December 14, 2016

To: Zoning Adjustments Board

From: Zach Cowan, City Attorney

Re: Public Reviews of Draft EIR for 1900 Fourth Street Project

The ZAB has requested a formal opinion from this office as to whether there are "unusual circumstances" under CEQA Guideline 15105(a) to extend the comment period on the draft EIR for 1900 Fourth Street beyond the 60-day maximum specified by that Guideline.

It is my understanding that the ZAB was informed that it was staff's opinion that there are no such unusual circumstances, and that this conclusion had been reached with my participation, but wants a formal opinion to this effect.

As a threshold matter, the ZAB should be assured that when planning staff state that they have conferred with this office add that a given conclusion has been reached, that is in fact the case. This office provides advice to planning staff on a range of planning and other issues on an almost daily basis. Virtually all of that advice is in discussion or by e-mail, and very little is reduced to formal opinions. There are two main reasons for this. First, the time demands placed on this office do not allow for every answer or piece of advice to be stated in the form of a formal opinion; that is simply too consuming. Second, the vast majority of the advice we give on a day to day basis is generally project specific, and sometimes addresses very small issues, and is simply not significant enough to merit memorialization in a formal opinion.

As noted above, the legal advice we provide generally addresses a specific factual situation, and represents our best attempt to apply the law to the facts as they are known. In this case, we are aware of no unusual circumstances applicable to a draft EIR released in mid-November. The fact that holidays occur during this period is not exceptional, although it is one factor that contributed to the decision to extend the 45-day review period to 60 days.
After the ZAB meeting at which this issue was raised, I received an e-mail suggesting that an unusual circumstance is the fact that an unidentified person asked for certain public records at an unspecified time but did not receive them within 10 days. I have inquired about the facts of this case and have been informed that although there was some delay in production of the records due to internal miscommunication between staff, the records were provided two weeks before the EIR was released for public review. These facts do not, in my opinion, constitute an unusual circumstance justifying extension of the review period beyond the 60 days specified in Guidelines 15105(a).