

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA**

RESOLUTION NO. 11-XX - AT MEETING HELD NOVEMBER 7, 2011

**FAIRVIEW VIEW AND SUNLIGHT ORDINANCE
INITIAL STUDY AND NEGATIVE DECLARATION**

**Introduced by Commissioner
Seconded by Commissioner**

WHEREAS the Planning Commission did hold a public hearing on the proposed Fairview View and Sunlight Ordinance (“the Ordinance”) on 18 April, 2011; and

WHEREAS this Commission did find on that date (by unanimous vote with one excused) that the Ordinance was necessary and appropriate, and recommended this Ordinance to the Board of Supervisors for approval after an appropriate process as prescribed by law; and

WHEREAS part of the Commissions’ finding and recommendation to the Board of Supervisors was that the Ordinance is exempt from environmental analysis under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, which states that “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment” the project is not subject to CEQA analysis; and

WHEREAS concerns raised by members of the public required Planning Staff to prepare an Initial Study for the proposed Ordinance pursuant to CEQA to more closely examine the potential environmental impacts that may result from implementation of the Ordinance, and submit this Initial Study to the Planning Commission for its consideration and for consideration of adoption of a Negative Declaration for the project pursuant to CEQA, which is appropriate when a project is found to have no significant effect upon the environment; and

WHEREAS CEQA Guidelines Section 15074 requires certain findings to be made in order that a Negative Declaration may be adopted by the decisionmaking body, specifically “only if it finds on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration...reflects the lead agency’s independent judgment and analysis”; and

WHEREAS the Initial Study prepared by Planning Staff was circulated for public review as required by the CEQA for a period no less than 21 days, and whereas the public had the opportunity to comment on this document both during the review period and up to and during the public hearing by this Commission on November 7, 2011; and

WHEREAS this Planning Commission held a duly noticed public hearing to consider this Initial Study and Negative Declaration recommendation for the Fairview View and Sunlight Ordinance at the hour of 6:00 p.m. on Monday, the 7th day of November, 2011, in the Auditorium of the Alameda County Building, 224 W. Winton Avenue, Hayward, California; and

WHEREAS the Ordinance has thus been reviewed in accordance with the provisions of the California Environmental Quality Act; and

WHEREAS the Planning Commission is authorized and obligated to make recommendations to the Board of Supervisors on matters of Ordinance amendment related to planning and zoning; and

WHEREAS the testimony submitted in writing and at the public hearing and items in the public record have been considered by the Planning Commission prior to this action; and

WHEREAS the complete record for this process is in the custody of the Alameda County Planning Department, and may be found at Room 111, 224 West Winton Avenue, Hayward, California 94580.

NOW, THEREFORE,

BE IT RESOLVED that this Planning Commission finds that the proposed action would not have a significant effect on the environment for the following reasons:

- a. the Ordinance makes no specific requirement that any vegetation be altered, trimmed or removed, but it specifies only that disputes about vegetation and views be resolved in a prescribed way, with no specific outcome required; and
- b. the Ordinance specifies that involved parties should consider the trimming of vegetation back to a condition only *as it was at the time of Ordinance adoption*, meaning that the existing setting – the condition of landscaping throughout the Fairview area at the time of Ordinance adoption – is a condition not subject to negotiation under the process in the Ordinance, and would not change as a result of negotiations pursuant to the Ordinance, and thus by definition no significant impact would ever occur; and

BE IT FURTHER RESOLVED that this Planning Commission does hereby find, and recommends that the Board of Supervisors does also find, on the basis of the whole record before it (including the initial study and any comments received) that there is no substantial evidence in the record that the project will have a significant effect on the environment and that the negative declaration reflects the lead agency’s independent judgment and analysis; and

BE IT FURTHER RESOLVED that this Planning Commission accepts and approves the Initial Study for the Fairview View and Sunlight Ordinance as the appropriate and proper environmental analysis for the proposed Ordinance; and

BE IT FURTHER RESOLVED that this Planning Commission does hereby recommend to the Board of Supervisors that the Board adopt the Initial Study and a Negative Declaration as the appropriate and proper environmental determination for the proposed Ordinance.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOE:

EXCUSED:

ABSENT:

ABSTAINED:

ALBERT LOPEZ, PLANNING DIRECTOR AND SECRETARY,
ALAMEDA COUNTY PLANNING COMMISSION