receiving applications, plans, forms, letters and other documents in connection with the Initiative's program.

Audit and Suspension of Permits

The following describes the permits to be audited: (A) The first four projects submitted by the Permit Simplicity Certified Professional are automatically selected for audit. (B) Any project submitted where the Permit Simplicity Certified Professional has not been previously audited in the past twelve months shall be automatically selected for audit. (C) Any project submitted by a Permit Simplicity Certified Professional that failed an audit twice shall automatically be selected for audit during the following twelve months. (D) Any project submitted by a Permit Simplicity Certified Professional during the twelve months after having been reinstated following a suspension from the program shall automatically be selected for audit during the following twelve months. (E) Any project over 100,000 square feet or greater than three stories shall be automatically selected for audit. (F) A random sample of between 10% and 20% of remaining Permit Simplicity Certified Projects shall be selected for audit.

Permit Revocation

The Building Official, or his or her designee, may revoke any permit issued under the Permit Simplicity Certification Program at any time if the Building Official, or his or her designee, believes that the permitted project or any portion thereof poses a threat to public health or safety.

COMPARISON TO OTHER CITIES

Staff conducted a limited review of “comparable” regulations in other cities in California and Arizona. While it is common to provide for expedited reviews for certain permit types, which the City of Oxnard already does, it is uncommon to allow self-certification, and unheard of to allow self-certification for all permit types. No city found has self-certification regulations that apply to all permit types as is being proposed for the City of Oxnard.

Phoenix, Arizona is the flagship self-certification system in the country. However, the City of Phoenix includes the following permit type limitations: Interior alterations and tenant build-outs of business, mercantile, factory, assembly, and storage; New construction of residential or commercial buildings with occupied floor less than 75 feet above Fire Department access; Landscape inventory, salvage, and new landscape plans; Grading and drainage plans, stormwater management plans, and parking lot site plans. Further, in Phoenix, the following permits types are expressly not included: Planning, zoning, grading and drainage, off-site civil, fire, no hazardous materials, limited assembly occupancy; no flood plain. Finally, in reviewing the City of Phoenix’s actual experience implementing their self-certification audits, staff found the following results: of 252 self-certificate permits audited, 39 failed the audit (28%).

In California, the City of Elk Grove is often mentioned as an early adopter of the self-certification program. Elk Grove limited permit types for self-certification to tenant improvements for retail, office and warehouse buildings. In Elk Grove, food establishments and permits for a change of use were not eligible. Elk Grove had four permits total that were eligible for self-certification, but in each case the permit was reviewed by City plans examiners prior to issuance. **The City of Elk Grove is no longer implementing this program of self-certification.**

The County of Sacramento pursued a self-certification program. Their program was limited to tenant improvement projects that are 5,000 square feet or less. Sacramento County staff indicated that **they do not have a self-certification program at this time**; they conduct plan review for all plans. The Sacramento County website is down and staff indicated they haven’t provided training for professionals for many years.

The City of Riverside conducted visits to several cities in Arizona and California who had implemented or considered a self-certification program. After reviewing these examples and consulting with development stakeholders and design professionals locally, the City of Riverside implemented a very limited self-certification program. Only re-roof and water heater permits are issued through a self-certification program. The City of Riverside instead focused on how to improve and streamline the permit process through the Streamline Riverside program.

The Initiative proposed for the City of Oxnard is more expansive than other self-certification examples. Furthermore, even those with limited self-certification examples have limited actual effectiveness.

IMPACTS OF THE PROPOSED INITIATIVE

The Initiative will impact the City in two broad categories: (1) Administrative and (2) Fiscal. The Initiative would eliminate, or at least substantially reduce, the safeguards that the building code and permit review system was built around; there would no longer be oversight to verify mistakes are not made which could impact the life safety of the citizens, business, and visitors to the City of Oxnard. The Initiative would create uncertainty and unpredictability for applicants that could result in significant cost increases.

ADMINISTRATIVE IMPACTS

Role of the Building Official

The Building Official is responsible for public safety associated with construction. Specifically, the Building Official is authorized to enforce the provisions of the adopted Building Code. The Building Official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Further, the Building Official shall receive applications, review construction documents and issue permits for the erection, alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code. In addition, the Building Official shall also make all of the required inspections, or shall have the authority to accept reports of inspection by approved agencies or individuals.

The Initiative shifts the safety compliance role of the Building Official to a private entity to such an extent to create a safety concern for those occupying buildings in the City of Oxnard. Further, the permit applicants will not likely fully understand the risk they are taking by working with a self-certified professional; risks such as earthquakes, fire, accessibility, and energy compliance. Risks also include financial implications from delays and redesign that could occur with post permit plan review audits and field inspection non-compliance determinations.

City's Plan Check Process / Implementation

The City's plan check process is intended to mitigate building risks; risk factors unique to California include seismic safety, flood hazards, accessibility, fire hazards and energy compliance. These standards are not present in the Building Codes of Arizona. The City regularly uncovers errors in design professional plans submitted to the City of Oxnard. It is estimated that 35% of plans filed for plan check review have errors; most notable error types are missing fire protections, missing emergency exits, and missing seismic connections. These are serious life safety standards that are missed by design professionals.

The City's current plan check procedure relies on the ability of multiple divisions/departments conducting concurrent plan checks. This is referred to as the "One-Stop-Shop." This provides a clear benefit to applicants as it saves time and ensures coordination among various City functions. The Initiative would require that all department reviews be completed prior to filing for a Self-Certification permit. This will prevent the City from conducting concurrent reviews and will cause delay and confusion for the applicant.

The concurrent review simplifies the process for applicants by conducting multi-agency review internally as the building plans are being reviewed. This concurrent review also allows and encourages conflicts across multiple departments to be worked out internally, not requiring the applicant to do this from the outside. When these internal conflicts are not resolved internally through a concurrent review, the applicant faces delays and cost implications. The Initiative creates a new layer of bureaucracy.

Building Inspections

Inspectors rely on the fact that the plan checkers have ensured the plans comply with code requirements. If this is no longer the case, inspections will likely result in compliance issues in the field, causing longer inspections and more problems identified in the field. Many such code compliance issues raised during construction will cause project construction to stop while the issue is resolved and plans are reviewed and modified. These delays will likely cause significant financial harm to applicants.

Program Audit Provisions

The program allows for a significant number of permits to be audited after they are issued. If issued permits are audited after they are issued, significant confusion, delay and cost increases will likely be experienced by the applicants. Projects will be under construction but subject to an audit and potential "stop work order" if compliance issues are determined. Audits in the City of Phoenix have resulted in a fail rate of 28% out of 252 audits conducted.

Also, the Initiative does not make sure the owner fully understands the risk involved in going this route that their new facility will be more prone to problems that could force the owner to redo all the work that has been completed until the time the mistake is discovered.

Training and Tracking

The Initiative requires the City to design and implement an ongoing “permit simplicity” training programs for design professionals. Although models of this program exist those cities in California that have in the past produced these trainings largely no longer do so. The training development and tracking of participating professionals will take significant staff administrative time up front and ongoing. It will be critical that certified professionals are tracked for compliance.

FISCAL IMPACTS

Staff Time & Training

The fiscal impacts of the initiative depends in large part on how the development community responds to this major shift in process and review responsibility. There is uncertainty and unpredictability in the staffing needs with the Initiative. The biggest factor affecting staffing and costs will be the number of individuals and scale of projects that chose to participate in the program. However, regardless of the level of participation, the up front work to develop the training and tracking systems as well as the self-certified permit submittal procedures will be required and take significant staff time.

The biggest impact will be to the Building Inspector staffing, but again the impact is unpredictable. The City's current Building Inspector staffing is based on the assumption that the inspectors can move quickly through a plan compliance field inspection. If inspectors are required to take more care in reviewing unreviewed plans, significant delays will be experienced. Delays during construction are generally much more expensive than those leading up to the start of construction. Should code compliance issues arise during construction, it is likely the project or that portion of the project will be stopped until a solution and / or revised plan is prepared, reviewed and revised permit issued. The cost of stopping a project under construction and putting contractors and their subcontractors on hold can be substantial and can cause qualified contractors to avoid work in the City of Oxnard

Staff will also have to develop a Structural Engineer Peer Review eligible list by conducting a Request for Qualifications and entering into a contract for the work and ongoing compliance of these professionals with standards. The cost of this effort and the costs to pay the Structural Engineer Peers cannot be determined at this time. Staff will also have to create and staff an Appeals Board.

Lastly additional on-going training will need to be provided to staff to implement the Initiative. The Initiative requires different positions/jobs than the city has today and shifts the needed skill set from engineers to trainers, monitors, and compliance auditors. The costs of this training will largely depend on the number of participants in the program.

Insurance Rates

The Insurance Services Office (ISO) reviews cities and gives scores based on the training, knowledge, experience and staffing of local building departments. If the department no longer reviews all plans then the score that they give the city will likely be reduced. Lower ratings mean higher insurance cost for the residents and property owners of the community.