

ORDINANCE NUMBER O- 19303 (NEW SERIES)

ADOPTED ON JUL 26 2004

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, AND BY ADDING SECTION 112.0310; 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, AMENDING CHAPTER 12, ARTICLE 8, DIVISION 2, BY AMENDING SECTION 128.0207, ALL PERTAINING TO ENVIRONMENTAL DETERMINATIONS.

WHEREAS, by Senate Bill 1393, the California Legislature amended Public Resources Code section 21151 to allow appeals of decisions by non-elected decision-makers that certify an environmental impact report, approve a negative declaration or mitigated negative declaration, or determine that a project is not subject to CEQA; and

WHEREAS, Public Resources Code section 21151(c) requires these appeals to ultimately be heard by the elected decision-making body, to wit: the City Council; and

WHEREAS, activities or approvals described in Public Resources Code sections 21080(b) through 21080.33 and Article 18 (commencing with section 15261) are statutorily exempt from and therefore not subject to CEQA; and

WHEREAS, because this City Council has determined, consistent with State CEQA Guidelines section 15268(a) for ministerial projects, that statutorily exempt projects or activities are not subject to CEQA, case-by-case decisions to conduct such activities or approve such projects by non-elected decision-makers need not be appealed to the City Council; and

WHEREAS, decisions by non-elected decision-makers that a project is not subject to CEQA in accordance with State CEQA Guidelines section 15061(b)(2) or (3) are appealable to the City Council;

NOW THEREFORE 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 and adding section 112.0310, 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 *premises* 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 decision-maker will be the City Council.
 - (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 decision, or of an *environmental determination* shall be provided in accordance with sections 112.0301(c), 112.0302, and 112.0303.

§112.0310 Notice of Right to Appeal Environmental Determination

(a) A Notice of Right to Appeal Environmental Determination shall be posted for the following:

- (1) A determination that a project, as defined by State CEQA Guideline section 15378, is exempt from CEQA in accordance with State CEQA Guidelines section 15061(b)(2) or (3);
- (2) An *environmental determination* associated with a project, as defined by State CEQA Guidelines section 15378, that the City Manager approves or decides to carry out in accordance with his powers under City of San Diego Charter section 28.

(b) The Director is not required to post a Notice of Right to Appeal Environmental Determination for those projects deemed statutorily exempt in accordance with State CEQA Guidelines, Article 18, commencing with Section 15260.

(c) The Notice of Right to Appeal Environmental Determination shall include:

- (1) An identification of the project, including its common name where possible and its location;
- (2) A brief description of the project;
- (3) A statement regarding the type of *environmental determination* and;

(4) A brief statement to support the reasons for the *environmental determination*, including citation to applicable State CEQA Guidelines or statutes.

(d) The Notice of Right to Appeal Environmental Determination shall be posted at the City of San Diego, Development Services Department at a location easily accessible to the public and shall remain posted for period of 15 *business days*.

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*; and

(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 grounds not stated in the appeal will not be considered.

§ 112.0520 Environmental Determination Appeals

(a) Persons Who Can Appeal

- (1) Notwithstanding other provisions of this Code, any person may appeal an *environmental determination* by the City Manager.
 - (2) Notwithstanding other provisions of this Code, any *interested person* may appeal to the City Council, a decision by the Planning Commission, to approve a negative declaration, mitigated negative declaration or an environmental impact report, provided that:
 - (A) The decision is associated with a Process Two or Three decision.
 - (B) All available administrative appeals of the project decision have been exhausted.
- (b) Time for Filing an Appeal
- (1) An application to appeal a decision described in section 112.0520(a)(1) shall be filed in the Office of the City Clerk within the earlier of 10 *business days* from the date of the posting of the Notice of Right to Appeal Environmental Determination or 15 *business days* from the date of the *environmental determination*.
 - (2) An application to appeal a decision described in section 112.0520(a)(2) shall be filed in the Office of the City Clerk within 10 *business days* from the date of the Planning Commission's decision.
- (c) 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.

- (d) The City Council shall consider the appeal and shall, by a majority vote:
 - (1) Deny the appeal, uphold the *environmental determination* and adopt the CEQA findings of the previous decision-maker, where appropriate; or
 - (2) Grant the appeal and make a superceding *environmental determination* or CEQA 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(f), to reconsider the *environmental determination* that incorporates any direction or instruction the City Council deems appropriate.
- (e) If the City Council denies the appeal or grants the appeal under section 112.0520(d)(2), the lower decision-maker's decision to grant the entitlements, approval or City authorization, shall become effective immediately.
- (f) If the City Council grants the appeal under section 112.0520(d)(3), the lower decision-maker's decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall reconsider its *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 Two or Three 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.
- (g) If the decision on remand, in accordance with section 112.0520(d)(3), results in the same type of environmental document, such decision shall be deemed the final action.

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 (CEQA), under State CEQA Guidelines section 15061(b)(2) or (3).

[No change to remainder of section.]

Section 4: That Chapter 12, Article 8, Division 2, of the San Diego Municipal Code is amended by amending section 128.0207, to read as follows:

§128.0207 Review for Exemption from the Requirements of CEQA

- (a) As part of the preliminary review of an activity proposed within the City of San Diego, the Development Services Director shall determine whether the proposed activity is exempt from CEQA as described in Section 128.0203 and in the State CEQA Guidelines, Section 15061 and shall file a Notice of Right to Appeal Environmental Determination in accordance with Section 112.0310.
- (b) A determination by the Development Services Director that a project is exempt from CEQA, as described in State CEQA Guidelines section 15061(b)(2) or (3), shall be subject to the appeal procedures in section 112.0510.

Section 5. 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 6. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
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07/15/04 **COR.COPY**
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