

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.

- (d) All documentation or other evidence in support of the appeal must be filed with the appeal application. No further documentation or evidence will be accepted or analyzed by staff prior to the City Council consideration of the appeal after filing of the appeal application. Any evidence submitted after the filing date may not be considered by the City Council as part of the appeal.
- (e) The appeal application shall be accompanied by an appeal fee in accordance with Chapter 11, Article 2, Division 2, of the San Diego Municipal Code, and will not be deemed a valid appeal without concurrent payment of the appeal fee.
- (f) Electronically transmitted appeals shall not be accepted in the Office of the City Clerk.

§112.0520 Appeal of Environmental Determination

- (a) Notwithstanding other provisions of this Code, any person may appeal a decision by a non-elected City decision maker that a project is not subject to the California Environmental Quality Act, to the City Council, provided that:
 - (1) The decision is not associated with a project subject to a City Council decision or a Process Four or Five decision.

- (2) If the decision is associated with a Process Two or Three decision, all available administrative appeals of the project decision have been exhausted.
- (b) Notwithstanding other provisions of this Code, any *interested person* may appeal a decision by a non-elected City decision maker to certify an environmental impact report, adopt a negative declaration or mitigated negative declaration, to the City Council, provided that:
 - (1) The decision is not associated with a project subject to a City Council decision or a Process Four or Five decision; or
 - (2) If the decision is associated with a Process Two or Three decision, all available administrative appeals of the project decision have been exhausted.
- (c) An application to appeal a determination that a project 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; 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 to reconsider the *environmental determination* with any direction or instruction the City Council deems appropriate.

- (g) If the City Council upholds the *environmental determination*, the lower decision maker's project decision shall become effective immediately.

- (h) If the City Council grants the appeal, the lower decision maker's project decision shall be deemed vacated and the lower decision maker shall reconsider its *environmental determination* and its project decision 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 for a decision 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, the matter shall be remanded to the Planning Commission.

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
06/30/03
Or. Dept: Plan.
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