

**Title 21**  
**ENVIRONMENTAL CLEARANCE\* 1**

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**\*Note:** Footnotes are numbered throughout the text and are located at the end of this title.

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Chapters:

- 21.04 General Provisions and Procedures
- 21.05 Categorical Exemptions
- 21.06 Negative Declarations
- 21.07 Environmental Impact Reports

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

Parts:

- 1 General Provisions
- 2 Procedures

**Part 1**  
**GENERAL PROVISIONS**

Sections:

- 21.04.010 Adoption by reference.
- 21.04.020 Construction.
- 21.04.030 Disclosure.

**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.

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B. To enable compliance with the disclosure obligations under this section, the city shall provide appropriate statement forms.

(Ord. 24551.)

**Part 2  
PROCEDURES**

Sections:

- 21.04.100 Director.
- 21.04.110 Director's responsibility.
- 21.04.120 Fees.
- 21.04.130 Public notice.
- 21.04.140 Appeals - General.

**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 or the planning commission may be appealed to the city

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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 follow and adhere to the provisions of Chapter 21.06.

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 (3rd) 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 chapter when the city is the lead agency.

5. The board of directors of the redevelopment agency shall conduct appeal hearings under this chapter 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 maker of the environmental decision being appealed shall prepare a report and recommendation on the appeal to the city council or board of directors of the redevelopment agency, as appropriate, and such report shall be provided to the

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appellant, applicant, and adjacent property owner(s) in the same manner provided for hearing notices pursuant to provisions of Section 21.07.050.

8. The appeal hearing before the city council or board of directors of the redevelopment agency under this section shall be a hearing de novo.

9. 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.

10. 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.

11. 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.

12. All decisions of the city council or the board of directors of the redevelopment agency under this section shall be final.

(Ords. 27686, 27933.)

**Chapter 21.05**  
**CATEGORICAL EXEMPTIONS**

Sections:

- 21.05.100 Existing facilities.
- 21.05.110 New construction or conversion of small structures.
- 21.05.120 Minor alterations to land, water or vegetation.
- 21.05.130 Enumeration of special activities.

**21.05.100 Existing facilities.**

The following specific activities are added to those activities listed in Section 15301 of the CEQA Guidelines:

- A. The restriping of streets or highways to relieve traffic congestion;
- B. Issuance of sewer lateral repair permits;
- C. Approval of construction, tow-away and no parking signs;
- D. Issuance of permits for curb painting (house numbers);
- E. Issuance of truck unloading permit;
- F. Approval of parking meter hoods;
- G. Issuance of transportation wide load permit;
- H. Issuance of permit for direct line telephone (airport).

(Ord. 24551.)

**21.05.110 New construction or conversion of small structures.**

The following specific activities are added to those activities listed in Section 15303 of the CEQA Guidelines:

- A. Issuance of sewer lateral permits;
- B. Issuance of house moving permits pursuant to Chapter 17.36 of Title 17 of this Code.

(Ord. 24551.)

**21.05.120 Minor alterations to land, water or vegetation.**

The following specific activities are added to those activities listed in Section 15304 of the CEQA Guidelines:

- A. The installation, maintenance, repair, restoration, reconditioning, relocation, replacement, removal or demolition of pipeline which is less than one mile in length and within a public right-of-way. "Pipeline" includes only subsurface facilities.

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- B. Issuance of temporary permits for carnivals, amusement rides and petting zoos;
- C. Issuance of temporary permits for tract sales offices;
- D. Issuance of temporary permits for temporary storage or construction yards;
- E. Weed abatement programs.

(Ord. 24551.)

### **21.05.130 Enumeration of special activities.**

The enumeration of certain projects and activities in this title as special activities which are categorically exempt shall not be deemed to be the only activities which may be entitled to such exemption. Where special activities not enumerated herein are found to be adequately described within the general descriptions of the various classes of categorically exempt activities specified in this title, such other special activities may also be found to be categorically exempt.

(Ord. 24551.)

**Chapter 21.06  
NEGATIVE DECLARATIONS**

Sections:

- 21.06.010 Consideration and approval of a negative declaration.
- 21.06.020 Appeals of adoption of a negative declaration or mitigated negative declaration.
- 21.06.030 Appeal hearing procedure.

**21.06.010 Consideration and approval of a negative declaration.**

- A. The director shall cause the preparation and circulation of each negative declaration or mitigated negative declaration in a manner that comports with the provisions of CEQA and this chapter.
- B. The director shall provide a negative declaration or mitigated negative declaration to the advisory body making a recommendation to the decision-making body on a project and to the decision-making body for a project, together with all comments received thereon and the director's report on the negative declaration or mitigated negative declaration setting for the director's responses to comments received on the negative declaration or mitigated negative declaration.
- C. An advisory body to the decision-making body on a project shall consider the draft negative declaration or mitigated negative declaration, together with any comments received during the public review time period, and the director's report thereon prior to making its recommendation on a project.
- D. The decision-making body on a project shall consider the draft negative declaration or mitigated negative declaration, together with any comments received during the public review time period, the director's report thereon and any recommendation of an advisory body.
- E. The decision-making body shall adopt the negative declaration or mitigated negative declaration only if, on the basis of the initial study, any comments received, the director's report and the balance of the entire record before it, the decision-making body determines that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration otherwise conforms with CEQA. As alternatives to approving the negative declaration, the decision-making body may take any of the following actions:
  - 1. Require the preparation of an EIR by the project applicant.
  - 2. Require the draft negative declaration or mitigated negative declaration to be revised and undergo additional noticed public review.
  - 3. Withdraw the draft negative declaration, if the project is withdrawn by the applicant.
- F. If within the noticed public review period for the negative declaration or mitigated negative declaration, the director determines that a comment received raises an issue that would require recirculation of the negative declaration or mitigated negative declaration or would otherwise require substantial revision to the environmental analysis performed for a project, the director may:

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1. Require the preparation of an EIR by the project applicant and refund the filing fee to the protestant.
  2. Require the draft negative declaration to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.
  3. Withdraw the draft negative declaration, if the project is withdrawn by the applicant, and refund the filing fee to the protestant.
- G. The negative declaration or mitigated negative declaration shall not become final unless and until the decision-making body adopts the negative declaration or mitigated negative declaration and all appeals set forth in this chapter have been exhausted.

(Ords. 24551, 27933.)

### **21.06.020 Appeals of adoption of a negative declaration or mitigated negative declaration.**

- A. Any person may file a written appeal to the city council or the Board of Directors of the Redevelopment Agency of the City of San José, as appropriate, of a decision maker's decision to adopt a negative declaration or mitigated negative declaration in accordance with the provisions and conditions of this section.
- B. Any person shall file such an appeal on a form prescribed by the director no later than 5:00 p.m. on the third (3rd) business day following the earliest to occur of the following events:
1. The decision maker adopts a negative declaration or mitigated negative declaration during or as a part of a noticed public hearing; or
  2. An action is taken after a public hearing on a 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 adoption of the negative declaration at issue and the adoption of the negative declaration or mitigated negative declaration did not occur as a part of a public hearing; or
  3. Commencement of the project if the project is undertaken without any public hearing.
- C. The appeal shall be filed on a form prescribed by the director. The appeal shall state with specificity the reasons that the negative declaration or mitigated negative declaration should be found not to be complete or adequate or not to have been prepared in compliance with the requirements of CEQA or this title.
- D. No appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to an advisory body or a decision-making body at or prior to a public hearing whenever the negative declaration or mitigated negative declaration or underlying project is considered at a public hearing.
- E. The director shall schedule a hearing on the appeal before the city council or Board of Directors of the Redevelopment Agency of the City of San José, as appropriate, and shall give at least ten (10) days prior written notice thereof to the appellant, the applicant, and the owners of property contiguous to the project as shown on the latest equalized assessment roll adopted by the County of Santa Clara.

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F. No protest fee need be paid by a planning commissioner if three or more members of the planning commission, acting independently, file timely protests in compliance with this section.

(Ords. 24551, 27933.)

### **21.06.030 Appeal hearing procedure.**

A. The city council or board of directors of the redevelopment agency, as appropriate, shall hold a public hearing on an appeal of the adoption of a negative declaration or mitigated 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 city council or board of directors of the redevelopment agency in considering the appeal is limited to environmental issues.

1. If the city council or board of directors of the redevelopment agency finds that the project may have a significant effect on the environment, the council or board, as appropriate, 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 appellant.

2. If the city council or board of directors of the redevelopment agency, as appropriate, upholds the action to adopt the negative declaration or mitigated negative declaration, the negative declaration or mitigated negative declaration shall become final.

(Ords. 24551, 27686, 27933.)

**Chapter 21.07**  
**ENVIRONMENTAL IMPACT REPORTS**

Sections:

- 21.07.010 Final EIR.
- 21.07.020 Public hearing.
- 21.07.030 EIR certification.
- 21.07.040 Appeal of planning commission certification.
- 21.07.050 Hearing notice - Appeal.
- 21.07.060 Appeal hearing.
- 21.07.070 Revision to an EIR after an appeal.

**21.07.010 Final EIR.**

After the director of planning has prepared written responses to public comments on the draft environmental impact report (EIR), the director shall prepare the final EIR.

(Ords. 24551, 24643.)

**21.07.020 Public hearing.**

- A. The planning commission shall hold a hearing to certify the final EIR as complete and prepared in compliance with CEQA.
- B. The certification hearing may be heard concurrently with the hearing on the project.
- C. The director shall determine the time and place of the public hearing in accordance with the rules and regulations of the planning commission.
- D. Notice of the time and place of the certification hearing shall be published in a newspaper of general circulation in the area affected by the proposed project. The notice shall be published once not less than ten days before the hearing date.
- E. The notice shall briefly describe the nature and location of the project, and shall advise the public that written comments may be submitted to the planning commission, on or before the date set for hearing.

(Ords. 24551, 24643.)

**21.07.030 EIR certification.**

- A. Upon conclusion of its certification hearing, the planning commission may find that the final EIR is complete and conforms to the requirements of CEQA.
- B. If the planning commission certifies the final EIR, it may then immediately act or make recommendations on the project associated with the EIR.
- C. No action or recommendation by the planning commission shall be deemed final until the appeal period specified in Section 21.07.040 has expired.

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D. A decision by the commission not to certify a final EIR is not subject to an appeal.

E. If the planning commission does not certify the EIR, it shall take no action nor make any recommendation with regard to the project.

F. A final EIR which is revised at the direction of the planning commission shall be noticed in accordance with Section 21.07.020 and reheard in accordance with this section.

G. If the planning commission is unable to obtain the four votes necessary for any action on the final EIR for two consecutive meetings, the certification hearing shall be scheduled, by the director, before the city council or agency board in accordance with Section 21.07.020, with no further action by the planning commission.

(Ords. 24551, 24643, 25564, 25565.)

### **21.07.040 Appeal of planning commission certification.**

A. Any person may file a written appeal of the planning commission's certification of the final EIR with the director, no later than 5:00 p.m. on the third business day following the certification.

B. The appeal shall be filed on a form prescribed by the director. The appeal shall state with specificity the reasons that the final EIR should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.

C. No appeal shall be considered unless it is based on issues which were raised at the public hearing either orally or in writing or in writing prior to the public hearing.

D. The city council shall conduct appeal hearings when the city is the lead agency.

E. The board of directors of the redevelopment agency shall conduct appeal hearings when the redevelopment agency is the lead agency.

(Ords. 24551, 24643, 25564, 25565.)

### **21.07.050 Hearing notice - Appeal.**

A. Upon receipt of a timely appeal, the director shall schedule a hearing on the appeal of the commission's certification of the final EIR before the city council or the agency board.

B. At least ten days prior to the appeal hearing, written notice of the hearing shall be placed in the mail to the person filing the appeal, the applicant, and the owners of property contiguous to the project as shown on the latest equalized assessment roll adopted by the County of Santa Clara.

(Ords. 24551, 24643, 25564, 25565.)

**21.07.060 Appeal hearing.**

- A. The certification appeal hearing of the city council or agency board shall be de novo.
- B. The city council or agency board may hear the appeal of the certification concurrently with the hearing on the project.
- C. Upon conclusion of the certification appeal hearing, the city council or agency board may find that the final EIR is complete and conforms to the requirements of CEQA.
- D. If the city council or agency board finds the final EIR complete and in conformance with the requirements of CEQA, it shall uphold the commission's certification of the final EIR and it may then immediately act on the project associated with the EIR.
- E. If the city council or agency board finds that the final EIR is not complete or is not in compliance with the requirements of CEQA, the council or board shall require that the EIR be revised and shall not take any action on the project.
- F. All decisions of the council or board shall be final.

(Ords. 24551, 24643, 25564, 25565.)

**21.07.070 Revision to an EIR after an appeal.**

- A. If the city council or agency board requires a revision of the EIR pursuant to Section 21.07.060, the director shall revise the EIR and prepare a revised final EIR.
- B. A public hearing shall be held by the city council or agency board on the revised final EIR in accordance with Section 21.07.060 and noticed in accordance with Section 21.07.050.
- C. The revised final EIR shall be reviewed by the city council or agency board and may be certified if the council or board finds the revised final EIR is complete and in conformance with the requirements of CEQA in accordance with the provisions of this chapter.
- D. If any other law or title of this Code requires an advisory body to forward to the city council or agency board a recommendation on the project associated with the EIR, the revised final EIR shall be forwarded to such advisory body. Any recommendation based on a final EIR prior to its revision shall be disregarded. If a recommendation is not required by any other law or title of this Code, the council or board may, in its discretion, act on the project without any recommendation from any advisory body.

(Ords. 24551, 24643, 25564, 25565.)