

ORDINANCE NO. 9548 (N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE,
THE ZONING ORDINANCE AND THE ADMINISTRATIVE CODE,
RELATING TO APPEALS OF ENVIRONMENTAL DETERMINATIONS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. It is the intent of the Board of Supervisors in enacting this ordinance, to implement Section 2 of Chapter 1121 of the Statutes of 2002, by providing an appeal to the Board from specified environmental determinations made by San Diego County decision makers.

Section 2. Chapter 4 is hereby added to Division 6 of Title 8 of the San Diego County Code, to read as follows:

CHAPTER 4. APPEALS OF ENVIRONMENTAL DETERMINATIONS

86.401. PURPOSE.

It is the purpose of this Chapter to implement the provisions of paragraph (c) of Section 21151 of the Public Resources Code, to provide for appeals to the Board of Supervisors from certain environmental determinations.

86.402. DEFINITIONS.

As used in this chapter, the following terms shall have the following meanings:

- (a) "Environmental determination" shall mean a decision by any nonelected County decision maker, to certify an environmental impact report, approve a negative declaration or mitigated negative declaration, or determine that a project is not subject to the California Environmental Quality Act (Pub.Res. Code Sec. 21000 et seq.; "CEQA").
- (b) "Lower decision maker" shall mean the nonelected County decision maker whose environmental determination is appealed under this Chapter.

- (c) “Project decision” shall mean a decision by a lower decision maker to approve, conditionally approve or deny an application or proposal for which an environmental determination is a prerequisite under CEQA.

86.403. AUTHORITY TO FILE APPEAL.

Notwithstanding other provisions of this Code, any person may appeal an environmental determination to the Board of Supervisors, provided that:

- (a) No other appeal of the environmental determination is provided under the applicable law or ordinance to a County decision maker subordinate to the Board of Supervisors; and
- (b) 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.

86.404. MANNER AND TIME OF FILING APPEAL.

The appeal of the environmental determination shall be filed as follows:

- (a) The appeal shall be in writing and shall be filed in the office of the lower decision maker;
- (b) The appeal shall clearly specify the grounds upon which the appellant claims the lower decision maker's environmental determination was made in error; all grounds must be specified in the appeal; no additional grounds not stated in the appeal will be considered;
- (c) All documentation or other evidence in support of the appeal must be filed with the appeal; no further documentation or evidence will be received or analyzed by staff prior to the Board of Supervisors consideration of the appeal;
- (d) The appeal shall be accompanied by an appeal fee in the amount specified in Section 362, (Schedule A, “APPEALS – To Board of Supervisors”) of the Administrative Code; and
- (e) The appeal shall be filed within 10 days after the date of the environmental determination or the associated project decision, whichever is later.

86.405. EFFECT OF FILING APPEAL.

The filing of the appeal shall stay the proceedings and effective date of the lower decision maker's project decision pending resolution of the appeal. The lower decision maker, or its secretary or clerk, shall docket the appeal with the Board of Supervisors for consideration at the next available land use meeting.

86.406. BOARD OF SUPERVISORS ACTION.

- (a) The Board of Supervisors shall consider the appeal and shall:
 - (1) Deny the appeal and uphold the environmental determination;
 - (2) Grant the appeal and make a superseding environmental determination; or
 - (3) Grant the appeal and remand the environmental determination to the lower decision maker for reconsideration, with any direction or instruction the Board deems appropriate.
- (b) The Board may, but is not required to, conduct a noticed public hearing on the appeal.
- (c) If the Board of Supervisors upholds the environmental determination, the lower decision maker's project decision shall become effective immediately.
- (d) If the Board of Supervisors grants the appeal, the lower decision maker's project decision shall be deemed vacated, and:
 - (1) If the Board of Supervisors has made a superseding environmental determination, the lower decision maker shall reconsider its project decision in view of the action of the Board of Supervisors; or
 - (2) If the Board of Supervisors has remanded the environmental determination to the lower decision maker, the lower decision maker shall reconsider its environmental determination and its project decision in view of the action and any direction or instruction from the Board of Supervisors.

Section 3. Section 7064 of the Zoning Ordinance, relating to procedures governing applications for Administrative Permits, is hereby amended to read as follows:

7064 APPEAL.

A decision pursuant to Sections 7060 or 7074 may be appealed as provided by the Administrative Appeal Procedure commencing at Section 7200, except that, unless an

appeal is otherwise provided for by law, the Director's decision pursuant to Section 7060 concerning an adult entertainment establishment shall be final and not appealable and shall be subject to prompt judicial review in a court of competent jurisdiction.

Section 4. Paragraph h of Section 7114 of the Zoning Ordinance, relating to procedures governing applications for Variances, is hereby amended to read as follows:

7114 APPEAL.

[a. through g.: no change]

h. Finality and Effective Date. Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, the decision of the authority having jurisdiction over an appeal shall be final, conclusive, and effective immediately.

[i.: no change]

Section 5. Paragraph h of Section 7116 of the Zoning Ordinance, relating to procedures governing applications for Site Plans, is hereby amended to read as follows:

7166 APPEAL.

[a. through g. : no change]

h. Effective Date. The decision of the Planning Commission shall be final and effective immediately except as follows:

1. The decision on a Site Plan filed as a requirement of a Specific Plan may be appealed to the Board of Supervisors in the same manner as a decision of the Planning Commission on a Major Use Permit is appealed.
2. When the Director's decision and the decision of the Planning Commission are not the same, a Site Plan filed as a requirement of a Specific Plan shall be forwarded to the Board of Supervisors for final action.
3. Where an appeal of an environmental determination is filed, the procedures specified in Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code shall be followed.

Section 6. Section 7206 of the Zoning Ordinance, relating to procedures governing Administrative Appeals, is hereby amended to read as follows:

7206 EFFECTIVE DATE.

Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, the decision of the Planning Commission on an Administrative Appeal shall be final and effective immediately.

Section 7. Paragraph j of Section 7366 of the Zoning Ordinance, relating to procedures governing applications for use permits, is hereby amended to read as follows:

7366 APPEAL.

[a. through h. : no change]

j. Finality and Effective Date. Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, the decision of the authority having jurisdiction over an appeal shall be final, conclusive, and effective immediately.

Section 8. Schedule A of Section 362 of the Administrative Code is hereby amended, by revising the “AUTHORITY” statement under “APPEALS (1) (Except for an Administrative Decision)”, to read as follows:

Refer to applicable sections of Zoning Ordinance and County Code for each case type.

Section 9. Paragraphs (e) and (f) of Section 375.13 of the Administrative Code, relating to the Rules of Conduct and Procedure For Planning and Zoning Process, is hereby amended to read as follows:

Sec. 375.13. DECISION.

[(a) through (d) : no change]

(e) Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, no application for rehearing or reconsideration of matters involving

major and minor subdivision map approvals or denials, special use permits, variances and other adjudicatory proceedings will be entertained by a decision – making body.

(f) Subject to the provisions of Chapter 4 (commencing with Section 86.401) of Division 6 of Title 8 of the San Diego County Code, relating to appeals of environmental determinations, an application for rehearing or reconsideration of amendments to The Zoning Ordinance, including but not limited to reclassification of land, general plan adoptions and amendments, and specific plan adoptions and amendments, will be entertained by a decision - making body only in those instances involving intentional or negligent misrepresentation of facts at the original hearing.

PASSED, APPROVED AND ADOPTED this 9th day of April 2003