

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_



AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 11, ARTICLE 2, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE, BY AMENDING SECTIONS 112.0301 AND 112.0308; AMENDING DIVISION 5 BY AMENDING SECTION 112.0510, AND BY ADDING NEW SECTION 112.0520; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 113.0103, ALL PERTAINING TO ENVIRONMENTAL DETERMINATIONS.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 11, Article 2, Division 3, of the San Diego Municipal Code is amended by amending sections 112.0301 and 112.0308, to read as follows:

**§112.0301 Types of Notice**



(a) and (b) [No change.]

(c) Notice of Public Hearing. A Notice of Public Hearing shall be provided before a decision is made on an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, or Process Five, or an appeal of a Process Two, Process Three, Process Four decision, or of an *environmental determination*.

(1) Content. Except as set forth in section 112.0301(c)(2), the Notice of Public Hearing shall include the following information:

(A) through (I)[No change.]

- (2) The Notice of Public Hearing for an appeal of an *environmental determination* shall include the following information:
- (A) The general subject of the public hearing, including the type of *environmental determination* and the name of the proposed *development*.
  - (B) The location and size of the property that is the subject of the application.
  - (C) The community planning area in which the proposed *development* associated with the *environmental determination* is located.
  - (D) The *name* of the *applicant* and, with the consent of the *applicant*, the *applicant's* address and telephone number.
  - (E) The *identity* of the decision maker holding the public hearing.
  - (F) The date, *time*, and place of the public hearing.
  - (G) A brief description of the general procedures concerning the conduct of hearing and local actions.
  - (H) The name and telephone number of the City staff person to contact for additional information.

- (3) Distribution. Except as otherwise provided by the Municipal Code, the City Manager shall publish the Notice of Public Hearing in accordance with section 112.0303, and shall mail the Notice of Public Hearing to the persons described in section 112.0302(b), at least 10 *business days* before the date of the public hearing.

**§112.0308 Notice for Appeal Hearings**

The notice for an appeal hearing of a Process Two, Process Three, Process Four decisions, or of an *environmental determination* shall be provided in accordance with sections 112.0301(c), 112.0302, and 112.0303.

Section 2. That Chapter 11, Article 2, Division 5, of the San Diego Municipal Code is amended by amending section 112.0510, and by adding a new Section 112.0520, to read as follows:

**§112.0510 Contents of Appeal Applications**

(a) and (b) [No change.]

(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*.
- (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 ground not stated in the appeal may not be considered.

**§112.0520 Appeal of Environmental Determination**

(a) Notwithstanding other provisions of this Code, any person may appeal an *environmental determination*, by a non-elected City decision maker, to the City Council, provided that:

- (1) The decision is associated with a Process One decision; or
- (2) The decision is associated with a project, as defined in Public Resources Code section 21065, approved by the City Manager in accordance with his powers under Charter Section 28.

(b) Notwithstanding other provisions of this Code, any *interested person* may appeal an *environmental determination*, by a non-elected City decision maker, to the City Council, provided that:

- (1) The decision is associated with a Process Two or Three decision; and,
- (2) All available administrative appeals of the project decision have been exhausted.

(c) An application to appeal a determination that a project, as defined by CEQA, is not subject to CEQA shall be filed in the Office of the City Clerk within 10 business days from the date of the staff decision that the

project is not subject to CEQA, as provided in Public Resources Code section 21080.

- (d) An application to appeal the certification of an environmental impact report or the adoption of a negative declaration or mitigated declaration shall be filed in the Office of the City Clerk within 10 business days of the certification of the environmental impact report or adoption of the negative declaration or mitigated negative declaration.
- (e) The appeal hearing before the City Council shall be held, or the City Clerk shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with section 112.0308.
- (f) The City Council shall consider the appeal and shall:
  - (1) Deny the appeal, uphold the *environmental determination* and adopt the findings of the previous decision-maker, where appropriate; or
  - (2) Grant the appeal and make a superceding environmental determination or findings; or
  - (3) Grant the appeal, set aside the *environmental determination*, and remand the matter to the previous decision maker, in accordance with section 112.0520(h), to consider a revised

*environmental determination* that incorporates any direction or instruction the City Council deems appropriate.

- (g) If the City Council upholds the *environmental determination*, the lower decision maker's decision to grant the entitlements, approval or City authorization, shall become effective immediately.
  
- (h) If the City Council grants the appeal, the lower decision maker's decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall consider a revised *environmental determination* and its decision to grant the entitlements, approval or City authorization, in view of the action and, where appropriate, any direction or instruction from the City Council.
  - (1) If the *environmental determination* was a decision that the activity was not subject to CEQA, the matter shall be remanded to the Development Services Director to prepare a revised *environmental determination* in accordance with section 128.0103.
  
  - (2) If the *environmental determination* was the certification of an environmental impact report or adoption of a negative declaration or mitigated negative declaration, associated with a Process 2 or 3 decision, the matter shall be remanded to the Planning Commission for consideration of a revised *environmental determination*.

(3) If the *environmental determination* was the certification of an environmental impact report, or adoption of a negative declaration or mitigated negative declaration, associated with a decision by the City Manager, the matter shall be remanded to the City Manager for consideration of the revised *environmental determination*.

Section 3. That Chapter 11, Article 3, Division 1, of the San Diego Municipal Code is amended by amending section 113.0103, to read as follows:

**§113.0103 Definitions**

*Abutting property* through *Encroachment* [No change.]

*Environmental determination* means a decision by any non-elected City decision maker, to certify an environmental impact report, adopt a negative declaration or mitigated negative declaration, or to determine that a project is not subject to the California Environmental Quality Act (Pub.Res. Code § 21000 et seq.; “CEQA”).

[No change to remainder of section.]

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By \_\_\_\_\_  
Mary Jo Lanzafame  
Deputy City Attorney

MJL:cdk:cfq  
04/12/04; 5:40 pm  
Or. Dept: Plan.  
O-2004-107