

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE DELETING SECTION 21.07.080 OF CHAPTER 21.07 OF TITLE 21 OF THE SAN JOSE MUNICIPAL CODE RELATING TO REQUEST FOR RECONSIDERATION OF CERTIFICATION OF ENVIRONMENTAL IMPACT REPORTS

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 21.07.080 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby deleted in its entirety as follows:

~~**21.07.080** Request for reconsideration of city council's certification as initial decision-making body.~~

~~A. Any interested person, prior to seeking judicial review on any of the grounds stated in Section 21.07.080.C of an EIR certification decision made by the city council under Sections 21.07.020 and 21.07.030, shall file a petition for reconsideration with the city clerk not later than three business days following the date of the decision.~~

~~B. Failure to file a petition for reconsideration constitutes a waiver of the right to request reconsideration and the city council's decision shall be final for all purposes. Upon timely receipt of a petition for reconsideration, the city clerk shall schedule a reconsideration hearing to be commenced by the city council no later than sixty days after the filing of the petition. At least ten days prior to the reconsideration hearing, written notice of the hearing shall be placed in the mail to the person filing the request for reconsideration and the applicant. At the conclusion of the hearing for reconsideration, the city council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all hearings conducted by the city council concerning the matter.~~

~~C. A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration, precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.~~

~~The grounds for reconsideration are limited to the following:~~

- ~~1. An offer of relevant evidence which was improperly excluded at the prior city council certification hearing.~~
- ~~2. Proof of facts which demonstrate that the city council proceeded without, or in excess, of its jurisdiction.~~
- ~~3. Proof of facts which demonstrate that the city council failed to provide a fair hearing.~~

- ~~4. Proof of facts which demonstrate that the city council abused its discretion by:~~
- ~~a. Not proceeding in a manner required by law; or~~
 - ~~b. Rendering a decision which was not supported by findings of fact; or~~
 - ~~c. Rendering a decision in which the findings of fact were not supported by the evidence.~~

~~D. A petition for reconsideration is subject to a reconsideration fee as prescribed by resolution of the city council. At the conclusion of the reconsideration hearing, the city council may, in its sole discretion, refund all, or a portion, of the reconsideration fee to the petitioner.~~

~~E. If a decision is subject to reconsideration, the initial decision shall not be final until the later of the fourth business day after the date of the initial decision or if a petition for reconsideration is timely filed, the request for reconsideration is withdrawn prior to the conclusion of the reconsideration hearing.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk