

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 21 OF THE SAN JOSE MUNICIPAL CODE (ENVIRONMENTAL CLEARANCE) TO AMEND SECTION 21.04.140 TO REMOVE THE PHYSICAL MAILING REQUIREMENTS FOR STAFF REPORTS FOR APPEALED PROJECTS FROM CHAPTER 21.04**

**WHEREAS**, the California Environmental Quality Act (“CEQA”) requires local agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project; and

**WHEREAS**, in March 2022, the City of San José’s (“City”) Auditor’s Office published a report focusing on the City’s environmental review process. The objective of this audit was to evaluate the City’s review process under CEQA. The audit report presented findings and included 12 recommendations to reduce environmental review timelines for private development projects; and

**WHEREAS**, in the Mayor’s March 2024 Budget Message, the Mayor stated the need to streamline the CEQA process for development projects Downtown and directed the City Manager to pursue the best strategy to eliminate or reduce the need for technical reports and analyze the staff review process for efficiencies with the goal of reducing review times; and

**WHEREAS**, on August 14, 2024, the Rules and Open Government Committee directed staff to present additional information on CEQA streamlining to the Community and Economic Development Committee, including recommendations to further streamline the CEQA process for projects; and

**WHEREAS**, in response to the Mayor’s March 2024 Budget Message and direction from the August 14, 2024 Rules and Open Government Committee, and building upon the 2022 Audit Recommendations and feedback from internal reviewing parties and external stakeholders, Planning staff have revised the requirement to provide appeal hearing staff reports electronically instead of mailing physical copies to reduce staff time and cost to prepare and mail reports, resulting in a more efficient process toward appeal hearings;

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

SECTION 1. The foregoing recitals are incorporated herein by reference.

SECTION 2. Chapter 21.04 of Title 21 of the San José Municipal Code is hereby amended as follows in strikeout/underline format:

## **Chapter 21.04 GENERAL PROVISIONS AND PROCEDURES**

### **Part 1 GENERAL PROVISIONS**

#### **21.04.010 Adoption by reference.**

- A. This title incorporates by reference and adopts the objectives, criteria and procedures for environmental review contained in the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. and the CEQA Guidelines.
- B. This title merely implements the provisions of CEQA and the CEQA Guidelines. To the extent there is any conflict between this title and CEQA or the CEQA Guidelines, the provisions of CEQA and the CEQA Guidelines shall prevail.

(Ord. 24551.)

#### **21.04.020 Construction.**

For purposes of interpreting and implementing this title, CEQA or the CEQA Guidelines, the city shall constitute a "local agency" and a "public agency" as these terms are used in the CEQA Guidelines, whenever these terms are reasonably applicable to the city in the given circumstances.

(Ord. 24551.)

#### **21.04.030 Disclosure.**

- A. In order to achieve maximum objectivity in the environmental clearance process, all applications for environmental clearance and proposed draft environmental impact reports (EIRs):
  - 1. Shall identify the person or persons who prepared the clearance or proposed draft EIR; and
  - 2. Shall disclose the nature, but not the amount, of any economic interest in the project that will or might be derived from the development or the operation of the project.
- B. To enable compliance with the disclosure obligations under this section, the city shall provide appropriate statement forms.

(Ord. 24551.)

### **Part 2 PROCEDURES**

**21.04.100 Director.**

"Director" as used in this title and not otherwise identified shall refer to the director of planning.

(Ord. 24551.)

**21.04.110 Director's responsibility.**

- A. All projects subject to CEQA shall be submitted for environmental clearance to the director of planning.
- B. The director of planning is responsible for environmental clearance under this title and CEQA.

(Ord. 24551.)

**21.04.120 Fees.**

The fees charged to defray the city's cost and expense of conducting the proceedings under this title shall be as set forth in the schedule of fees established by resolution of the city council.

(Ord. 24551.)

**21.04.130 Public notice.**

The CEQA procedures for providing notice shall not preclude the city from providing (1) additional public notice if the city desires, or (2) additional public notice at the same time and in the same manner as public notice required by other laws governing the project.

(Ord. 24551.)

**21.04.140 Appeals - General.**

- A. Any determination regarding the appropriate environmental clearance for a project made by the director, planning commission or other non-elected decision-making body may be appealed to the city council as set forth and described in this section.
- B. Appeals of certifications of environmental impact reports shall follow and adhere to the procedures set forth in Chapter 21.07.
- C. Appeals of determinations on a negative declaration or a mitigated negative declaration shall follow and adhere to the provisions of Chapter 21.06.
- D. Appeals to city council of environmental determinations that a project is not subject to CEQA, is exempt from CEQA under the provisions of CEQA or this title, or should be approved in reliance on a previously certified environmental impact report or adopted negative declaration shall follow and adhere to the provisions of this section.
- E. Appeals of an environmental clearance determination allowed under this section to the city council shall proceed in accordance with and adhere to the following provisions and conditions:
  - 1. A person wishing to file a written appeal of a determination on environmental clearance with the director under this section shall file such appeal no later than 5:00 p.m. on the third business day following the earliest to occur of the following events:
    - a. An action is taken on the environmental determination if that determination is made through or as a part of a public hearing; or
    - b. An action is taken after a public hearing on the project by a decision-making body making a decision on the project, which decision relied upon the determination on environmental clearance at issue; or
    - c. Commencement of the project if the project is undertaken without any public hearing.
  - 2. The appeal shall be filed on a form prescribed by the director. The appeal shall state with specificity the reasons that the environmental clearance determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA or this title.
  - 3. No appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.
  - 4. The city council shall conduct appeal hearings under this chapter when the city is the lead agency.

5. Upon receipt of a timely appeal under this section, the director shall schedule a hearing and transmit a hearing notice for the appeal hearing before the city council utilizing the processes and timelines set forth in Section 21.07.050.
  6. The Director of Planning, Building, and Code Enforcement or Director's designee ~~maker of the environmental decision being appealed~~ shall prepare a report and recommendation on the appeal to the city council ~~and such report shall be provided to the appellant, applicant, and adjacent property owner(s) in the same manner provided for hearing notices pursuant to provisions of Section 21.07.050.~~
  7. The appeal hearing before the city council under this section shall be a hearing de novo.
  8. The city council may elect to hear an appeal of the environmental clearance determination with a public hearing on a related underlying project.
  9. Upon the conclusion of the appeal hearing under this section, the city council may find that the environmental clearance determination conforms to the requirements of CEQA and this title or that the environmental clearance determination does not conform to the requirements of CEQA or this title.
  10. If the city council finds that the environmental clearance determination comports with CEQA and this title, it shall uphold the environmental clearance determination and may then immediately take action upon the related project. If the city council finds that the environmental clearance determination does not comport with CEQA and this title, it may require the director to re-examine and process such environmental clearance determination and shall not take any approval actions on the related project.
  11. All decisions of the city council under this section shall be final.
- (Ords. 27686, 27933, 29389, 29390, 29484.)

PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, MMC  
City Clerk