

DATE ISSUED: March 10, 2004

REPORT NO. 04-042

ATTENTION: Honorable Mayor and City Council
Docket of March 15, 2004

SUBJECT: Environmental Appeals Regulations

SUMMARY

Issues - Should the Mayor and City Council approve an ordinance amending Chapter 11, Article 2, Division 3 and Division 5 and Chapter 11, Article 3, Division 1 of the Land Development Code to clarify how the City will administer the change to Public Resource Code Section 21151 (c) regarding appeals of environmental determinations?

Managers Recommendation – Approve the proposed ordinance (Attachment No. 1).

Environmental Review – This activity is not a project and is exempt per Section 15060(c)(3) of the State of California Environmental Quality Act Guidelines.

Fiscal Impact - The staffing costs and fiscal impact to prepare the proposed regulations are part of the Land Development Code Implementation work program.

Code Enforcement Impact - The proposed regulations will have no impact on code enforcement.

Housing Impact Statement - This code change, necessitated by change to State Law, could result in increased costs for those housing projects that have the environmental determination appealed to City Council. Additional costs could result from processing costs associated with the appeal and from delays in obtaining final approval and, thus, could delay construction of the project.

BACKGROUND

A change to the California Public Resources Code regarding the California Environmental Quality Act has necessitated a change to the City's Land Development Code. Public Resource Code Section 21151 (c) was amended as follows:

- (c) *If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.*

This change became effective January 1, 2003 and provides for an appeal to City Council of a lower decision making body's decision on an environmental document or on the determination a project is exempt. This appeal would be applicable to exemption determinations and to Process 2 decisions (a staff level decision that can now only be appealed to Planning Commission) and Process 3 decisions (a Hearing Officer decision that can now only be appealed to Planning Commission).

DISCUSSION

City Attorney and Development Services staff have drafted the attached ordinance (Attachment No. 1) to clarify the procedures and rules that the City will apply in implementing this change to date law.

Under the current Land Development Code, procedures are established for appeals including who may file an appeal, the required content of an appeal, the types of notice that must be given for an appeal, the type of information that must be included in the appeal notice, and the procedures and decision process for the appeal hearings. These procedures are standardized for all decision making processes.

The proposed revision to the Land Development Code for this new appeal utilizes most of these same standards. It allows the same parties to appeal an environmental determination as with any other discretionary action. The same time frame for allowing an appeal is the same as all other appeals. Most of the appeal criteria and content of the appeal notice are also the same. In addition, the same property owners and tenants get noticed of the appeal.

In addition to these changes, the new regulations establish what issues are subject to appeal and how the various decisions that City Council can make will affect the subject project associated with the environmental document or determination. For projects where the appeal of the environmental determination is denied, the decision of the lower decision making body is upheld and becomes effectively immediately. For projects where the appeal of the determination is upheld, the Council will remand the environmental determination back to the lower decision making body for reconsideration based on the issues determined by the City Council.

CONCLUSION

Staff believe the proposed regulations implement the revision to State law, maintain consistency with other appeal processes within the City, and make it clear to project applicants and the public how the various actions that City Council can take will affect the project in the future.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved by: P. Lamont Ewell
Assistant City Manager

CHRISTIANSEN/KGB

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: 1. Environmental Determinations Ordinance

(O-2004-40)

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

Attachment No. 1

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 will 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.
- (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, an *interested*

Attachment No. 1

person may appeal an *environmental determination* to the City Council, provided that:

- (1) The *environmental determination* is not associated with a project subject to a Process Four or Five decision.
 - (2) If the *environmental determination* is associated with a project decision, no appeal under this chapter shall be filed until the project decision has been made and all available administrative appeals of the project decision have been exhausted.
- (b) 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 decision that the project is not subject to CEQA, as provided in Public Resources Code section 21080.
- (c) 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.
- (d) The appeal hearing before the City Council shall be held, or the

Attachment No. 1

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.

- (e) The appeal hearing before City Council will follow these procedures:
 - (1) An appeal of an *environmental determination* that the project is not subject to CEQA shall be limited to whether the project is any of the activities described in Public Resources Code section 21080(b).
 - (2) An appeal of an *environmental determination* other than to adopt a negative declaration or mitigated negative declaration shall be limited to whether there is substantial evidence, in light of the whole record, that the project would not have a significant effect on the environment.
 - (3) Following the appeal hearing, City Council may decide to:
 - (A) Deny the appeal and uphold the *environmental determination*.
 - (B) Grant the appeal, set aside the *environmental determination*, and remand the matter to the

Attachment No. 1

previous decision maker to reconsider the *environmental determination* with any direction or instruction the City Council deems appropriate.

- (f) If the City Council upholds the *environmental determination*, the lower decision maker's project decision shall become effective immediately.
- (g) 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, where appropriate, in view of the action and any direction or instruction from the City Council.
 - (1) If the *environmental determination* was a decision that the activity was not subject to the 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

Attachment No. 1

By _____
Mary Jo Lanzafame
Deputy City Attorney

MJL:cdk
07/03/03
Or. Dept: Plan.
O-2004-40
Form=o&t.frm