

#6026
07/25/2022

(O-2023-9)

ORDINANCE NUMBER O- 21508 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 29 2022

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, ONE MEASURE RELATING TO COASTAL ZONE HEIGHT LIMITS IN THE MIDWAY-PACIFIC HIGHWAY COMMUNITY PLAN AREA.

WHEREAS, the voters of the City of San Diego (City) enacted People's Ordinance No. 10960 (New Series) (the Height Limit Ordinance) as Proposition D on November 7, 1972, to limit the height of buildings in the City to 30 feet or less in the Coastal Zone, as defined in the Ordinance; and

WHEREAS, San Diego Municipal Code (Municipal Code) section 27.1049 requires that any initiated legislative act adopted by a majority vote of the voters may be amended or repealed only by a majority vote of the voters or by San Diego Charter (Charter) amendment; and

WHEREAS, the Height Limit Ordinance was amended by a majority vote of the City's voters on November 8, 1988, as Proposition L, to allow the restoration of the chimney and rooftop cupola as part of the historic restoration of the 1915 Agar/Mission Brewery building located at Washington and Hancock Streets; and

WHEREAS, the Height Limit Ordinance was amended by a majority vote of the City's voters on November 3, 1998, as Proposition D, to allow SeaWorld to plan and construct exhibits and educational facilities upon certain conditions; and

WHEREAS, the Height Limit Ordinance was amended by a majority vote of the City's voters on November 7, 2000, as Proposition C, for the International Gateway of the Americas project in San Ysidro; and

WHEREAS, the Height Limit Ordinance was amended by a majority of the City's voters on November 3, 2020, as Measure E, for the Midway-Pacific Highway Community Plan area (Measure E) and codified as Municipal Code section 132.0505(b)(4); and

WHEREAS, on January 20, 2022, a court entered a judgment granting a writ of mandate in Case No. 37-2020-00030308-CU-TT-CTL to set aside all of the City's approvals to place Measure E on the November 3, 2020 ballot (Superior Court Decision); and

WHEREAS, the City has appealed the Superior Court Decision and does not expect to receive a decision before the General Election on November 8, 2022; and

WHEREAS, the City Council (Council) proposes to submit another measure to City voters that would amend the Height Limit Ordinance codified in Municipal Code section 132.0505 to exclude the Midway-Pacific Highway Community Plan area, as shown on Exhibit A to this Ordinance, from the 30-foot height limit in the Coastal Zone; and

WHEREAS, Councilmember Chris Cate initially submitted the proposal to the Council's Rules Committee for consideration in accordance with the Council Policy 000-21 process, in which proposals are considered for the November 2022 ballot; and

WHEREAS, the Midway-Pacific Highway Community Plan area encompasses approximately 1,324 acres, of which 88 acres is owned by the City, including the current Pechanga Sports Arena site; and

WHEREAS, the Council adopted an update to the Midway-Pacific Highway Community Plan in September 2018, after a multi-year process of obtaining planning group and public input; and

WHEREAS, some of the Midway-Pacific Highway Community Plan land use goals include creating a vibrant, balanced, and pedestrian-oriented community that provides residential, commercial, office, industrial, institutional, military, and civic uses; special districts and villages to highlight and foster the diverse character areas within the community; a compatible mix of land uses that support active transportation and a healthy environment; and a variety of housing types for all age, income, and social groups; and

WHEREAS, those who have proposed the amendment to the Height Limit Ordinance contend that the Height Limit Ordinance was designed to protect public view corridors along the coast; and

WHEREAS, those who have proposed the amendment to the Height Limit Ordinance contend that there are no public view corridors in the Midway-Pacific Highway Community Plan area to protect, and removing the height limit would be the catalyst to attracting needed investment to bring to life the vision of the Midway-Pacific Highway Community Plan; and

WHEREAS, those who have proposed the amendment to the Height Limit Ordinance contend that removing the 30-foot height limit in the Midway-Pacific Highway Community Plan area would allow for enhanced community and economic investments, including a potential new state-of-the-art entertainment complex; and

WHEREAS, if approved by a majority vote of the City's voters, building height would still be regulated by zoning laws in the Municipal Code, and proposed development must comply with the governing laws; and

WHEREAS, if approved by a majority vote of the City's voters, the amendments would not remove any other Community Plan areas from the Coastal Zone height limitations; and

WHEREAS, if approved by a majority vote of the City's voters, the California Coastal Commission must approve the amendments in the portions of the Midway-Pacific Highway Community Plan area within California Coastal Commission jurisdiction before the amendments covering those areas would become effective; and

WHEREAS, Charter section 23 and Municipal Code section 27.1001 provide that the Council may place any legislative act on the ballot to be considered at a Municipal Special Election; and

WHEREAS, by Ordinance No. O-21506, adopted on JUL 25 2022, the Council has called a Municipal Special Election in the City of San Diego, to be consolidated with the California State General Election to be held on November 8, 2022, for the purpose of submitting to the qualified voters of the City one or more ballot measures; and

WHEREAS, the Council considered this issue at Committee and Council hearings and has voted to ask San Diego voters to consider a ballot measure that would remove the Midway-Pacific Highway Community Plan area from the 30-foot limit on building height in the Height Limit Ordinance; and

WHEREAS, the Council desires to submit, to the qualified voters of the City of San Diego, at the Municipal Special Election to be held on November 8, 2022, one measure amending People's Ordinance No. 10960 (New Series), as amended by a majority vote of the City's voters on November 8, 1988, November 3, 1998, and November 7, 2000, to remove the Midway-Pacific Highway Community Plan area from the 30-foot limit on building height in the Height Limit Ordinance; NOW, THEREFORE,

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

Section 1. One measure amending People’s Ordinance No. 10960 (New Series), as amended by a majority vote of the City of San Diego’s qualified voters on November 8, 1988, November 3, 1998, and November 7, 2000, pertaining to the height of buildings in the Coastal Zone in the City of San Diego, and removing the 30-foot height limit for the Coastal Zone within the Midway-Pacific Highway Community Plan area, is hereby submitted to the qualified voters of the City at the Municipal Special Election to be held November 8, 2022, with the measure to read as follows:

MEASURE

Article 2: Overlay Zones

Division 5: Coastal Height Limit Overlay Zone

§132.0505 Coastal Height Limit

- (a) Notwithstanding any section to the contrary, no building or addition to a building shall be constructed with a height in excess of thirty feet within the Coastal Zone of the City of San Diego.
- (b) The words “Coastal Zone” as used within this section shall mean that land and water area of the City of San Diego from the northern City limits, south to the border of the Republic of Mexico, extending seaward to the outer limits of City jurisdiction and extending inland to the location of Interstate 5 on January 1, 1971. This limitation shall not apply to:
 - (1) that land area of the Coastal Zone bounded by National City on the south, San Diego Bay on the west and Laurel Street or the southwesterly projection of Laurel Street on the north;

- (2) that the land area of the Coastal Zone bounded by Ingraham Street on the west, Sea World Drive on the south, Mission Bay on the north and the boat ramp access road in South Shores Park on the east;
- (3) that land area of the Coastal Zone approximately bounded on the north and west by Camino de la Plaza, on the south by the international border with the Republic of Mexico, and on the east by Virginia Avenue, including that adjacent strip of land of approximately forty by 520 feet which is located south of Camino de la Plaza and east of Virginia Avenue; and
- (4) that land area of the Coastal Zone within the Midway-Pacific Highway Community Plan area approximately bounded by the San Diego River on the north; San Diego International Airport and Laurel Street on the south; Interstate 5 on the east; and Sports Arena Boulevard, Midway Drive, Kemper Street, Rosecrans Street, and Lytton Street, including the Kemper Neighborhood Village and the Lytton District, on the west; as more particularly described in Document No. OO-21220, a copy of which is on file with the City Clerk.
- (5) that land area of the Coastal Zone within the Midway-Pacific Highway Community Plan area approximately bounded by the San Diego River on the north; San Diego International Airport and Laurel Street on the south; Interstate 5 on the east; and Sports

Arena Boulevard, Midway Drive, Kemper Street, Rosecrans Street, and Lytton Street, including the Kemper Neighborhood Village and the Lytton District, on the west; as more particularly described in Document No. OO- _____, a copy of which is on file with the City Clerk.

- (c) The base of measurement of the height shall be in accordance with the Uniform Building Code of 1970.
- (d) Other than the restoration of the chimney and rooftop cupola as part of the historic restoration of the 1915 Agar/Mission Brewery Building located at Washington and Hancock Streets in San Diego, California, and as described in sections 132.0505(b)(1) through (b)(4~~5~~), there shall be no exception to the provisions of this section.
- (e) No building or structure or addition to a building or structure within the land described in exception section 132.0505(b)(2), shall exceed one-half the height of the existing Sea World Sky Tower on that land using the base of measurement in accordance with the Uniform Building Code of 1970.
- (f) No taxpayer funds shall be spent for any improvements in connection with a building or structure or addition to a building or structure within the land described in exception section 132.0505(b)(2).
- (g) The exception set forth in section 132.0505(b)(2) shall remain in effect as long as the land described therein is used for recreational, exhibition, educational, research and scientific purposes.

- (h) No more than five acres of the approximately sixty-six acre site described in section 132.0505(b)(3) may contain buildings or structures, or additions to buildings or structures, measuring up to 150 feet in height. No more than five additional acres of the remaining portion of the property may contain buildings or structures, or additions to buildings or structures, measuring up to eighty feet in height. As to the remaining portion of the property, no buildings or structures, or additions to buildings or structures, shall exceed fifty feet in height. The footprint of the entire building or structure shall be used to calculate the five acres, whether or not the entire building or structure measures 150 feet or eight feet in height. The measurement of height shall use the base of measurement in accordance with the Uniform Building Code of 1970.
- (i) This section may be amended, including an amendment to make an exception to the thirty-foot height limitation, only by a majority vote of the voters of the City of San Diego.

[Editor's Note: Amendments adopted by O- **21508** N.S.; effective DEC 12 2022 shall sunset if a court reverses the Superior Court decision in Case No. 37-2020-00030308-CU-TT-CTL on the 2020 Ballot Measure E and there are no further appeals.]

(The Midway-Pacific Community Plan area is shown on a map attached to this Ordinance as Exhibit A, and incorporated by reference here, and which will be published in the voter pamphlet as part of this measure.)

END OF MEASURE

Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this Ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

MEASURE ____ . REMOVING 30-FOOT HEIGHT LIMIT IN MIDWAY-PACIFIC HIGHWAY COMMUNITY PLAN AREA. Shall People’s Ordinance O-10960 be amended to exclude the Midway-Pacific Highway Community Plan area, which includes the Sports Arena, from the 30-foot height limit on buildings in the Coastal Zone, with any future development still required to comply with other governing laws?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. Passage of this measure requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election and shall become inoperative and be repealed if a court reverses the Superior Court Decision and there are no further appeals related to Measure E.

Section 6. The City Clerk shall cause this Ordinance or a digest of this Ordinance to be published once in the official newspaper following this Ordinance’s adoption by the City Council.

Section 7. In compliance with Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or

deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. A full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 9. This Ordinance may be passed by the Council on the date of introduction pursuant to Charter section 275(c) and shall take effect upon final passage pursuant to San Diego Charter sections 295(a) and 295(d).

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Corrine L. Neuffer
Corrine L. Neuffer
Chief Deputy City Attorney

CLN:cm
June 29, 2022
Or.Dept: Planning
Doc. No. 3018886_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 25 2022.

ELIZABETH S. MALAND
City Clerk

By Cannie Patterson
Deputy City Clerk

Approved: 7/29/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 25 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 29 2022

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUL 25 2022, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21508