

## STRIKEOUT ORDINANCE

**OLD LANGUAGE:** ~~Struck Out~~  
**NEW LANGUAGE:** Double Underline

ORDINANCE NUMBER O-20348 (NEW SERIES)

DATE OF FINAL PASSAGE FEBRUARY 12, 2014

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, DIVISION 3 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 112.0310; AMENDING CHAPTER 11, ARTICLE 2, DIVISION 5 BY AMENDING SECTIONS 112.0511 AND 112.0520; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 8, DIVISION 1 BY AMENDING SECTIONS 128.0103 AND 128.0104; AMENDING CHAPTER 12, ARTICLE 8, DIVISION 2 BY AMENDING SECTIONS 128.0202, 128.0203, 128.0207, 128.0208, 128.0209, AND 128.0210; AMENDING CHAPTER 12, ARTICLE 8, DIVISION 3 BY AMENDING SECTIONS 128.0303, 128.0304, 128.0307, 128.0308, 128.0309, 128.0310, 128.0311, 128.0312, AND 128.0313; ALL RELATING TO PROCEDURES AND APPEALS OF ENVIRONMENTAL DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

### **§112.0310 Notice of Right to Appeal Environmental Determination**

In accordance with Chapter 12, Article 8, Division 2, the Planning Director implements the California Environmental Quality Act (CEQA) and the State CEQA Guidelines within the City of San Diego. While not required by CEQA, in some circumstances the City requires the posting of a Notice of Right to Appeal Environmental Determination for activities that are subject to CEQA.

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

- (1) ~~A determination that a project, as defined by State CEQA~~  
~~Guideline section 15378, is exempt from CEQA pursuant to a~~  
~~category exemption, that an activity is covered by the general~~  
~~rule that CEQA applies only to projects which have the potential~~  
~~for causing a significant effect on the environment, or is exempt~~  
~~pursuant to State CEQA Guidelines Article 12.5 in accordance~~  
~~with State CEQA Guidelines sSections 15061(b)(2), or~~  
~~15061(b)(3), or 15061(b)(5);~~
  - (2) A determination that a project is exempt from CEQA pursuant to a  
statutory exemption, e.g. CEQA Guidelines 15061(b)(1); and
  - (3) ~~An environmental determination~~ A decision to adopt or certify an  
environmental document associated with a project, as defined by  
~~State CEQA Guidelines section 15378, that the City Manager~~  
~~approves or decides to carry out without a public hearing in~~  
~~accordance with his powers under City of San Diego Charter~~  
~~sSection 28, including environmental documents for projects~~  
~~decided in accordance with Process Two.~~
- (b) ~~The Director is not required to post a~~ A Notice of Right to Appeal  
Environmental Determination is not required to be posted for those  
projects deemed statutorily exempt in accordance with State CEQA  
Guidelines, Article 18, commencing with Section 15260 the following:
- (1) Activities that are not subject to CEQA pursuant to CEQA  
Guidelines Section 15060(c) and 15061(b)(4);

(2) Projects with an environmental document subject to a Hearing Officer or Planning Commission action to adopt or certify; and

(3) Projects with an environmental document or an exemption determination subject to City Council approval.

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

(1) and (2) [No change in text.]

(3) A statement regarding the type of *environmental determination* ~~and~~;

(4) A brief statement to support the reasons for the *environmental determination*,<sup>7,2</sup> including citation to applicable State CEQA Guidelines or statutes; and

(5) The date the Notice of Right to Appeal Environmental Determination is posted and the time for filing an appeal in accordance with Section 112.0520(b).

(d) ~~The~~ A Notice of Right to Appeal Environmental Determination shall be posted on the date of the *environmental determination* as follows:

(1) ~~at~~ At the City of San Diego, Development Services Department ~~at~~ in a location easily accessible to the public; and

(2) On the City of San Diego's website.

(e) A Notice of Right to Appeal Environmental Determination shall be distributed via electronic mail (or by U.S. mail if electronic mail is unavailable) on the date of the *environmental determination* as follows:

- (1) To the Council Office for the Council District in which the proposed project is located;
  - (2) To the officially recognized community planning group, if any, that represents the area in which the proposed project is located;  
and
  - (3) To any person who has submitted a written request for notification of the proposed *development* to the City staff person named in the Notice of Future Decision.
- (f) A Notice of Right to Appeal Environmental Determination shall remain posted in accordance with Section 112.0310(d) shall remain posted for a period of 15 10 business days.

**§112.0511 No Development During Appeal Period**

*Development* authorized by a permit, map, or other matter may not occur before the *date of final action*, except that actions necessary to address an emergency can proceed to the minimum amount necessary to protect public health and safety.

**112.0520 Environmental Determination Appeals**

- (a) [No change in text.]
- (b) Time for Filing an Appeal

An application to appeal a ~~decision described in Section 112.0520(a)~~ an *environmental determination* shall be filed in the Office of the City Clerk as follows:

- (1) ~~within~~ Within 10 business days from the date of the posting of the Notice of Right to Appeal Environmental Determination; or

(2) Within 10 business days from the date of a decision by a Hearing Officer or the Planning Commission to adopt or certify an environmental document.

(c) [No change in text.]

(d) Power to Act on Appeal. After the conclusion of the public hearing, ~~The~~ City Council ~~shall consider~~ may take action ~~the appeal and shall,~~ by a majority vote as follows:

(1) By majority vote ~~D~~deny the appeal, approve the *environmental determination* and adopt the CEQA findings and statement of overriding considerations of the previous decision-maker, where appropriate; or

(2) By majority vote ~~G~~grant the appeal and set aside the *environmental determination*, in accordance with Section 112.0520(e).

(e) If the City Council grants the appeal under Section 112.0520(d)(2):

(1) [No change in text.]

(2) ~~The Development Services~~ Planning Director shall reconsider the *environmental determination* in accordance with Section 128.0103 and prepare a revised environmental document as appropriate, in consideration of any direction from the City Council.

(3) At a subsequent hearing, the City Council shall again consider the *environmental determination* and associated projects, and may take action ~~in accordance with Section 112.0520(e)(3)(A), (B), or (C) to~~ as follows:

(A) through (C) [No change in text.]

**§113.0103 Definitions**

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

*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~~ exempt from the California Environmental Quality Act (CEQA), under State CEQA Guidelines ~~s~~Section 15061(b)(2) or (3).

*Environmentally sensitive lands through Yard* [No change in text.]

**§128.0103 Powers and Duties of the ~~Development Services~~ Planning Director in Implementing Environmental Quality Procedures**

The ~~Development Services~~ Planning Director shall be responsible for implementing this article.

- (a) The ~~Development Services~~ Planning Director shall have the following powers as required for all projects or activities as defined by CEQA, whether proposed by private *applicants*, the City, or other public agencies:
- (1) through (8) [No change in text.]
- (b) The ~~Development Services~~ Planning Director shall establish and maintain that degree of independence in the performance of these functions and duties as will assure the City Council, the City Manager, the Planning Commission, and the people of the City of San Diego that the review and analysis of the environmental consequences of projects, are in accordance with CEQA, are independent and wholly objective, and are not prepared for the purpose of either supporting or detracting from any project, plan, or

position, whether advanced by the City, any other governmental agency,  
or private interest.

**§128.0104 Authority to Require Mitigation and Monitoring Programs**

When the conditions of a project approval require mitigation and monitoring, the City Manager and the ~~Development Services~~ Planning Director are responsible for promulgating mitigation and monitoring standards and guidelines for public and private projects consistent with the requirements of CEQA Section 21081.6. The ~~Development Services~~ Planning Director or City Manager may require appropriate surety instruments or bonds from private project *applicants* to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its costs to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

**§128.0202 Incorporation of CEQA by Reference; Actions That Require Compliance with CEQA**

- (a) Except as otherwise provided, CEQA and this article shall apply to the following discretionary activities located within the City of San Diego:
- ~~(a)~~(1) Activities directly undertaken by the City such as construction of *streets*, bridges, or other public *structures* or adoption of plans and zoning regulations;
  - ~~(b)~~(2) Activities financed in whole or in part by the City of San Diego;  
and
  - ~~(c)~~(3) Private activities that require approval from the City of San Diego such as adoption and amendment of *land use plans* and the *Local Coastal Program*, zoning and rezoning actions, *development*

agreements, *subdivision* activities, *development* and use permits, and variances.

- (b) An activity is not subject to CEQA if the activity does not involve the exercise of discretionary powers by a public agency; if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or if the activity is not a project as defined in State CEQA Guidelines Section 15378.

**§128.0203 Actions Exempt from CEQA**

An action or activity may be exempt from CEQA if it meets any of the following conditions:

- (a) ~~The activity is not a project as defined in the State CEQA Guidelines, Section 15378;~~
- (b) The project has been granted an exemption by statute (e.g., State CEQA Guidelines, Article 18, commencing with Section 15260) or by categorical exemption (State CEQA Guidelines, Article 12.5, commencing with Section 15191, and Article 19, commencing with Section 15300).
- (1) ~~CEQA exempts ministerial actions by statute. City approval decided in accordance with Process One is a ministerial action, including issuance of a *construction permit*. The following are *construction permits*: Building Permits, Plumbing Permits, Electrical Permits, Mechanical Permits, Grading Permits, Public Right-Of-Way Permits, Demolition Permits, Removal and Relocation Permits, and Sign Permits.~~

~~(2) — Activities within the City of San Diego that typically are exempt by statute or categorical exemption from CEQA are provided in the CEQA Administrative Guidelines of the Land Development Manual.~~

~~(e)(b)~~ The activity is covered by the general rule in the State CEQA Guidelines, Section 15061(b)(3), that states that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

**§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~~ Planning 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~~ Planning Director that a project is exempt from CEQA, as described in State CEQA Guidelines section 15061(b)(2) or (3), for which a Notice of Right to Appeal Environmental Determination must be posted pursuant to Section 112.0310(a), shall be subject to the appeal procedures in ~~Section 112.0510~~ 112.0520.

**§128.0208 Determination of Type of Environmental Document**

- (a) After an application for a discretionary permit or action is *deemed complete*, the Planning ~~and Development Review~~ Director shall take one of the following actions:
  - (1) through (3) [No change in text.]
- (b) [No change in text.]
- (c) The Planning ~~and Development Review~~ Director shall notify the *applicant* of the scope of the required environmental document and the additional information required, if any, in accordance with ~~the~~ State CEQA Guidelines; Section 15060.

**§128.0209 When a Previous Environmental Document May Be Used**

- (a) A previously certified EIR or Negative Declaration, including any supplement or addendum, may be used when changes in the project or circumstances have occurred, unless the Planning ~~and Development Review~~ Director determines that one or more of the situations identified in ~~the~~ State CEQA Guidelines; Section 15162; exist.
- (b) If a previously certified document is to be used, the Planning ~~and Development Review~~ Director shall provide the decision-making body with an explanatory cover letter stating that none of the conditions specified in ~~the~~ State CEQA Guidelines; Section 15162; exists.
- (c) [No change in text.]

**§128.0210 When a National Environmental Policy Act (NEPA) Document or Joint Document May Be Used**

- (a) NEPA applies to projects that are carried out, financed, or approved in whole or in part by federal agencies. If a project will require compliance with both CEQA and NEPA, the ~~Planning and Development Review~~ Director should use the NEPA document rather than preparing a separate CEQA document if the following two conditions exist:
- (1) [No change in text.]
  - (2) The NEPA document complies with the provisions of ~~the State~~ CEQA and the CEQA Guidelines. Because NEPA does not require separate discussion of mitigation measures or growth including impacts, these points of analysis would need to be added, supplemented, or identified before an Environmental Impact Statement (EIS) could be used as an EIR.
- (b) If the NEPA document would not be prepared by the federal agency by the time the City of San Diego would need to consider an environmental document consistent with this article, the ~~Planning and Development Review~~ Director should try to prepare a ~~combined NEPA-11-CEQA~~ joint NEPA/CEQA document. Preparation of this joint environmental document shall involve the federal agency to avoid the need for the federal agency to prepare a separate document for the same project.

**§128.0303 Who May Prepare an Environmental Document for the City**

- (a) The ~~Planning and Development Review~~ Director shall be responsible for preparation of environmental documents required by this article. The

Planning and Development Review Director is authorized to retain consultants to implement the provisions of this section and expend funds collected in accordance with Section 128.0206 for this purpose.

(b) The Planning and Development Review Director may choose one or more of the following alternatives for preparing a draft environmental document:

(1) through (2) [No change in text.]

(3) Execute a three-party agreement or memorandum of understanding with the *applicant* and an independent environmental consultant to govern the preparation of a draft environmental document by the independent environmental consultant based on a scope of work prepared by the Planning and Development Review Director; or

(4) Allow a draft environmental document to be prepared by an environmental consultant retained by the *applicant* based on a scope of work prepared by the Planning and Development Review Director.

(c) An environmental document prepared in accordance with this section shall be subject to the requirements for independent review and analysis set forth in Section 128.0103(b) and shall not be released for public review until the Planning and Development Review Director determines that the document is adequate.

- (d) The Planning ~~and Development Review~~ Director shall review and consider for inclusion in an environmental document any information regarding the project submitted by any person.

**§128.0304 Notice of Preparation of an Environmental Impact Report**

After the Planning ~~and Development Review~~ Director has determined that an EIR is required for a project, the Planning ~~and Development Review~~ Director shall send to each Responsible Agency, each Federal Agency involved in approving or funding the project, and each Trustee Agency responsible for natural resources affected by the project a Notice of Preparation stating that an EIR will be prepared. The contents, distribution, and procedures for the Notice of Preparation shall be consistent with the State CEQA Guidelines, Section 15082.

**§128.0307 Requests for Additional Public Review Time on the Draft Environmental Document**

The Planning ~~and Development Review~~ Director may approve a request from the affected officially recognized community planning group or *interested party* if there is no officially recognized community planning group for an additional review period not to exceed 14 calendar days. The additional time for review shall not extend the time for action beyond that required under law. The failure to allow additional time for review shall not invalidate any discretionary approval based upon the document for which the additional review time was requested.

**§128.0308 Responses to Comments on the Draft Environmental Documents**

The Planning ~~and Development Review~~ Director shall prepare, or supervise preparation of, written responses to letters of comment received during the public

review period for all environmental documents. Both the letters of comment and the responses shall be attached to the final environmental document.

**§128.0309 Recirculation of a Draft Environmental Document**

When significant new information is added to an environmental document after notice is given of the availability of the document for public review but before it is certified, the ~~Planning and Development Review~~ Director shall recirculate the draft environmental document consistent with the State CEQA Guidelines, Section 15088.5.

**§128.0310 Final Environmental Document Preparation, Distribution and Public Review**

A final environmental document consisting of all information required by CEQA and the State CEQA Guidelines and any other information the ~~Planning and Development Review~~ Director may add shall be prepared and distributed for review.

(a) Final Environmental Document Distribution

At least 14 calendar days before the first public hearing or discretionary action on the project, the ~~Development Services~~ Planning Director shall make all final environmental documents, including EIR Candidate Findings and Statements of Overriding Consideration if applicable, available to the public and decision makers and shall also mail copies of final environmental documents to the officially recognized community planning groups and members of the public who commented on the draft document. Failure to provide this 14-calendar day review period shall not be treated as a procedural defect and shall not preclude discretionary

action on the project when necessary to avoid conflict with time limits imposed by law. The ~~Development Services~~ Planning Director shall provide a final EIR to any public agency that commented on the draft consistent with CEQA.

- (b) Comment on Final Environmental Document

[No change in text.]

**§128.0311 Certification of an Environmental Document**

- (a) [No change in text.]

- (b) If the environmental document has been previously certified because the decision is being heard on appeal, because the City is acting as a Responsible Agency, or because of reuse of a previously certified document, subsequent discretionary approvals on the same project shall not require recertification of any previously certified environmental document prepared in connection with the project. In this case, the decision maker need not certify as required by Section 128.0311(a)(1) but shall state the information contained in Section 128.0311(a)(2) for the record. Nothing in this section shall be deemed to preclude the Planning ~~and Development Review~~ Director from reviewing the previously certified document to determine whether any supplemental information or document may be necessary.

- (c) [No change in text.]

**§128.0312 Adoption of Candidate Findings and Statement of Overriding Considerations by the Decision Maker**

Before approving a project for which the final EIR identifies one or more significant effects, the decision maker shall adopt the required *findings* in accordance with the State CEQA Guidelines, Section 15091. When the decision to approve the project allows the occurrence of significant effects that are identified in the final EIR but are not at least substantially mitigated, the decision maker shall make a statement of overriding considerations stating the specific reasons to support the decision based on the final EIR and other information in the record in accordance with the State CEQA Guidelines, Section 15093.

(a) Review of Further Information

If before making a decision, the decision maker determines that substantive additional information has been presented at the public hearing requiring further review, the decision maker may refer the information to the ~~Planning and Development Review~~ Planning Director for analysis, provided the referral does not adversely affect any time limits imposed by law.

(b) Preparation of Adopted *Findings*

[No change in text.]

**§128.0313 Notice of Determination**

The ~~Development Services~~ Planning Director, or City Clerk as appropriate for Process Five decisions, shall file a Notice of Determination within 5 working days of the *date of final action* for each project approval for which an environmental document was considered. The contents of the Notice of Determination and

procedures for its filing shall be consistent with the State CEQA Guidelines,  
Section 15075 and 15094.

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