

**ORDINANCE NO. 27686**

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING CHAPTER 21.04 OF TITLE 21 OF THE SAN  
JOSE MUNICIPAL CODE TO ADD A NEW SECTION AND  
AMENDING SECTION 21.06.030 OF CHAPTER 21.06 OF  
TITLE 21, ALL RELATED TO PROVIDING FOR AN  
ADDITIONAL APPEAL TO THE CITY COUNCIL OF  
CERTAIN ENVIRONMENTAL CLEARANCE  
DETERMINATIONS AND SETTING FORTH THE FACTS  
CONSTITUTING SUCH URGENCY**

**WHEREAS**, this ordinance sets forth a process only and does not involve any change to or impact upon the physical environment such that this ordinance does not constitute a project under the provisions of the California Environmental Quality Act of 1970, as amended, guidelines implemented pursuant to CEQA, nor Title 21 of the San José Municipal Code (collectively, "CEQA").

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

**SECTION 1.** Part 2 of Chapter 21.04 of Title 21 of the San José Municipal Code is hereby amended by adding a new section to be numbered and entitled and to read in its entirety as follows:

**21.04.140 Appeals- General**

- A. In addition to the procedures and appellate processes set forth in this Title, any determination regarding the appropriate environmental clearance for a project made by the Director or the Planning Commission may be appealed to the City Council or the Board of Directors of the Redevelopment Agency 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 first follow and adhere to the provisions of Chapter 21.06. That person may then file with the Director a written appeal of the Planning Commission's decision under Section 21.06.030 to the City Council or the Board of Directors of the Redevelopment Agency pursuant to the provisions of this Section.
- D. Appeals to City Council or Board of Directors of the Redevelopment Agency of environmental determinations that a project is not subject to CEQA or is exempt from CEQA under the provisions of CEQA or this Title 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 or Board of Directors of the Redevelopment Agency 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 (3<sup>rd</sup>) business day following the earliest to occur of the following events:
    - a. An initial action is taken on the environmental determination if that determination is made through or as a part of a public hearing; or
    - b. An initial action is taken after a public hearing on the project by an advisory-body making a recommendation on the project or a decision-making body making a decision on the project, whichever

first occurs, which recommendation or 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 Section when the City is the lead agency.
5. The Board of Directors of the Redevelopment Agency shall conduct appeal hearings under this Section when the Redevelopment Agency is the lead agency.
6. 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 or the Board of Directors of the Redevelopment Agency, as appropriate, utilizing the processes and timelines set forth in Section 21.07.050.
7. The appeal hearing before the City Council or Board of Directors of the Redevelopment Agency under this Section shall be a hearing *de novo*.

8. The City Council or Board of Directors of the Redevelopment Agency 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 or Board of Directors of the Redevelopment Agency, as appropriate, 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 or Board of Directors of the Redevelopment Agency, as appropriate, 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 or Board of Directors of the Redevelopment Agency, as appropriate, finds that environmental clearance determination does not comport with CEQA and this Title, it shall 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 or the Board of Directors of the Redevelopment Agency under this Section shall be final.

**SECTION 2.** Section 21.06.030 of Chapter 21.06 of Title 21 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**21.06.030 Protest Hearing Procedure**

- A. The Planning Commission shall hold a public hearing on a protest to a negative declaration to consider all relevant information and materials concerning whether the project may have a significant effect on the environment.
  
- B. The action of the Planning Commission in considering the protest is limited to environmental issues.
  - 1. If the Planning Commission finds that the project may have a significant effect on the environment, the Commission shall require the preparation of an EIR in accordance with this Title prior to any consideration of whether the project should be approved. In such event, the Director shall thereafter refund the filing fee to the protestant.
  
  - 2. If the Planning Commission upholds the action of the Director, the negative declaration shall become final if no further appeal under Section 21.04.140 is timely filed on the matter.

**SECTION 3.** This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are: (1) there exists an essential need to clarify and expressly set forth an appeal process for environmental determinations made under CEQA to the City Council in an expedited and immediate manner that will not cause undue delays or burdens upon hundreds of pending projects in the City subject to CEQA so that development applications and processes can continue to be timely processed and considered, and (2) there is an immediate need to remove any confusion or ambiguity that exists about the ability of the City Council to consider issues pertaining to environmental clearance determinations under CEQA.

**SECTION 4.** This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain effective until the effective date of a superseding ordinance.

**ADOPTED** this 28<sup>th</sup> day of March, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,  
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;  
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk