



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: APRIL 25, 2013
HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013
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NOTE: ATTACHED TO THIS DOCUMENT IS A SUPPLEMENTAL MEMO WHICH WAS PUBLISHED ON APRIL 29, 2013.

Project Name: **California Environmental Quality Act Procedures, Appeals, and Public Notice**

Case Number: 2013.0463U [Board File No. 13-0248]

Initiated by: Supervisor Kim

Introduced: April 9, 2013

Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
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Reviewed by: **Sarah Jones, Acting Environmental Review Officer**
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Recommendation: **Approval of Certain Portions, Disapproval of Certain Portions**

ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Kim would amend the Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Background:

On November 7, 2012; December 5, 2012; and March 20, 2013, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019. On November 29, 2012 and March 14, 2013, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted duly noticed public hearings to consider the same proposed Ordinance. At each of the hearings, each Commission passed a resolution with advisory recommendations. At the most recent hearings, in March of this year, both Commissions recommended approval of the Ordinance with two modifications. Supervisor Wiener has subsequently modified the proposal in response to these resolutions (HPC Resolution No. 704 and PC

Resolution No. 18826). Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks.

On March 12, 2013 Supervisor Kim introduced an alternative proposal that would also amend Administrative Code Chapter 31 to address San Francisco's local administration of CEQA and appeal procedures. As this proposed ordinance was introduced shortly before the Commissions' hearings on Supervisor Wiener's proposal and as it was not yet signed to form, the Commissions briefly discussed this proposal but did not consider the content. On April 9, 2013, Supervisor Kim introduced the version described in this case report.

The Way It Is Now Summary:

In San Francisco, the Board of Supervisors considers appeals because the California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body *if* a non-elected decision-making body approves the CEQA document. Since the Planning Commission and Planning Department are not elected bodies, CEQA provides that CEQA documents approved by the Commission and Department are appealable to the Board. CEQA Guidelines clarify that such appeal is allowed after the project is approved. Case law has clarified that where the elected decision-making body approves the CEQA document itself, no appeal is required.

The appeal right derives from state law and the ordinance under consideration would not change or abrogate that right.

State CEQA law leaves establishment of the appeal process (and other provisions) to local bodies. In San Francisco, Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR certification¹ to the Board, but does not provide procedures for an appeal of a neg dec or an exemption. To fill this void, the Clerk of the Board has provided interim procedures for an appeal of a neg dec and an exemption. Not only does Chapter 31 currently *not* provide for a process for an appeal of such determinations, but Chapter 31 does not provide specified time limits for filing appeals. The Clerk has addressed this problem by referring every appeal to the City Attorney's Office for advice on whether an appeal is timely. On February 22, 2008, the City Attorney drafted a memorandum² explaining general guidelines for determining if appeals of private projects were 1) "ripe" or ready for appeal and 2) "timely" meaning not too late. This memo provides general guidance whereby appeals could be filed prior to the expiration of the appeal period for the final administrative approval. For private projects, the time in which an appeal can be filed depends on the entitlements needed for a project. The Clerk continues to refer each appeal to the City Attorney's Office for a case by case determination. In practice, it is difficult for the public to understand when the filing of a CEQA appeal is appropriate.

¹ The current procedures for appeal of an EIR are set forth in Administrative Code Section 31.16.

² The full title of the memorandum is "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations/Determining Whether Appeals Are Ripe for Review and Timely Filed". It is posted on the Clerk's web page.

The Way It Would Be Summary:

The proposed Ordinance would establish new controls in the following categories:

1. procedural requirements for the Planning Commission, Historic Resource Commission, and the Environmental Review Officer (ERO),
2. substantial increases in notification requirements,
3. specific controls for projects with multiple approvals,
4. regulations concerning modifications of projects previously determined to be exempt from CEQA,
5. delegation of ERO's authority to the SFPUC and SFMTA,
6. procedures specific to appeal of CEQA documents to the Board of Supervisors.

The Way It Would Be: Details and Analysis

Below is an examination of the six types of changes contained in the proposed Ordinance and the Department's analysis of these changes.

1. **THE LEGISLATION CONTAINS MULTIPLE AMENDMENTS ESTABLISHING NEW PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW. SPECIFICALLY, THE CHANGES WOULD AFFECT THE PLANNING COMMISSION, HISTORIC RESOURCE COMMISSION, AND THE ENVIRONMENTAL REVIEW OFFICER (ERO).**

Sec 31.04(d): "The Historic Preservation Commission shall have the authority to review and comment on all environmental documents and determinations for projects that may have an impact on historic or cultural resources."

Analysis: This language is in the Planning Code and Charter, and does not appear to have any further implications.

Recommendation: The Department has no recommendation on this language.

Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)).

Analysis: This would transfer responsibility for the administrative action of determining if a project qualifies for exemption from the ERO to the Planning Commission approval. For an exemption, the question at hand is whether there are unusual circumstances that disqualify a project that otherwise fits into the exemption category. If a project is exempt from CEQA, it means it is not subject to CEQA review and therefore there is no CEQA finding for the Commission to approve. The Commission's role in the exemption process is the adoption of policies and procedures (e.g. the list of project types that qualify for exemptions), rather than individual determinations regarding exempt projects.

There are staff time impacts of both this section, and Section 31.08(i)(3), in that Environmental Planning (hereinafter "EP") staff would be required to attend every project approval hearing before the Planning Commission or other boards and commissions in case of public testimony or questions on the environmental

determination. The estimated staff time impact could be up to 3 Full-Time Employees given the uncertainty of Commission hearing length.

Recommendation: The Department recommends opposing the changes contained in Sec 31.08(h)(1) and Sec 31.08(i)(3).

Sec 31.11(j) and 31.15(f): The legislation proposes amending the statement that the ERO “may” file a Notice of Determination (NOD) to state that the ERO “shall” file the NOD.

Analysis: In practice, since this notice requires payment of fees to the County Clerk by the project sponsor, it is subject to the sponsor’s discretion to pay the fee and file this notice. The fee can exceed \$3,000. The incentive to the sponsor to file a NOD is a shortening of the time in which a lawsuit may be filed. As it now stands, the sponsor may choose whether or not to assume the risk of not filing an NOD, and if it is not filed there is more opportunity for the public to challenge a project.

Recommendation: There is no apparent reason to make the proposed change. Compliance is uncertain since it would be in the project sponsor’s control. Therefore, the language should be modified to state that the ERO shall file an NOD upon payment of required fees by the project sponsor. With this modification, the Department could recommend support this provision.

Sec 31.12: The legislation requires public scoping meetings for every EIR.

Analysis: These meetings are required during the scoping process for certain types of projects as specified in CEQA, including some General Plan amendments, residential development exceeding 500 units, office development exceeding 250,000 square feet, and projects located in the California Coastal Zone/Bay Conservation and Development Commission jurisdiction (CEQA Guidelines Sec 15206 and 15082(c)). Requiring scoping meetings for every EIR would require expenditure of cost and time associated with venue fees, materials, court reporter, and meeting attendance.

Recommendation: The Department recommends that the Commissions oppose this proposed amendment.

Sec 31.14(a)(1)(c): This provision would require that any Draft EIR addressing alterations to a structure more than 50 years old be referred to the HPC for comment at a noticed public meeting, scheduled at least 10 days before the Planning Commission hearing on the DEIR.

Analysis: There are two aspects of this provision that are problematic. First, not every structure more than 50 years old is a historic resource under CEQA. If the structure has been determined not to be a historic resource, then there is no basis for review of the EIR by the HPC. Requiring this additional hearing for buildings that are not historic resources is unduly burdensome for staff, the HPC, the project sponsor, and the public, and is beyond the responsibilities of the HPC.

Second, given the biweekly schedule of the HPC, the requirement that hearings occur 10 days prior to the Planning Commission could serve to delay the Planning Commission hearing and lengthen the comment period. Planning and/or HPC resolution would be an appropriate mechanism for defining a preferred time lapse between hearings.

Recommendation: The Department recommends opposing the inclusion of all buildings over 50 years old in the list of projects that would require a hearing before the HPC. The Department recommends opposing any codified requirement regarding the amount of time between hearings.

Sec 31.14(c): This provision allows for distribution of EIRs in electronic form unless hard copy is requested.

Analysis: Any reduction in the number of EIRs that must be printed would reduce cost and resource use.

Recommendation: The Department recommends strongly supporting this provision.

Sec 31.15(a): The legislation states that Response to Comments documents shall be distributed no less than 14 days prior to the Planning Commission's consideration of certification.

Analysis: The requirement under CEQA is 10 days. While Response to Comments documents are usually distributed 14 days ahead of the hearing, anything longer than what CEQA requires should not be defined by ordinance.

Recommendation. The Department should oppose codification of this provision.

2. THE PROPOSED ORDINANCE CONTAINS SUBSTANTIAL INCREASES IN NOTIFICATION REQUIREMENTS.

General Analysis of Increased Notification: The ordinance requires a substantial increase in mailed and electronic notification. The result of these requirements would be substantial additional staff time devoted to notification, and possible delays in otherwise over-the-counter permits. Conversely, adding notification of CEQA actions for permits that are not issued over the counter would involve minor additional time and cost. There is already extensive notification and review associated with these permits, and the review process provides adequate time for notification. The Department could combine CEQA notification with other notification that already occurs (e.g. Section 311/213, See Exhibit D).

The increased notification would be unduly burdensome for both staff and project sponsors when it comes to over-the-counter permits. These permits are only issued for the very smallest of projects, those that result in no increase in intensity of use, dwelling units, or building envelope. In short, **they are permits that have no potential to result in significant environmental impacts.** The Department is committed to developing a web-based map of exemptions issued, on which these minor exemptions would be visible and

searchable, a substantial improvement over our existing system. Beyond web posting, notification of these exemptions, which number in the hundreds per month, would not have sufficient benefit to justify the substantial time and cost.

The various aspects of the increased notification requirements are described below.

Sec 31.04(h): A subscription-based electronic notification system is required. As defined it would have to allow subscribers to receive notifications tailored to their subscription, e.g. notification about a specific property, neighborhood, or type of CEQA determination.

Analysis: As proposed, this system would be extremely cumbersome. It means that for every CEQA determination there would need to be a decision made as to which list of subscribers should be notified. It would add staff time to every determination and it would create a lot of potential for error. Also, it would be impossible to offer a choice of mailing list that is tailor-made for every possible preference; it is not equitable notification to meet some people's requests and not others.

A distinction has to be made here for electronic notification lists based on document type, in contrast to electronic notification list based on project attribute. For types of determinations that are already notified, it would be a simple addition to add an email notification for anyone who had indicated a desire to receive that kind of document – that is to say, if someone wants a notification every time a Neg Dec is issued, or a catex is issued for a permit that is not issued over the counter, that would be a simple additional step. Even for catexes issued over the counter, we could consider design of a system that could summarize the week's catexes and notify the interested list. The salient point is that document type-based mailing list distinctions do not require individual, project-by-project consideration for inclusion on different mailing lists, and therefore can be administered automatically. Administration of such a system would potentially require up to 1 FTE.

Recommendation: Mailing list subscriptions based on project attributes (such as location, size, site ownership, historic status, etc.) would be extremely problematic to administer. For each CEQA determination, staff would need to analyze and consider which list should be included in the notification; this means that the process could not be completed automatically. The additional time and potential for error would be substantial, potentially requiring up to an estimated five (5) Full-Time Employees. It is questionable whether the benefit of an attribute-based notification service would exceed these costs. The Department recommends opposing this aspect of the ordinance.

Sec 31.08(d): As it currently exists in Chapter 31, this section requires the mailed notification of Class 31 and Class 32 exemptions, exemptions for projects that are historic resources as defined by CEQA, and any demolition of a structure. The exemption

determinations for projects in these categories are mailed to a list of individuals and organizations who have requested such notice.

The amendments add the following categories of projects to the notice requirement: alteration of a building 50 years or older, "demolition" of a residential building under Planning Code Section 317 (which includes major alterations), "demolition" of an existing structure as defined in Section 1005(f) of the Planning Code (it is unclear if this is intended to include any structure or only structures subject to Article 10 of the Code), projects within or affecting any park or open space under the jurisdiction of the Recreation and Park Commission or any other City board or commission, and any community plan exemption.

Analysis: These changes would substantially increase the number of catexes requiring mailed notice. Most notably, the requirement for mailed notice of a catex determination for any alteration to a building 50 years or older could apply to a very large number of projects and permits. This would involve mailed notice of an estimated 15 determinations per day beyond those already noticed. Up to three (3) Full-Time Employees might be necessary to meet this requirement, in addition to materials and postage costs. The ordinance would also require posting on the Department website of all exemption determinations associated with these projects.

Mailed notice is already provided for exemptions associated with historical resources under CEQA and for other types of projects that have potential impacts (such as demolition of a structure). A further category of projects are subject to 311/312 notification. The remaining projects that have no notification of exemption determinations at this stage constitute those very minor projects that have no potential to significantly impact the environment. Moreover, the Department completes a CEQA Categorical Exemption Determination checklist for each catex, which identifies projects that may have unusual circumstances (such as steep slopes or historical resources) and requires further environmental review prior to permit issuance (see Exhibit C). The costs of mailed notice for the projects that do not already qualify for notice and/or further environmental review would far exceed any benefits.

That said, while there is no added benefit to a CEQA-specific notification it should be noted that most of the projects described above would benefit from mailed public notification of the project *and* that the Commissions' and the Department have proposed such project notification also include public notification of the CEQA determination. Mailed project notification is currently required for demolitions and defacto demolitions as defined under Planning Code Section 317. The Building Department also provides notification of demolition as defined in the Building Code. Mailed public notice is required for major permit to alter in relation to Conservation Districts as described in Planning Code Section 1110.

Mailed public notification is required for Certificate of Appropriateness as described in Planning Code Section 1006.

Recommendation: While the Department recommends opposing the expanded requirements for mailed notice, the proposed requirements for web posting would provide great public benefit and should be supported. Independent of any requirement to provide additional online notice, the Department is already pursuing vastly improved posting of all exemptions, in a system searchable by location with filtering by date of issuance.

Sec 31.11(c)(5), 31.13(d)(4): This section calls for mailed notice to residential occupants within 300 feet, to the extent practical.

Analysis: Since mailing labels are generated through property tax and ownership records, it is substantially more complex to provide mailed notice to occupants (i.e. renters).

Recommendation: The mailed notices to which these sections refer are replicated on the Department's website, in a newspaper of general circulation, and through posting at the project site. The notice is adequate, and the Department recommends opposing the addition of residential occupants to the notice requirements even with the caveat regarding practicality.

3. **THE PROPOSED ORDINANCE SPECIFIES CONTROLS FOR PROJECTS WITH MULTIPLE APPROVALS.** Sec 31.08(f) requires "written determinations" for projects with multiple permits or other approvals that describe and evaluate the whole of the project and list all approval actions necessary.

Analysis: Any project reviewed by Planning, whether over-the-counter or otherwise, could involve multiple permits or approvals.

It is unclear what constitutes a "written determination", since the next section (31.08(g)) discusses Certificates of Exemption. Depending on the intent and interpretation, this requirement could be onerous if it would constitute a greater effort than our current catex checklist. (See Exhibit C which is the four-page thorough checklist.) Currently, approximately 300 exemptions per year that are taken in by Planning staff for review and receive an exemption without a certificate of determination. Literally thousands more exemptions per year are issued over-the-counter. Requiring some additional written determination beyond the checklist for these would represent an estimated 50% increase in the time required to grant each and every exemption.

The ordinance would require that the written determination identify all discretionary approvals needed to implement the project. Since most of these approvals are granted by other agencies, further staff time would be required to coordinate with the agencies, and there is no guarantee that such a list would be accurate over time. Furthermore, it should be noted that CEQA always requires

analysis of the whole of the action for which approval is sought in its very definition of the term “project”, and specifically states that the project may be subject to several discretionary approvals (CEQA Guidelines Sec 15378).

Recommendation: The concept of an “approval” as it is defined in CEQA and in the existing provision of Chapter 31 is discussed below under Appeals. The Department recommends supporting the concept of identifying the “approval” in the CEQA determination, and recommends opposing the other aspects of this provision.

4. THE PROPOSED ORDINANCE INCREASES REGULATIONS CONCERNING MODIFICATIONS OF PROJECTS PREVIOUSLY DETERMINED TO BE EXEMPT FROM CEQA.

Analysis: The legislation defines “modifications” as follows: “a modification requiring re-evaluation under Section 31.19 shall mean a change in the scope of a project as described in the original application upon which Planning based the exemption determination.” (Sec 31.08(k)) Under CEQA, a change to the scope of the project as described will necessarily require issuance of a new exemption, as there is no mechanism for amending a catex. There is no description or definition in the ordinance to guide the determination of whether there has been a “change to the scope of the project.”

Recommendation: Re-evaluation of changed projects is an appropriate and necessary component of CEQA, and is one that is done now by the ERO. The concept of codified assurance that modified projects will be referred to the ERO is one that the Commissions should support. However, the language as proposed does not provide sufficient clarity around the salient determination that a project has changed. The issue addressed in this Section 31.08(k) should be that, when a project is referred to Planning regarding a modification in an aspect of the project regulated under the Planning Code (such as height, setbacks, or uses) the application shall be referred to the ERO for consideration of its consistency with the project as described in the original exemption. If the ERO determines that the project description no longer fits within the previous project description, a new determination shall be issued. The Department recommends supporting language to this effect.

While a new exemption associated with an altered project should always be appealable, the Commissions should oppose legislation that makes appealable the determination of a modified project’s consistency with the original project description. This is a ministerial decision involving use of fixed measurements that requires little to no application of judgment on the part of the ERO. Ministerial decisions are not subject to CEQA.

5. THE PROPOSED ORDINANCE AMENDS THE ERO’S DELEGATION OF ERO’S AUTHORITY TO OTHER CITY DEPARTMENTS.

ANALYSIS: The ERO currently has delegation agreements with SFPUC and SFMTA for issuance of exemptions, as provided for under Chapter 31. These agencies may prepare exemptions that are affirmed by the ERO and posted by the Planning Department along with other exemptions. The Department's analysis shows that together these agencies issue approximately 100 exemptions per year; in some cases an exemption will cover multiple exempt activities such as no parking zones, stop signs, sewer repair affecting less than one mile of linear feet, etc.

Recommendation: There has been no indication or evidence that these delegation agreements have resulted in problematic circumstances for the public. However, the ordinance amendments would eliminate these agreements (Sec 31.08(d)). Elimination of the agreements would require additional staff time at the Planning Department for completion of these exemptions (estimated increase of one to two Full-Time Employees), and would likely be highly burdensome to the agencies' efforts to complete minor projects that are clearly exempt from CEQA. The Department recommends opposing this aspect of the ordinance.

6. PROCEDURES SPECIFIC TO APPEAL OF CEQA DOCUMENTS TO THE BOARD OF SUPERVISORS.

ANALYSIS: The aspect of the legislation concerning the timing of appeal of exemption determinations is a critical issue for the Department. The legislation proposes an appeal window extending from the time that the exemption determination is noticed (which could occur many months prior to project approval) until 30 days following the issuance of any discretionary permit or any other approval action for the project (Sec 31.16(e)(1)(A)) – therefore, 30 days beyond the last permit issued. This lengthens the appeal window on the front end of a project; on the back end, it is substantially identical to our current system. For an exemption that was not noticed, the appeal window would extend to 60 days beyond the discretionary action.

Recommendation: The Department recommends **strongly opposing** codification of the appeal window in this manner. Both CEQA and Chapter 31 are very clear on the question of the relationship of CEQA to multiple discretionary approvals. Section 15352 of the CEQA Guidelines defines "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person," and makes it clear that a single "project" may be subject to multiple discretionary approvals. Section 31.20 of Chapter 31 applies this definition in the context of multiple approvals, specifying that "For purposes of determining the appropriate time for evaluation of projects and preparation of EIRs pursuant to this Chapter, there shall be only one relevant decision by the City to carry out or approve, or not to carry out or approve, a project. However for other purposes there may be more than one determination by the same or separate boards, commissions and departments of the

City, either discretionary or ministerial, affecting the carrying out or approval of the project.”[emphasis added] (Sec 31.20(d)).

Appeals of exemptions are allowed under Section 15061(e) of the CEQA Guidelines, which states that “when a nonelected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt from CEQA may be appealed...” Since both “project” and “approval” are defined in CEQA, the apparent intent of this section of the Guidelines is that the exemption determination be appealable after the approval, that is, after that single “decision by a public agency to which commits the agency to a definite course of action in regard to a project.”

The Department believes that just as CEQA review for any project must consider the entirety of the project regardless of the number of discretionary approvals involved, so too should the CEQA determination only be appealable in association with that single approval defined in the CEQA Guidelines and in Administrative Code Section 31.20.

In the interest of maximum clarity, the Department should clearly identify the “approval” as defined by CEQA associated with each project on that project’s environmental determination. The Department recommends supporting a requirement that the approval be identified on each CEQA determination.

Other Appeals-Related Issues

Sec 31.16(b)(4): This provision would allow consideration of landmarking to continue while an appeal to the Board of Supervisors is pending, but other actions could not be considered.

Analysis: Why should this action be able to proceed, but not others? Furthermore, one issue in the appeal could be the historic status of the building, so landmarking might constitute action on an issue under dispute. There are other approvals that are just as important and time-sensitive as landmarking, so calling this one out does not seem equitable.

Recommendation: The Department recommends opposing the singling out of landmarking as the only approval that could occur during the appeal period.

31.16(b)(5): This section provides that if multiple appellants file an appeal, each individual appellant shall be granted the full amount of time that would be granted to a single appellant.

Analysis: The granting of equal time for testimony to up to 3 appellants could create an incentive for multiple appeals to be filed in order for appellants to gain more presentation time. Currently, both the lead appellant and the project sponsor are each granted 10 minutes to present with an allowance for individual speakers to present a lesser amount (typically 2-3 minutes apiece) in either support or opposition to the appeal. If there were three appellants and if all

parties were granted the 10 minutes that are currently allocated for presentations, there could be up to 90 minutes for the primary presentations in addition to any public comment.

Recommendation: The Department recommends opposing this provision.

31.16(b)(6): This provision establishes timeframes for submittal of material to the Board and would guard against "data dumping" in the appeals process.

Analysis: The Department recommends supporting this provision with a modification.

Recommendation: The recommended modification would be to revise as follows: "Written materials submitted later than noon, eight days prior to the scheduled hearing, other than Planning Department responses to the appeal, will not be considered part of the record unless the Board affirmatively votes to include such written materials in the record."

31.16(d)(1): This provision allows appeals of Negative Declarations to the Board without an appeal to the Planning Commission.

Analysis: The public comment and appeal opportunity on Negative Declarations to the Planning Commission is widely noticed and is an integral part of the Neg Dec process under CEQA. It is consistent with the purpose and spirit of CEQA, which is to encourage public participation in the assessment of environmental impacts so as to allow for improvements to projects as proposed for approval. Further, per City Attorney advice, appellants may unwittingly weaken their own prospects in litigation before the courts if they do not partake in the appeal opportunity at the Planning Commission. It is also unfair to project sponsors who have fully submitted to the CEQA process to allow later appeal of the environmental review if this critical opportunity for input was ignored.

Recommendation: Because application of this provision may impact both appellants and project sponsors, the Department recommends opposing this provision.

POTENTIAL COMMISSION ACTION

The proposed Ordinance is before both the Planning Commission and the Historic Preservation Commission so that each may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department strongly recommends that both the Historic Preservation Commission and the Planning Commission recommend *approval of some portions* of the proposed Ordinance and disapproval of other portions and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

In March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826). In light of that recommendation, the Department recommends that the Commission approve some portions of this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation.

While the detailed recommendations were reviewed section by section in the earlier portion of this report, overall the Department recommends that the Commissions' position on the major aspects of the Chapter 31 amendments proposed by Supervisor Kim should be as follows:

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

ENVIRONMENTAL REVIEW

The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

The Planning Department has not received communication specific to Supervisor Kim's proposal since the March 2013 hearings on Supervisor Wiener's proposal. In March 2013, the Department received multiple letters that have previously been submitted to the Commissions.

RECOMMENDATION: Approval of Certain Portions and Disapproval of Certain Portions
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Attachments:

Exhibit A: Draft PC/HPC Resolution

Exhibit B: Board of Supervisors Ordinance and Legislative Digest for Board of Supervisors File No. 130248 V.2

Exhibit C: Existing CatEx Checklist

Exhibit D: List of Notifications



SAN FRANCISCO PLANNING DEPARTMENT

Draft Resolution Historic Preservation Commission Administrative Code Text Change HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013

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Project Name: California Environmental Quality Act Procedures, Appeals, and Public Notice
Case Number: 2013.0463U [Board File No. 13-0248]
Initiated by: Supervisor Kim
Introduced: April 9, 2013
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
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sarah.b.jones@sfgov.org, 415-575-9034

Recommendation: Approval of certain portions, disapproval of certain portions.

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE OF CERTAIN PORTIONS, DISAPPROVE OF CERTAIN PORTIONS OF THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEALS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL IMPACT REPORTS, NEGATIVE DECLARATIONS, EXEMPTION DETERMINATIONS, AND DETERMINATIONS ON MODIFIED PROJECTS; TO CLARIFY AND UPDATE EXISTING CHAPTER 31 PROCEDURES, INCLUDING WITHOUT LIMITATION: TO PROVIDE FOR THE PLANNING DEPARTMENT OR PLANNING COMMISSION TO APPROVE ALL EXEMPTION DETERMINATIONS; TO REQUIRE THE PLANNING DEPARTMENT TO ESTABLISH AN ELECTRONIC NOTIFICATION SYSTEM; TO EXPAND NOTICING OF EXEMPT PROJECTS; TO REQUIRE NEW NOTICING WHEN FILING NOTICES OF EXEMPTION AND NOTICES OF DETERMINATION; TO REVISE NOTICING OF NEGATIVE DECLARATIONS AND ENVIRONMENTAL IMPACT REPORTS FOR PLANS OF 20 ACRES OR MORE; TO PROVIDE AN EXPANDED ROLE FOR THE HISTORIC PRESERVATION COMMISSION; AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on October 16, 2012, Supervisor Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1019 which would to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations.

Whereas, on November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted to make advisory recommendations to Supervisor Wiener concerning the proposal; and

Whereas, the HPC's recommendations are recorded in Resolution Number 694; and

Whereas, on November 29, 2012, the Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning Commission's recommendations are recorded in Resolution Number 18754; and

Whereas, on March 14, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on March 20, 2013, the HPC conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019; and

Whereas, at these March 2013 hearings, Commissions recommended approval of the Ordinance with two modifications in HPC Resolution No. 704 and PC Resolution No. 18826; and

Whereas, Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks to April 22, 2013; and

Whereas, at the April 8 2013 Land Use Committee hearing Supervisor Kim announced that she would be introducing an alternative proposal; and

Whereas on April 9, 2013 Supervisor Kim introduced an ordinance titled "Administrative Code-California Environmental Quality Act Procedures, Appeals and Public Notice [BF 130248]; and

Whereas, this proposed Administrative Code amendment has been determined to be categorically exempt from environmental review under the CEQA Section 15060(c)(2); and

Whereas on April 25, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas on May 15, 2013, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Historic Preservation Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the legislative sponsor, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Therefore be it resolved that, the Historic Preservation Commission has reviewed the proposed Ordinance;

Be it further resolved that in March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826) and **MOVED, in light of that recommendation, the Historic Preservation Commission recommends that the Board approve of certain portions, disapprove of certain portions** of the proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation; and

Be it further **MOVED, that in general, this Commission recommends the following by subject area:**

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

And, be it further MOVED, that the Historic Preservation Commission concurs with the more detailed recommendations as described in the attached Executive Summary from the Department.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals. In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.
3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.
7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.
9. The Commission reaffirms their earlier decision to approve Board File Number 121019 CEQA Procedures and recommends forwarding certain portions of this proposal with a positive recommendation to the Board.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on __.

Jonas P. Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

April 12, 2013

Planning Commission
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On April 9, 2013, Supervisor Kim introduced the following proposed legislation:

File No. 130248-2

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
- Scott Sanchez, Zoning Administrator
- Sarah Jones, Chief, Major Environmental Analysis
- AnMarie Rodgers, Legislative Affairs
- Monica Pereira, Environmental Planning
- Joy Navarrete, Environmental Planning

REVISED LEGISLATIVE DIGEST

(4/9/2013, Substituted)

[Administrative Code - California Environmental Quality Act Procedures, Appeals, and Public Notice]

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Existing Law

The City of San Francisco, in accordance with the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* ("CEQA"), and CEQA Guidelines, Title 14, California Code of Regulations, Section 15000 *et seq.* has adopted local procedures for administering its responsibilities under CEQA. These procedures are codified in San Francisco Administrative Code Chapter 31. These procedures tailor the general provisions of the CEQA Guidelines to the specific operations of the City and incorporate by reference the provisions of CEQA and the CEQA Guidelines.

Amendments to Current Law

The proposed ordinance clarifies and updates procedures in San Francisco Administrative Code Chapter 31 to reflect revisions to CEQA and the CEQA Guidelines, to provide for appeals to the Board of Supervisors of various CEQA decisions, to update and expand noticing and to expand the role of the Historic Preservation Commission in CEQA reviews. The primary updates to Chapter 31 are as follows:

- Section 31.02.
 - States a purpose of the ordinance is that EIRs consider a reasonable range of alternatives.
 - States a purpose of the ordinance is to resolve appeals to the Board in a fair and timely manner.

- Section 31.04.
 - Deletes a no longer relevant reference to the San Francisco Redevelopment Agency.
 - Clarifies certain administrative functions of entities within the City and County to reflect actual practice and changes in local law, including activities of the Clerk of the Board and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk.
 - Provides that the Historic Preservation Commission has authority to review all environmental documents for projects that may have an impact on historic or cultural resources.
 - Provides for the Historic Preservation Commission to hold a hearing and comment on Planning's proposed administrative regulations if they concern historic or cultural resources issues.
 - Requires all notices provided for under Chapter 31 to be provided in hard copy unless some one specifically requests electronic copies.
 - Requires the Planning Department to establish an electronic notification system for all notices provided under Chapter 31 that allows persons to pick different specified categories of projects or different types of CEQA documents for which they would like to receive electronic notice.
- Section 31.05. Deletes an existing provision providing for the ERO to delegate specified exemption determinations to another city entity.
- Section 31.08. Revises how Planning makes and notices exemption determinations.
 - Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for exempt projects to all types of exemptions - statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
 - Requires the Planning Department to post on it website and provide to city departments a list of the types of projects in the city that Planning has identified as categorically exempt.

- Provides that other City departments may provide analyses to the Planning Department on why projects are exempt but requires the ERO to issue all exemptions.
- **Public notices of exemptions.** Requires Planning to post and mail notices of exemption determinations for these specified projects:
 - Projects involving historic resources, which is defined as those that include sites or districts listed on the California Register, listed in Planning Code Articles 10 or 11, listed on an historic resource survey that has been adopted or officially recognized by the City, and any other resource for which substantial evidence supports a findings of historic significance under CEQA criteria.
 - Projects involving demolition, as defined in Planning Code Section 317.
 - Projects involving demolition, as defined in Planning Code Section 1005(f).
 - Alterations to buildings 50 years old or older.
 - Any project in or affecting a park or open space under the jurisdiction of or planned for acquisition by the Recreation and Parks Commission or any park under the jurisdiction of another city department.
 - Projects relying on a community plan exemption.
 - Any project that qualifies for a Class 31 exemption.
 - Any project that qualifies for a Class 32 exemption.
- **Written determinations.** Requires Planning to prepare written determinations and post and mail notice of the exemption for projects requiring multiple permits or other approvals. The exemption determination must cover the whole project and list the approvals.
- **Certificates of exemption.** Allows but does not require use of written Certificates of Exemption; if prepared, Planning must post and mail notices of the certificate.
- **Final exemption determination.** Provides that the Planning Department's issuance of an exemption determination is final unless the project requires Planning Commission approval, in which case the Planning Commission must

approve the exemption determination before approving the project. Planning must provide notice of hearings on these exemptions determinations.

- **Project approval noticing.** Requires any city department that holds a public hearing to approve an exempt project to provide notice of the exemption determination and advise of the right of appeal to the Board.
- **Notices of exemption.** Specifies that notices of exemption, which CEQA provides may be filed with the County Clerk to start the running of a statute of limitation, may be filed only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.
- **Modification to exempt project.** Requires re-evaluation of an exemption and issuance of a new exemption determination, if the project is still exempt, if the scope of a project changes or if Planning is presented with new information regarding the environmental impacts of the project.
- Sections 31.10 and 31.11.
 - Clarifies in Section 31.10(f) as to when a negative declaration or an environmental impact report is required by CEQA.
 - Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.
 - Provides in Section 31.11(c)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to adopt a negative declaration to each property owner within 300 feet of the exterior boundaries of the project area.
 - Provides in Section 31.11(h) that the decision-making body that adopts the negative declaration shall so advise the ERO.
 - Specifies in Section 31.11(j) that CEQA-required notices of determination shall be filed with the County Clerk to start the running of a statute of limitation, only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of

Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.

- Sections 31.12 – 31.15.
 - Provides in Section 31.14(a)(1) that the Planning Department shall obtain comments from the Historic Preservation Commission, on a draft EIR for any projects that may impact historic or cultural resources. Planning shall obtain any comments 10 days before the Planning Commission holds a public hearing on the draft EIR.
 - Provides in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of a draft EIR to each property owner within 300 feet of the exterior boundaries of the project area.
 - Requires in Section 31.14(c) that Planning make the draft EIR available on Planning's website and provide a copy in electronic form on a text searchable digital storage device or by text searchable electronic mail transmission to anyone who requests a copy and provides an email address, unless they request a hard copy.
 - Requires in Section 31.15(a) that Planning make a final EIR available to the public no less than 14 days before the Planning Commission hearing to consider certification of the final EIR.
 - Provides in Section 31.15(c) that the ERO must have the draft EIR hearing record transcribed as part of the administrative record.
 - Requires the first decision-making body to approve the project to so advise the ERO.
 - In section 31.15(f) contains the same provision regarding the filing of notices of determination for EIRs as found in Section 31.11(j) for negative declarations.
 - Section 31.19. Provides in section 31.19(b) that when an exempt project is modified, as defined in Section 31.08(k), and again determined to be exempt, Planning must post the determination on its website, and mail notice to all approving entities and all entities requesting notice.
- Section 31.16. Deletes existing Section 31.16 pertaining to appeals of final EIRs and proposes a new Section 31.16 to address appeals of exemption determinations,

negative declarations, environmental impact reports, and determinations that no additional environmental review is required for modified projects requiring subsequent approvals that previously relied on an EIR or negative declaration for approval. The key provisions of the new section include:

- To file an appeal, one must pay a fee, file the appeal within the time frames specified in the ordinance and state the specific grounds for appeal.
- The time frames for filing appeals are:
 - For an EIR, after EIR certification and no later than 30 days after the first approval of the project in reliance on the EIR.
 - For a negative declaration, after the Planning Commission affirms a negative declaration on appeal, or, if no appeal is filed, after the Planning Department issues a final negative declaration, and no later than 30 days after the first decision-making body to consider the project adopts the negative declaration.
 - For an exemption determination that is noticed, after notice of the exemption determination and no later than 30 days after issuance of any permit or other project approval for the project, provided, that once the Board has heard and upheld an appeal of the same determination for the same project, the Clerk will reject subsequent appeals.
 - For an exemption determination that is not noticed, whenever the exemption determination is discovered, but no later than 60 days after the project is approved.
 - For determinations that modified projects for which EIRs or negative declarations were prepared, within 30 days of notice of the determination that no further environmental review is required.
- The ordinance specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with lists of interested parties.
- The Clerk is directed to schedule the appeal hearing before the full Board without regard to any rule or policy of the Board, no less than 30 or more than 45 days following the date the Clerk has accepted the letter of appeal and: (1) for exemption determinations, the City has taken an action to approve the project; and (2) for EIRs, negative declarations, and determinations on modified projects, the time for filing the appeal has expired.

- For projects that require multiple approvals, once the appeal is scheduled for hearing by the Clerk, other City agencies and officials may not approve the project, except (1) the Historic Preservation Commission can proceed to landmark the site or a historic district that includes the project, and (2) other City departments can take essential actions to abate hazards to public health and safety.
- The Board President may consolidate up to 3 appeals; if consolidated, each appellant shall have the same time for testimony as if such appeals were heard separately.
- Appellants must submit written materials pertaining to the appeal 11 days before the scheduled hearing. The Planning Department and anyone else may submit written responses to the Board within 8 days before the hearing. Materials submitted 8 days before the scheduled hearing will be distributed through the Board's normal distribution procedures and will be part of the record. Later submitted materials will not be part of the record unless the Board affirmatively votes to include such written materials in the record.
- The Board shall act within 30 days of the scheduled hearing date but may extend this date to not more than 90 days from the date that the Clerk schedules the appeal hearing.
- The ordinance specifies the actions that the Board may take for each kind of appeal and the process for then completing the CEQA document in the event the Board reverses the decision of the Planning Commission or Planning Department. If the Board upholds the CEQA decision, prior approval actions are valid. If the Board reverses the CEQA decision, prior approval actions are void.
- In the case of a negative declaration, if the Board reverses Planning's approval, the Board may remand the negative declaration to Planning for revision and if so, further appeals of the revised negative declaration are appealable directly to the Board.

Background Information

The ordinance is proposed to revise the City's existing CEQA procedures so that they conform to current provisions of CEQA and CEQA Guidelines, provide codified procedures for appealing negative declarations, exemption determinations and determinations regarding whether additional environmental review is required for modified projects. The provisions concerning appeals to the Board of EIRs, negative declarations, and determinations of exemption are intended to respond to requirements in the CEQA statute that if the Board, as the elected body of the City, does not make the final decision regarding a CEQA

determination, and instead, such decisions are made by the Planning Commission or Planning Department, the public has the right to appeal those decisions of Planning to the elected Board.

The ordinance also contains provision that are not required by CEQA, including, for example, a provision for appeal of determinations regarding whether additional environmental review is required for modified projects and Planning Department noticing and posting requirements for notices of exemption and notices of determination.

Prior to 2003, the CEQA statute provided for appeals of EIR certifications to the elected decision-making body where a non-elected decision-making body rendered certified the EIR for a project. In response to this earlier provision of CEQA, the City codified an appeal process for EIRs, which is currently found in Administrative Code Chapter 31.16. The Legislature amended the CEQA statute in 2003 to provide that where a non-elected decision-making body of a lead agency adopts a negative declaration or makes a determination that a project is exempt from CEQA, the negative declaration or CEQA exemption may be appealed to the lead agency's elected decision-making body, if any, after the project is approved. Since 2003, the City has not amended Chapter 31 to provide for an appeal process for negative declarations or exemption determinations. Instead, the City has relied on interim guidelines issued by the Clerk's Office, City Attorney opinions on ripeness and timeliness of appeals and Board Rules of Order for conducting land use appeal hearings.

1 [Administrative Code - California Environmental Quality Act Procedures, Appeals, and Public
2 Notice]

3 **Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the**
4 **California Environmental Quality Act to the Board of Supervisors of environmental**
5 **impact reports, negative declarations, exemption determinations, and determinations**
6 **on modified projects; to clarify and update existing Chapter 31 procedures, including**
7 **without limitation: to provide for the Planning Department or Planning Commission to**
8 **approve all exemption determinations; to require the Planning Department to establish**
9 **an electronic notification system; to expand noticing of exempt projects; to require**
10 **new noticing when filing notices of exemption and notices of determination; to revise**
11 **noticing of negative declarations and environmental impact reports for plans of 20**
12 **acres or more; to provide an expanded role for the Historic Preservation Commission;**
13 **and making environmental findings.**

14 NOTE: Additions are single-underline italics Times New Roman;
15 deletions are ~~strike through italics Times New Roman~~.
16 Board amendment additions are double-underlined;
17 Board amendment deletions are ~~strikethrough normal~~.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. The Planning Department has determined that the actions contemplated in
20 this ordinance comply with the California Environmental Quality Act (California Public
21 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
22 Board of Supervisors in File No. _____ and is incorporated herein by reference.

23 Section 2. The San Francisco Administrative Code is hereby amended by amending
24 Sections 31.02, 31.04, 31.05, 31.06, 31.08, 31.10, 31.11, 31.12, 31.13, 31.14, 31.15 and
25 31.19 to read as follows:

1 **SEC. 31.02. POLICIES AND OBJECTIVES.**

2 The basic purposes of CEQA and this Chapter 31 are to:

3 (a) Provide decision makers and the public with meaningful information regarding
4 the environmental consequences of proposed activities.

5 (b) Identify ways that environmental damage can be avoided or significantly
6 reduced.

7 (c) Provide for public input in the environmental review process.

8 (d) Bring environmental considerations to bear at an early stage of the planning
9 process, and to avoid unnecessary delays or undue complexity of review. Simplicity and
10 directness are to be emphasized, with the type of review related to the depth and variety of
11 environmental issues raised by a project, so that government and public concern may be
12 focused upon environmental effects of true significance.

13 (e) Provide procedural direction on implementation of CEQA by the City.

14 (f) When an environmental impact report is required by CEQA, consider a reasonable
15 range of substantially less damaging alternatives that feasibly attain most of a project's objectives.

16 ~~(g)~~(g) Prevent significant avoidable damage to the environment by requiring changes
17 in projects through the use of alternatives or mitigation measures when the government
18 agency finds the changes to be feasible.

19 ~~(g)~~(h) Disclose to the public the reasons why a governmental agency approved the
20 project in the manner the agency chose if significant environmental effects are involved.

21 (i) Resolve appeals of decisions of nonelected decision-making bodies in a fair and timely
22 manner.

23 **SEC. 31.04. RESPONSIBILITY.**

24 (a) The City and all its officials, boards, commissions, departments, bureaus and
25 offices shall constitute a single "local agency," "public agency" or "lead agency" as those

1 terms are used in CEQA, ~~except that the San Francisco Redevelopment Agency shall be a separate~~
2 ~~"local agency" or "public agency" as specified in CEQA. With regard to establishment of any~~
3 ~~redevelopment area, the City shall be the "lead agency."~~

4 (b) The administrative actions required by CEQA with respect to the preparation of
5 environmental documents, giving of notice and other activities, as specified in this Chapter,
6 shall be performed by the San Francisco Planning Department as provided herein, acting for
7 the City. When CEQA requires posting of a notice by the county clerk of the county in which the
8 project will be located, the Planning Department shall transmit the required notice to the applicable
9 county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the
10 posting shall commence.

11 (c) For appeals to the Board of Supervisors ("Board") under Section 31.16 of this Chapter,
12 the Clerk of the Board of Supervisors shall perform any administrative functions necessary for
13 resolution of the appeal.

14 (d) The Historic Preservation Commission shall have the authority to review and comment
15 on all environmental documents and determinations for projects that may have an impact on historic or
16 cultural resources.

17 (e)(e) Where adoption of administrative regulations by resolution of the Planning
18 Commission after public hearing is specified herein, the Planning Department shall provide the
19 Historic Preservation Commission with an opportunity to review and comment on the proposed
20 administrative regulations concerning historic or cultural resources issues. The Planning Department,
21 with the agreement of the Historic Preservation Commission, shall schedule public hearings at the
22 Historic Preservation Commission and the Planning Commission, which hearings there shall be
23 noticed at least 20 days prior to each scheduled hearing by publication in a newspaper of general
24 circulation in the City at least twenty (20) days prior to the hearing and by posting in the offices of
25 the Planning Department and on the Planning Department website, with copies of the proposed

1 regulations sent to the Board of Supervisors and any other affected boards, commissions and
2 departments of the City and to all organizations and individuals who have previously
3 requested such notice in writing. The Planning Department shall provide any comments of the
4 Historic Preservation Commission to the Planning Commission in writing in advance of the Planning
5 Commission's hearing on the proposed administrative regulations. The Planning Commission may
6 adopt, modify or disapprove the administrative regulations, taking into consideration the comments of
7 the Historic Preservation Commission. The decision of the Planning Commission in adopting
8 administrative regulations shall be final.

9 ~~(d)~~(f) The City shall be responsible for conducting environmental review for projects
10 undertaken by the City within the City's territorial limits and for projects undertaken by the City
11 outside the territorial limits of the City.

12 (g) Notwithstanding Administrative Code Section 8.12.5, all notices required by this
13 Chapter shall be provided by mail in hard copy form unless an individual or organization has
14 requested notice in electronic form. Electronic notification shall not be used when CEQA requires
15 mailed notice by the United States Postal Service in hard copy form. All notices required by this
16 Chapter 31 to be posted in the Planning Department shall also be posted on the Planning Department's
17 website.

18 (h) Electronic Notifications.

19 (1) The Environmental Review Officer shall implement an electronic notification
20 system for the notification requirements in this Chapter 31. The Environmental Review Officer shall
21 offer interested persons and organizations the opportunity to subscribe to an automated electronic mail
22 notification system. The system shall distribute all notifications required by this Chapter to subscribers.
23 Subscribers shall have the option to receive electronic mail regarding all CEQA notifications or all
24 CEQA notifications for: (A) a specific project; (B) a specific park, historic district, historic property,
25

1 neighborhood, or geographic area; (C) exemption determinations; (D) negative declarations; and (E)
2 environmental impact reports.

3 (2) The electronic notification system shall allow subscribers to opt-out of
4 notifications by mail in hard copy form. However, the electronic notification system shall not be used in
5 lieu of notifications by mail in hard copy form as required by this Chapter 31 unless: (A) a subscriber
6 affirmatively opts-out of notice in such form; and (B) no other provision of law requires notice in such
7 form.

8 **SEC. 31.05. OFFICE OF ENVIRONMENTAL REVIEW.**

9 (a) An Office of Environmental Review is hereby created in the Planning
10 Department, which shall be responsible, acting through the Director of Planning, for the
11 administration of those actions in this Chapter 31 assigned to the Planning Department by Section
12 31.04.

13 (b) Said office shall be under the direction of an Environmental Review Officer, who
14 shall supervise the staff members of the office and have charge of the collection of fees by the
15 office. The Environmental Review Officer shall report to, and coordinate and consult with, the
16 Director of Planning.

17 (c) In addition to the powers and duties conferred below, the Environmental Review
18 Officer may, upon delegation by the Planning Commission as to specific projects, take
19 testimony at supplemental public hearings on draft environmental impact reports, in addition
20 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section
21 31.14 of this Chapter, and shall report to, and make all such testimony available to, the
22 Planning Commission at a public hearing.

23 (d) The Environmental Review Officer shall also take such measures, within his or
24 her powers, as may be necessary to assure compliance with this Chapter 31 by persons, and
25 officials, boards, commissions, departments or agencies outside the Planning Department, and

1 shall periodically review the effectiveness and workability of the provisions of this Chapter 31
2 and recommend any refinements or changes that he or she may deem appropriate for
3 improvement of such provisions.

4 (e) All projects that are not ~~excluded or categorically~~ exempt from CEQA as defined in
5 Section 31.08(a) of this Chapter shall be referred to the Environmental Review Officer for
6 environmental review. All other officials, boards, commissions, departments, bureaus and
7 offices of the City shall cooperate with the Environmental Review Officer in the exercise of
8 his/her responsibilities, and shall supply necessary information, consultations and comments.

9 (f) The Environmental Review Officer shall be responsible for assuring that the City
10 is carrying out its responsibilities set forth in CEQA. In addition, when the City is to carry out or
11 approve a project and some other public agency is the "lead agency," as defined by CEQA,
12 and where projects are to be carried out or approved by the State and Federal governments,
13 the Environmental Review Officer shall provide consultation and comments for the City to the
14 other government agencies when appropriate.

15 (g) To the extent feasible, the Environmental Review Officer shall combine the
16 evaluation of projects, preparation of environmental impact reports and conduct of hearings
17 with other planning processes; and shall coordinate environmental review with the Capital
18 Improvement Program, the San Francisco General Plan and the San Francisco Planning
19 Code.

20 (h) Adoption and/or revision of administrative regulations to implement CEQA shall
21 be by resolution of the Planning Commission after a the public hearings held according to
22 Section 31.04(e) of this Chapter 31. The Environmental Review Officer may adopt necessary
23 forms, checklists and processing guidelines to implement CEQA and this Chapter 31 without a
24 public hearing.

1 (i) Upon prior authorization by the Planning Commission, the Environmental
2 Review Officer may attend hearings and testify on matters related to CEQA before
3 governmental organizations and agencies other than governmental agencies of the City and
4 County of San Francisco and may advocate on behalf of the City on matters related to CEQA.

5 (j) The Environmental Review Officer may provide information to other
6 governmental or environmental organizations and members of the public.

7 (k) The Environmental Review Officer may delegate his or her responsibilities to an
8 employee of the Office of Environmental Review. All references herein to the Environmental
9 Review Officer shall be deemed to include the Environmental Review Officer's delegate.

10 **SEC. 31.06. COVERAGE OF STATE LAW.**

11 CEQA provides that certain kinds of projects ~~may be~~ are subject to CEQA. Some of
12 these projects may be excluded or ~~category~~ exempt from CEQA. If a project is not excluded
13 or ~~category~~ exempt, CEQA provides a process whereby an initial study is completed, then
14 a determination is made as to whether a negative declaration, mitigated negative declaration, or
15 an environmental impact report ("EIR") ~~should be prepared~~ is required. In accordance with the
16 requirements of CEQA and as specified herein, the Planning Commission and/or the
17 Environmental Review Officer shall determine when CEQA applies to a project, when the
18 project is excluded or exempt, or when a negative declaration, mitigated negative declaration, or
19 environmental impact report is required.

20 **SEC. 31.08. CATEGORICAL EXEMPTIONS.**

21 (a) CEQA provides that certain classes of projects are exempt from CEQA because: (1)
22 the project is exempt by statute ("statutory exemption"); (2) the project falls within certain classes of
23 projects that generally do not have a significant effect on the environment and therefore are
24 categorically exempt from CEQA in accordance with the letter and the intent expressed in the
25 classes of categorical exemptions specified in CEQA ("categorical exemption"); (3) the activity is

1 covered under the general rule that CEQA applies only to projects with the potential for causing a
2 significant effect on the environment, thus, where it can be seen with certainty that there is no
3 possibility that the activity in question may have a significant effect on the environment, the activity is
4 not subject to CEQA ("general rule exclusion"); or (4) in certain cases, CEQA streamlining
5 procedures may allow reliance on a prior environmental document prepared on a zoning or planning
6 level decision, except as might be necessary to examine whether there are project-specific significant
7 effects which are peculiar to the project or its site ("community plan exemption"). Unless otherwise
8 specifically stated, reference in this Chapter 31 to "exemptions" or "exempt from CEQA" or an
9 "exemption determination" shall collectively refer to statutory exemptions, categorical exemptions,
10 general rule exclusions, and community plan exemptions.

11 (b) For categorical exemptions:

12 (1) CEQA requires that public agencies create and maintain a Each public agency
13 must list the of specific activities that fall within each categorical exemption such class, subject to
14 the qualification that these lists must be consistent with both the letter and the intent of the
15 classes set forth in CEQA. Except as provided in this section 31.08, projects that are categorically
16 exempt are not subject to the requirements of this Chapter 31. (b) The Environmental Review
17 Officer shall maintain the required list of types of projects which are categorically exempt, and such
18 list and shall be kept posted post it in the offices of the Planning Department and on the Planning
19 Department website and shall provide it to all City departments. SuchThe list shall be kept up to
20 date in accordance with any to implement changes in CEQA and any changes in the status of
21 local projects. The initial list and any additions, deletions and modifications thereto shall be
22 adopted as administrative regulations by resolution of the Planning Commission after public
23 hearing, hearings thereon held, according to the procedure set forth in Section 31.04(e)(e) of this
24 Chapter.

1 ~~(e)~~—(2) CEQA ~~provides for~~ allows public agencies to request ~~that the Secretary of~~
2 ~~the Resources Agency make~~ additions, deletions and modifications to the classes of projects
3 listed as categorically exempt in CEQA. The Planning Commission ~~or the Historic Preservation~~
4 ~~Commission~~ shall make any such requests, after ~~at the~~ public hearings thereon held according to
5 the procedure specified in Section 31.04~~(e)~~~~(e)~~ of this Chapter 31 for adoption of administrative
6 regulations.

7 ~~(d)~~~~(c)~~ The Environmental Review Officer may ~~create~~ adopt necessary forms, checklists
8 and processing guidelines to aid the Planning Department and other departments in
9 determining ~~that whether~~ a project may be ~~ategorically~~ exempt from CEQA in accordance with
10 ~~the letter and the intent expressed in the classes of categorical exemptions specified in~~ CEQA and with
11 the administrative regulations adopted by the Planning Commission.

12 ~~(e)~~~~(d)~~ The Environmental Review Officer shall be responsible for determining whether a
13 project is exempt from CEQA. The Environmental Review Officer shall advise other departments of
14 the ~~categorical exemptions. The Environmental Review Officer requirements of CEQA for determining~~
15 whether a project is exempt from environmental review and may delegate to them the analysis
16 necessary for determination-determining whether a project is ~~ategorically~~ exempt from CEQA.
17 The Environmental Review Officer may consult with and rely on the analysis by other departments in
18 making an exemption determination but the Environmental Review Officer shall make all such
19 determinations. to other departments, provided that other departments shall consult with the
20 Environmental Review Officer regarding the application of the categorical exemptions, and provided
21 further that the Environmental Review Officer shall be responsible for all determinations so delegated
22 to other departments.

23 ~~(f)~~~~(e)~~ Public Notice of Certain Exemptions. When the Environmental Review Officer, ~~or~~
24 ~~any other department to which the Environmental Review Officer has delegated responsibility pursuant~~
25 ~~to Section 31.08(e) above,~~ has determined that a project is ~~excluded or categorically~~ exempt from

1 CEQA, the Environmental Review Officer shall post its determinations in the offices of the Planning
2 Department and on the Planning Department website, and mail notice of its determinations to any
3 individuals or organizations that have previously requested such notice to the public shall be provided
4 for all ~~such~~ exemption determinations involving the following types of projects: (1) any historical
5 resources as defined in CEQA, including without limitation,

6 (1) any buildings and sites listed individually or located within districts listed
7 ~~(i)(A)~~ in Planning Code Articles 10 or 11, ~~(ii)(B)~~ in ~~City-recognized~~ any historical resource
8 surveys that have been adopted by or officially recognized by the City, or (iii)(C) ~~on~~ in the California
9 Register or determined to be eligible for listing in the California Register by the State Historical
10 Resources Commission, including, without limitation, any location listed or determined eligible for, ~~or~~
11 ~~(iv) on~~ the National Register of Historic Places;

12 (2) any other resource for which substantial evidence supports a finding of historic
13 significance, including, but not limited to, compliance with the criteria of Public Resources Code
14 Section 5024.1;

15 ~~(2)~~ (3) any Class 31 categorical exemption;

16 ~~(3)~~ (4) any demolition as defined in Planning Code Section 1005(f) of an existing
17 structure; ~~or~~;

18 (4) (5) any alteration to a building 50 years or older; (6) any demolition as defined in
19 Planning Code Section 317, of an existing structure;

20 (6) any Class 32 categorical exemption;

21 (7) any project within or affecting a park or open space under the jurisdiction or
22 designated for acquisition by the Recreation and Park Commission, or any park under the jurisdiction
23 of any other City department, board or commission; and

24 (8) any community plan exemption.

1 ~~Written determinations of categorical exemptions for these types of projects shall be posted in~~
2 ~~the offices of the Planning Department and shall be mailed to any individuals or organizations that~~
3 ~~have previously requested such notice in writing.~~

4 ~~(g)(f) **Written Determinations for Projects with Multiple Approvals.** When approval of a~~
5 ~~project that is the subject of an exemption determination involves issuance of multiple discretionary~~
6 ~~permits or other project approvals, the Environmental Review Officer shall prepare a written~~
7 ~~determination of exemption that describes and evaluates the whole of the project as required by CEQA~~
8 ~~that will result from all of the discretionary approval actions and lists all of the discretionary approval~~
9 ~~actions that are needed to implement the project. The Planning Department shall post the written~~
10 ~~determination of exemption in the offices of the Planning Department and on the Planning Department~~
11 ~~website, and shall mail the determination to any individuals or organizations that have previously~~
12 ~~requested such notice in writing.~~

13 (g) ~~**Certificates of Exemption.** When the Environmental Review Officer, or any other~~
14 ~~department to which the Environmental Review Officer has delegated responsibility pursuant to Section~~
15 ~~31.08(e) above, has determined that a project is excluded or categorically exempt from CEQA,~~
16 ~~the Environmental Review Officer may, but is not required to, prepare and issue a written~~
17 ~~Certificate of Exemption from Environmental Review by posting a copy thereof in the offices of~~
18 ~~the Planning Department and on the Planning Department website, and by mailing copies thereof~~
19 ~~to the applicant, the board(s), commission(s) or department(s) that will carry out or approve~~
20 ~~the project, and to any individuals or organizations who have previously requested such notice~~
21 ~~in writing.~~

22 (h) ~~**Final Exemption Determination.**~~
23 ~~(1) The Planning Department's determination that a project is exempt from CEQA~~
24 ~~shall be final unless the exemption determination is reviewed and approved or rejected by The-the~~
25 ~~Planning Commission as provided for in this Section 31.08(h). may take- The Planning Commission~~

1 shall allow testimony on any ~~eategorical~~ exemption determination of the Planning Department prior
2 to and separate from consideration of project approval at the public hearing, if any, in connection
3 with the Planning Commission's consideration of the project that is the subject of the
4 ~~eategorical~~ exemption. The Planning Commission shall approve the exemption determination prior to
5 approving the project. If the Planning Commission finds that the Planning Department's exemption
6 determination does not conform to the requirements of CEQA for an exemption, it shall direct the
7 Planning Department to revise the exemption determination or to take such further action as it
8 determines is required by CEQA before it approves the project. When the Planning Commission
9 reviews and approves the exemption determination, the determination shall be final upon its approval
10 by the Planning Commission.

11 (2) When the Planning Department provides public notice of the public hearing at
12 the Planning Commission to consider the project approval for the exempt project, the notice shall: (A)
13 describes the exemption determination; (B) explains how to obtain a copy of the exemption
14 determination; and (C) explains that any person may raise objections to the exemption determination at
15 or before the public hearing at the Planning Commission on the project.

16 (i) **Project Approval Noticing.** After an exemption determination is final as provided in
17 Section 31.08(h) of this Chapter, when any other City department provides public notice of any project
18 approval for the exempt project to be considered at a public hearing the notice shall: (1) describe the
19 exemption determination; (2) explain how to obtain a copy of the exemption determination; (3) explain
20 that any person may raise objections to the exemption determination at or before the public hearing on
21 the project; and (4) explain that any person may appeal the exemption determination to the Board of
22 Supervisors as provided for in Section 31.16 of this Chapter.

23 (j) **Notices of Exemption.** After the City has decided to carry out or approve the project
24 and the project is considered finally approved as provided for in Section 31.16(b)(11), the
25 Environmental Review Officer may file a Notice of Exemption with the county clerk in the county or

1 counties in which the project is to be located. The Planning Department shall also post any such
2 Notice of Exemption in the offices of the Planning Department and on the Planning Department
3 website, and mailed such Notice of Exemption to the applicant, the board(s), commission(s) or
4 department(s) that will carry out or approve the project, and to any individuals or organizations that
5 have previously requested such notice in writing.

6 (k) **Modification of Exempt Project.** Where a modification occurs to a project that the
7 Planning Department or Planning Commission has determined to be exempt, prior to any subsequent
8 approval actions, the Environmental Review Officer shall make a new determination and carry out the
9 procedures as provided for in Section 31.19 of this Chapter 31. For purposes of exempt projects, a
10 modification requiring re-evaluation under Section 31.19 shall mean a change in the scope of a project
11 as described in the original application upon which Planning based the exemption determination or
12 Planning is presented with new information regarding the environmental impacts of the project. If the
13 Environmental Review Officer again determines the project is exempt, the new determination may be
14 appealed to the Board of Supervisors as provided for in Section 31.16.

15 **SEC. 31.10. INITIAL EVALUATION OF PROJECTS.**

16 (a) Upon receiving an environmental evaluation application for a project, or upon
17 referral of a project by the board, commission or department that is to carry out or approve the
18 project, the Environmental Review Officer shall determine whether such project is exempt
19 from environmental review. If not exempt, the Environmental Review Officer shall complete an
20 initial study to determine the level of environmental analysis required. In the event it is clear at
21 the outset that an environmental impact report is required, the Environmental Review Officer
22 may, with the consent of the applicant, make an immediate determination and dispense with
23 the initial study. Each environmental evaluation application or referral shall include a project
24 description using as its base the environmental information form set forth as Appendix H of
25 the CEQA Guidelines, which form shall be supplemented to require additional data and

1 information applicable to a project's effects, including consistency with the environmental
2 issues included in the Eight Priority Policies set forth in Section 101.1 of the Planning Code
3 and incorporated into the General Plan, shadow impacts, including the analysis set forth in
4 Planning Code Section 295, and such other data and information specific to the urban
5 environment of San Francisco or to the specific project. Each environmental evaluation
6 application or referral shall be certified as true and correct by the applicant or referring board,
7 commission or department. Each initial study shall include an identification of the
8 environmental effects of a project using as its base the environmental checklist form set forth
9 in Appendix G of the CEQA Guidelines and addressing each of the questions from the
10 checklist form that are relevant to a project's environmental effects; provided that the checklist
11 form shall be supplemented to address additional environmental effects, including consistency
12 with the environmental issues included in the Eight Priority Policies set forth in Section 101.1
13 of the Planning Code and incorporated into the General Plan, shadow impacts, including the
14 analysis set forth in Planning Code Section 295, and such other environmental effects specific
15 to the urban environment of San Francisco or to the specific project.

16 (b) The initial study shall provide data and analysis regarding the potential for the
17 project to have a significant effect on the environment. The basic criteria for determination of
18 significant effect shall be consistent with the provisions set forth in CEQA.

19 (c) The applicant or the board, commission or department that is to carry out or
20 approve the project shall submit to the Environmental Review Officer such data and
21 information as may be necessary for the initial study. If such data and information are not
22 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

23 (d) During preparation of the initial study, the Environmental Review Officer may
24 consult with any person having knowledge or interest concerning the project. In cases in
25 which the project is to be carried out or approved by more than one government agency and

1 the City is the lead agency, the Environmental Review Officer shall solicit input from all other
2 government agencies that are to carry out or approve the project.

3 (e) If a project is subject to CEQA and the National Environmental Policy Act, an
4 initial evaluation prepared pursuant to the National Environmental Policy Act may be used to
5 satisfy the requirements of this Section.

6 (f) Based on the analysis and conclusions in the initial study, the Environmental
7 Review Officer shall determine, based on the requirements of CEQA, whether there is
8 substantial evidence to support a "fair argument" that the project ~~could~~ may have a significant
9 effect on the environment ~~and an environmental impact report is required, and/or~~ whether a project
10 could not have a significant effect on the environment and a negative declaration ~~or environmental~~
11 impact report shall be prepared is required.

12 ~~(f) — Based on the analysis and conclusions in the initial study, the Environmental Review~~
13 ~~Officer shall determine, based on the requirements of CEQA, whether the project could have a~~
14 ~~significant effect on the environment, and whether a negative declaration or environmental impact~~
15 ~~report shall be prepared.~~

16 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**
17 **DECLARATIONS.**

18 (a) When the Environmental Review Officer determines that a ~~any~~ negative declaration
19 or a mitigated negative declaration is the appropriate level of environmental review required by
20 CEQA for the project, ~~it such determination~~ shall be prepared by or at the direction of the
21 Environmental Review Officer. ~~Unless otherwise specifically stated, reference in this Chapter 31 to~~
22 "negative declaration" shall collectively refer to a negative declaration and a mitigated negative
23 declaration. The negative declaration shall ~~include the information required by CEQA and in each~~
24 instance shall describe the project proposed, include the location of the property, preferably
25 shown on a map, and the name of the project proponent, state the proposed finding that the

1 project could not have a significant effect on the environment, and have attached to it a copy
2 of the initial study documenting reasons to support that finding. *The A mitigated negative*
3 *declaration shall also indicate mitigation measures, ~~if any,~~ included in the project to avoid*
4 *potentially significant effects.*

5 (b) The Environmental Review Officer shall first prepare a negative declaration on a
6 preliminary basis, and shall post a copy of the proposed negative declaration in the offices of
7 the Planning Department and on the Planning Department website and mail notice thereof to the
8 applicant and the board(s), commission(s) or department(s) that will carry out or approve the
9 project.

10 (c) The Environmental Review Officer shall provide a notice of intent to adopt a
11 negative declaration ~~or mitigated negative declaration~~ to those persons required by CEQA. In each
12 instance, the Environmental Review Officer shall provide notice by:

13 (1) Mail to the applicant and the board(s), commission(s) or department(s) that will
14 carry out or approve the project.

15 (2) by publication Publication in a newspaper of general circulation in the City,

16 (3) by posting Posting in the offices of the Planning Department and on the
17 Planning Department website.

18 (4) Posting on the subject site.

19 (5) by mail Mail to the owners and, to the extent practical, the residential
20 occupants, of all real property within the area that is the subject of the negative declaration and
21 within 300 feet of all exterior boundaries of such area, and by mail to all organizations and
22 individuals who have previously requested such notice in writing, sufficiently prior to adoption
23 of the negative declaration to allow the public and agencies a review period of not less than
24 twenty (20) days, or ~~thirty (30)~~ days if a 30-day circulation period is required by CEQA. In the
25 case of City-sponsored projects that involve rezonings, area plans or General Plan amendments and

1 are either citywide in scope or the total area of land that is part of the project, excluding the area of
2 public streets and alleys, is 20 acres or more, the Environmental Review Officer shall only be required
3 to mail notice to the owners or occupants within the exterior boundaries of the project area, and to all
4 organizations and individuals who previously requested such notice in writing.

5 (d) The notice of intent shall specify the period during which comments are to be
6 received, the date, time and place of any public hearings on the project when known to the
7 Planning Department at the time of the notice, a brief description of the project and its location,
8 and the address where copies of the negative declaration and all documents referenced in the
9 negative declaration are available for review.

10 (e) Within ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day circulation period is required
11 by CEQA, following the publication of ~~such the~~ notice of intent, any person may appeal the
12 proposed negative declaration to the Planning Commission, specifying the grounds for such
13 appeal, ~~or Any person~~ may submit comments on the proposed negative declaration.

14 (f) The Planning Commission shall ~~hold~~ schedule a public hearing on any such
15 appeal within not less than ~~fourteen (14)~~ nor more than ~~thirty (30)~~ days after the close of the
16 appeal period. Notice of such hearing shall be posted in the offices of the Planning
17 Department and on the Planning Department website, and shall be mailed to the appellant, to the
18 applicant, to the board(s), commission(s) or department(s) that will carry out or approve the
19 project, to any individual or organization that has submitted comments on the proposed
20 negative declaration, and to any other individual(s) or organization(s) that ~~has~~ have previously
21 requested such notice in writing.

22 (g) After holding such hearing the Planning Commission shall: (1) affirm the
23 proposed negative declaration if it finds that the project could not ~~may~~ have a significant effect
24 on the environment; (2) may refer the proposed negative declaration back to the Planning
25 Department for specified revisions in accordance with CEQA requirements; or (3) ~~shall~~ overrule

1 the proposed negative declaration and order preparation of an environmental impact report if
2 *the Commission* finds that substantial evidence supports a fair argument that the project may have
3 a significant effect on the environment.

4 (h) If the proposed negative declaration is not appealed as provided herein, or if it is
5 affirmed on appeal, the negative declaration shall be considered final, subject to any
6 necessary modifications. Thereafter, the first City decision-making body to act on approval of
7 the project shall review and consider the information contained in the final negative
8 declaration, together with any comments received during the public review process, and, upon
9 making the findings ~~as provided in~~ required by CEQA, shall adopt the negative declaration, prior
10 to approving the project. All decision-making bodies shall review and consider the negative
11 declaration and make findings as required by CEQA prior to approving the project. The
12 decision-making body that adopts the negative declaration shall promptly so advise the Environmental
13 Review Officer.

14 (i) If the City adopts a mitigated negative declaration, the decision-making body
15 shall also adopt a program for reporting on or monitoring the mitigation measures for the
16 project that it has either required or made a condition of approval to mitigate or avoid
17 significant environmental effects.

18 (j) After the City has decided to carry out or approve the project subject to a final
19 negative declaration and the project is considered finally approved as provided for in Section
20 31.16(b)(11), the Environmental Review Officer ~~may~~ shall file a notice of determination with the
21 county clerk in the county or counties in which the project is to be located. If required by
22 CEQA, the notice of determination shall also be filed with the California Office of Planning and
23 Research. When the Environmental Review Officer files a notice of determination with the county
24 clerk, the California Office of Planning and Research, or both, the Planning Department shall also post
25 a copy of the notice of determination in the offices of the Planning Department and on the Planning

1 Department website, and mail a copy of the notice of determination to any individuals or organizations
2 who have previously requested such notice in writing.

3 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**
4 **REQUIRED.**

5 When the Environmental Review Officer determines ~~If it is determined~~ that a project may
6 have a significant effect on the environment ~~that cannot be avoided or mitigated to a less than~~
7 significant level and, ~~therefore, that~~ an environmental impact report is required, the
8 Environmental Review Officer shall ~~prepare and distribute a notice of preparation in the manner~~
9 and containing the information required by CEQA and provide such other notice as required by CEQA.
10 In addition, the Environmental Review Officer shall ~~scheduled~~ scoping meetings and publish the
11 notice of preparation in a newspaper of general circulation in the City, ~~shall~~ post the notice of
12 preparation in the offices of the Planning Department ~~and on the Planning Department website,~~
13 and ~~shall~~ mail the notice of preparation to the applicant, the board(s), commission(s) or
14 department(s) that will carry out or approve the project and to all organizations and individuals
15 who have previously requested such notice in writing. The Environmental Review Officer shall
16 provide such other notice as required by CEQA.

17 **SEC. 31.13. DRAFT ENVIRONMENTAL IMPACT REPORTS.**

18 (a) When an environmental impact report ("EIR") is required, it shall be prepared by
19 or at the direction of the Environmental Review Officer. The EIR shall first be prepared as a
20 draft report.

21 (b) The applicant or the board, commission or department that is to carry out or
22 approve the project shall submit to the Environmental Review Officer such data and
23 information as may be necessary to prepare the draft EIR. If such data and information are
24 not submitted, the Environmental Review Officer may suspend work on the draft EIR. The
25 data and information submitted shall, if the Environmental Review Officer so requests, be in

1 the form of all or a designated part or parts of the proposed draft EIR itself, although the
2 Environmental Review Officer shall in any event make his or her own evaluation and analysis
3 and exercise his or her independent judgment in preparation of the draft EIR for public review.

4 (c) During preparation of the draft EIR, the Environmental Review Officer may
5 consult with any person having knowledge or interest concerning the project. If he/she has not
6 already done so in accordance with Section 31.10 above, in cases in which the project is to be
7 carried out or approved by more than one public agency, the Environmental Review Officer
8 shall consult with all other public agencies that are to carry out or approve the project.

9 (d) When the draft EIR has been prepared, the Environmental Review Officer shall:
10 (1) Filefile a notice of completion of such draft with the California Office of Planning and
11 Research as required by CEQA and make the draft EIR available through the State Clearinghouse if
12 and as required by the California Office of Planning and Research.

13 A(2) Post a copy of such notice, or a separate notice containing the same information,
14 shall thereupon be posted in the offices of the Planning Department and on the Planning
15 Department website, and on the subject site, and

16 (3) mailed Mail such notice to the applicant, the board(s), commission(s) or
17 department(s) that will carry out or approve the project, and to any individual or organization
18 that has previously requested such notice in writing.

19 (4) Mail the The notice of completion shall be sent by mail to the owners and, to the extent
20 practical, the residential occupants, of all real property within the area that is the subject of the
21 environmental impact report and within 300 feet of all exterior boundaries of such area. In the
22 case of City-sponsored projects that involve rezonings, area plans or General Plan amendments and
23 are either citywide in scope or the total area of land that is part of the project, excluding the area of
24 public streets and alleys, is 20 acres or more, the Environmental Review Officer shall only be required
25 to mail notice to the owners or occupants within the exterior boundaries of the project area.

1 (5) A Provide a copy of the draft EIR shall be provided to the applicant and to such
2 board(s), commission(s) or department(s) and to any individual or organization that has so
3 requested.

4 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

5 (a) The Environmental Review Officer shall provide public notice of the availability of the
6 draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The
7 Environmental Review Officer shall provide the notice of availability at the same time that the notice of
8 completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days
9 prior to any scheduled public hearing on the draft EIR. The Environmental Review Officer shall
10 distribute the notice of availability in the manner required by CEQA and in each instance Notice shall
11 be:

12 (1) ~~sent~~ Send the notice to public agencies with jurisdiction by law, and persons
13 with special expertise as follows: ~~after filing a notice of completion as required by CEQA,~~

14 (A) ~~†~~The Environmental Review Officer shall send a copy of the draft
15 EIR to any public agencies as required by CEQA, and may send copies to and consult with
16 persons who have special expertise with respect to any environmental impact involved.

17 ~~(b)~~(B) In sending such copies, the Environmental Review Officer shall
18 request comments on the draft EIR from such agencies and persons, with particular focus
19 upon the sufficiency of the draft EIR in discussing possible effects on the environment, ways
20 in which adverse effects may be minimized, and alternatives to the project.

21 (C) For the types of projects set forth in Section 31.08(e)(1) through (5) of
22 this Chapter and for any other projects that may be subject to the approval of the Historic Preservation
23 Commission, the Environmental Review Officer shall send a copy of the draft EIR to the Historic
24 Preservation Commission and obtain any comments that the Historic Preservation Commission has on
25

1 the draft EIR at a noticed public meeting scheduled at least 10 days prior to any Planning Commission
2 hearing on the draft EIR.

3 (2) Post the notice in the offices of the Planning Department, on the Planning
4 Department website, and on the subject site.

5 (3) Publish the notice in a newspaper of general circulation in the City.

6 (4) Mail the notice to the applicant, the board(s), commission(s) or department(s)
7 that will carry out or approve the project, and to any individuals or organizations that previously have
8 requested such notice in writing.

9 (5) Mail the notice to the owners and, to the extent practical, the residential
10 occupants, of all real property within the area that is the subject of the environmental impact report
11 and within 300 feet of all exterior boundaries of such area. In the case of City-sponsored projects that
12 involve rezonings, area plans or General Plan amendments and are either citywide in scope or the total
13 area of land that is part of the project, excluding the area of public streets and alleys, is 20 acres or
14 more, the Environmental Review Officer shall only be required to mail notice to the owners or
15 occupants within the exterior boundaries of the project area.

16 (b) The notice of availability shall contain the information required by CEQA and in each
17 instance shall:

18 (e)(1) ~~Each notice and request for comments shall state~~ State the starting and ending
19 dates for the draft EIR review period during which the Environmental Review Officer will receive
20 comments that any comments must be returned within a certain time after the sending of the draft EIR,
21 and if comments are not returned within that time it shall be assumed that the agency or
22 person has no comment to make that requires a written response in the EIR. The time limit shall
23 normally be thirty (30) days, or forty five (45) days if required by CEQA. public review period shall be
24 not less than 30 days nor more than 60 days except under unusual circumstances. When a draft EIR is
25 submitted to the State Clearinghouse for review by state agencies, the public review period shall not be

1 less than 45 days, unless a shorter period, not less than 30 days, is approved by the State

2 Clearinghouse. The Environmental Review Officer may allow a longer period for comments on
3 projects of exceptional size or complexity. The Planning Commission or the Environmental
4 Review Officer may, upon the request of an agency, commission or person from whom
5 comments are sought, grant an extension of time beyond the original period for comments,
6 but such extension shall not interfere with the holding of any hearing on the draft EIR for
7 which notice has already been given.

8 (2) State the time, place and date of the scheduled Planning Commission hearing on
9 the draft EIR and all hearings at which the Environmental Review Officer will take testimony.

10 (c) The Planning Department shall make the draft EIR available to the public upon the date
11 of the notice of availability. The Planning Department shall post a copy of the draft EIR on the
12 Planning Department website and provide a copy of the draft EIR in electronic form on a text
13 searchable digital storage device or by text searchable electronic mail transmission when an email
14 address is provided, unless the draft EIR in printed hard copy form is specifically requested, to the
15 applicant and to such board(s), commission(s) or department(s) and to any individuals or
16 organizations that previously have requested a copy in writing.

17 (d) Notice to the general public shall be provided as follows:

18 (1) ~~Public participation, both formal and informal, shall be encouraged at all stages~~
19 ~~of review, and written comments that require a written response in the EIR shall be accepted at~~
20 ~~any time up to the conclusion of the public comment period. The Environmental Review~~
21 ~~Officer may give public notice at any formal stage of the review process, beyond the notices~~
22 ~~required by this Chapter 31 and CEQA, in any manner it may deem appropriate, and may~~
23 ~~maintain a public log as shall post on the Planning Department website the current status of all~~
24 ~~projects under formal review. Members of the general public shall be encouraged to submit their~~
25 ~~comments in writing as early as possible.~~

1 ~~(2) — The draft EIR shall be available to the general public upon filing of the notice of~~
2 ~~completion.~~

3 ~~(3)(e) The Planning Commission shall hold a public hearing on every draft EIR during~~
4 ~~the public comment period, with such hearing combined as much as possible with other~~
5 ~~activities of the Planning Commission. The Environmental Review Officer may, upon~~
6 ~~delegation by the Planning Commission, take testimony at supplemental public hearing(s) on~~
7 ~~draft EIRs, in addition to, and not in lieu of, the hearing conducted by the Planning~~
8 ~~Commission, and shall report to and make all testimony received by the Environmental~~
9 ~~Review Officer available to the Planning Commission at a public hearing. Notice of the Planning~~
10 ~~Commission hearings and all hearings at which the Environmental Review Officer takes testimony shall~~
11 ~~be given by publication in a newspaper of general circulation in the City at least 30 days prior to the~~
12 ~~hearing, by posting in the offices of the Planning Department, by posting on or near the site proposed~~
13 ~~for the project, and by mail sent not less than 30 days prior to the hearing to the applicant, to the~~
14 ~~board, commission or department that is to carry out or approve the project, and to any other~~
15 ~~individual or organization requesting such notice.~~

16 ~~(4)(f) The draft EIR, including any revisions made prior to or during the public hearing,~~
17 ~~shall be the basis for discussion at the hearing. To the extent feasible, any comments already~~
18 ~~received from any agency, organization or individual shall be available at the public hearing.~~

19 **SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.**

20 (a) A final EIR shall be prepared by, or at the direction of, the Environmental Review
21 Officer, based upon the draft EIR, the consultations and comments received during the review
22 process, and additional information that may become available. No less than 14 days prior to the
23 Planning Commission hearing to consider certification of the final EIR, the final EIR shall be made
24 available to the public and to any board(s), commission(s) or department(s) that will carry out or
25 approve the project.

1 (b) The final EIR shall include a list of agencies and persons consulted, the
2 comments received, either verbatim or in summary, and a response to any comments that
3 raise significant points concerning effects on the environment. The response to comments
4 may take the form of revisions within the draft EIR, or by adding a separate section in the final
5 EIR, or by providing an explanation in response to the comment.

6 (c) ~~A public~~ An administrative record shall be kept of each case in which an EIR is
7 prepared, including all comments received in writing in addition to a record of the public
8 hearing or hearings. The final EIR shall indicate the location of such record. ~~Any transcription of~~
9 ~~a hearing record shall be at the expense of the person requesting such transcription. The~~
10 Environmental Review Officer shall cause the draft EIR hearing record to be transcribed and retained
11 as part of the administrative record.

12 (d) When the final EIR has been prepared and in the judgment of the Planning
13 Commission it is adequate, accurate and objective, reflecting the independent judgment and
14 analysis of the Planning Commission, the Planning Commission shall certify its completion in
15 compliance with CEQA. The certification of completion shall contain a finding as to whether
16 the project as proposed will, or will not, have a significant effect on the environment.

17 (e) All decision-making bodies shall review and consider the EIR and make findings as
18 required by CEQA prior to approving the project. The first decision-making body to approve the
19 project shall promptly so advise the Environmental Review Officer.

20 (f) After the City has decided to carry out or approve the project subject to a final EIR, and
21 the project is considered finally approved as provided for in Section 31.16(b)(1), in accordance with
22 CEQA procedures, the Environmental Review Officer shall file a notice of determination with the
23 county clerk in the county or counties in which the project is to be located. If required by CEQA, the
24 notice of determination shall also be filed with the California Office of Planning and Research. The
25 Environmental Review Officer shall also post the notice of determination in the offices of the Planning

1 Department and on the Planning Department website, and mail a copy of the notice of determination to
2 any individuals or organizations who have previously requested such notice in writing.

3 **SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.**

4 (a) After evaluation of a proposed project has been completed pursuant to this
5 Chapter, a substantial modification of the project may require reevaluation of the proposed
6 project.

7 (b) Where ~~such~~ a modification as defined in Section 31.08(k) occurs as to a project that
8 has been determined to be ~~excluded or categorically~~ exempt pursuant to this Chapter, a new
9 determination shall be made as provided in this Chapter.

10 (1) ~~If the Environmental Review Officer the project is again determines the project~~
11 ~~to be excluded or categorically exempt, no further evaluation shall be required by this Chapter. the~~
12 Environmental Review Officer shall note the determination and the reasons therefore in the case
13 record, post a notice of the determination in the offices of the Planning Department and on the
14 Planning Department website, and mail such notice to the applicant, the board(s), commission(s) or
15 department(s) that will carry out or approve the project, and to any individuals or organizations that
16 have previously requested such notice in writing.

17 (2) If the project is determined not to be ~~excluded or categorically~~ exempt, an
18 initial study shall be conducted as provided in this Chapter.

19 (c) Where such a modification occurs as to a project for which a negative
20 declaration has been adopted or a final EIR has been certified, the Environmental Review
21 Officer shall reevaluate the proposed project in relation to such modification.

22 (1) If, on the basis of such reevaluation, the Environmental Review Officer
23 determines, based on the requirements of CEQA, that no additional environmental review is
24 necessary, this determination and the reasons therefor shall be noted in writing in the case
25 record, and no further evaluation shall be required by this Chapter. Notice of any such written

1 determination and the reasons therefor shall be posted in the Planning Department, and shall
2 be mailed to the applicant, the board, commission or department that will carry out or approve
3 the project, to any individual or organization that has commented on the environmental
4 document, and to any other individual or organization requesting such notice in writing.

5 (2) If, on the basis of such reevaluation, the Environmental Review Officer
6 determines that additional environmental review is necessary, the project shall be considered
7 a new project for purposes of environmental review pursuant to this Chapter. In that event, a
8 new evaluation shall be completed prior to the decision by the City as to whether to carry out
9 or approve the project as modified. CEQA sets forth specific requirements for the
10 determination of whether a supplemental or subsequent EIR is necessary, as well as the
11 process therefor.

12 Section 3. The Administrative Code is hereby amended by deleting Section 31.16 in its
13 entirety and adding new Section 31.16, to read as follows:

14 ***SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS***

15 ~~(a) Any person or entity that has submitted comments to the Planning Commission or the~~
16 ~~Environmental Review Officer on a draft EIR, either in writing during the public review period, or~~
17 ~~orally or in writing at a public hearing on the EIR, may appeal the Planning Commission's certification~~
18 ~~of a final EIR to the Board of Supervisors (the "Board").~~

19 ~~— (1) A letter of appeal shall be submitted to the Clerk of the Board within twenty (20)~~
20 ~~calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for~~
21 ~~appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the~~
22 ~~Board. The grounds for appeal shall be limited to issues related to the adequacy, accuracy and~~
23 ~~objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an~~
24 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~
25 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~

1 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~
2 ~~to the Clerk of the Board.~~

3 ~~—— (2) — After receipt of the letter of appeal, the Environmental Review Officer shall promptly~~
4 ~~transmit copies of the EIR to the Clerk of the Board and make the administrative record available to~~
5 ~~the Board.~~

6 ~~—— (3) — While the appeal is pending, and until the EIR is affirmed or re-certified as may be~~
7 ~~required by the Board, the City shall not carry out or consider the approval of a project that is the~~
8 ~~subject of the EIR on appeal.~~

9 ~~—— (b) — The Clerk of the Board shall promptly schedule a hearing on the appeal before the full~~
10 ~~Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more~~
11 ~~than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so~~
12 ~~that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal~~
13 ~~with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and~~
14 ~~to all organizations and individuals who have previously requested such notice, not less than ten (10)~~
15 ~~days prior to the date of the hearing.~~

16 ~~—— (c) — The Board shall conduct its own independent review of the final EIR. The Board shall~~
17 ~~consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of~~
18 ~~the final EIR, including but not limited to the sufficiency of the final EIR as an informational document~~
19 ~~and the correctness of its conclusions, and the Planning Commission's certification of the EIR. The~~
20 ~~Board may consider new facts, evidence and/or issues that were not introduced before the Planning~~
21 ~~Commission or the Environmental Review Officer.~~

22 ~~—— (d) — The Board shall affirm the Planning Commission's certification of the final EIR only if~~
23 ~~the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct,~~
24 ~~and that the findings contained in the Planning Commission's certification are correct. The Board may~~
25 ~~affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of~~

1 ~~the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make~~
2 ~~specific findings and remand the final EIR to the Planning Commission for further action consistent~~
3 ~~with the Board's findings. The Board shall act by motion in affirming or reversing the Planning~~
4 ~~Commission's certification of the final EIR.~~

5 ~~_____ (e) _____ The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~
6 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~
7 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~
8 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~
9 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~
10 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~
11 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~
12 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~
13 ~~certification of the final EIR is affirmed by action of the Board.~~

14 ~~_____ (f) _____ In the event the Board remands an EIR to the Planning Commission, the Planning~~
15 ~~Commission shall take such action as may be required by the specific findings made by the Board and~~
16 ~~consider re-certification of the EIR. In the event the EIR is re-certified by the Planning Commission,~~
17 ~~only the portions of the EIR which have been revised, or the new issues which have been addressed, by~~
18 ~~the Planning Commission may be appealed again to the Board pursuant to the procedures set forth~~
19 ~~herein.~~

20 ~~_____ (g) _____ The Board may reject an appeal if it finds that the appeal fails to state proper grounds~~
21 ~~for appeal. The Board shall act by motion in rejecting an appeal.~~

22 **SEC. 31.16. APPEAL OF CEQA DECISIONS**

23 **(a) Decisions Subject to Appeal. The following CEQA decisions made by any City**
24 **commission, department, agency or official may be appealed to the Board: (1) Certification of a final**
25 **EIR by the Planning Commission; (2) Adoption of a negative declaration by a City decision-maker; (3)**

1 Determination by the Planning Commission or Planning Department that a project is exempt from
2 CEQA; and (4) Determination by the Environmental Review Officer that no additional environmental
3 review is required for a modification to a project that was the subject of a prior EIR, negative
4 declaration or exemption determination.

5 (b) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16(c)
6 pertaining to EIRs, Section 31.16(d) pertaining to negative declarations, Section 31.16(e) pertaining to
7 exemption determinations or Section 31.16(f) pertaining to determinations on modified projects, the
8 following requirements shall apply to an appeal of any of the decisions listed in Section 31.16(a) of this
9 Chapter:

10 (1) The appellant shall submit a letter of appeal to the Clerk of the Board within the
11 time frames set forth in Sections 31.16(c), (d), (e) or (f), as applicable. The letter must state the specific
12 grounds for appeal and must be accompanied by a fee, as set forth in Section 31.22 of this Chapter,
13 payable to the San Francisco Planning Department. The appellant must sign the letter of appeal or may
14 have an agent or attorney file and sign the letter on its behalf. The appellant must also submit with the
15 appeal a copy of the CEQA decision being appealed, if available, and otherwise shall submit it when
16 available. Appellant shall concurrently submit a copy of the letter of appeal to the Environmental
17 Review Officer. The submission to the Environmental Review Officer may be made by electronic means.
18 The Clerk may reject a letter of appeal that does not comply with the requirements of this subpart.

19 (2) After receipt of a copy of the letter of appeal, the Environmental Review Officer
20 shall transmit copies of the environmental review documents to the Clerk of the Board not less than 11
21 days prior to the appeal hearing and shall make the administrative record available to the Board.

22 (3) After the Clerk has accepted the letter of appeal and scheduled the appeal for
23 hearing, all project approvals shall be suspended and the City shall not carry out or consider further
24 the approval of the project that is the subject of the appeal while the appeal is pending, except that
25 project-related activities may be undertaken if and only to the extent they are essential to abate hazards

1 to the public health and safety, including abatement of hazards on a structure or site as determined by
2 a qualified City official, including but not limited to the Director of Building Inspection, the Director of
3 Public Works, the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an
4 emergency presenting an imminent hazard to the public requiring immediate corrective action. If the
5 Historic Preservation Commission is in the process of considering a nomination of the project site, or
6 an area that includes the project, as a landmark or historic district, the designation may proceed
7 during the pendency of the appeal to the Board.

8 (4) The Clerk of the Board shall schedule the appeal for hearing before the full
9 Board, without regard to any rule or policy of the Board, no less than 30 and no more than 45 days
10 following the date that the Clerk has accepted the letter of appeal and: (A) for exemption
11 determinations, the City has taken an action as described in Section 31.16(e) to approve the project in
12 reliance on the exemption determination; and (B) for EIRs, negative declarations and determinations
13 on modified projects, the applicable time period for filing an appeal as set forth in Sections 31.16(c),
14 31.16(d) or 31.16(f) has expired. The Planning Department shall assist the Clerk in determining
15 whether the City has approved an exempt project and when the time period for filing an appeal of a
16 particular project has expired. No less than 20 days prior to the scheduled hearing date, the Planning
17 Department shall provide to the Clerk of the Board a list of all individuals and organizations that have
18 previously requested notice in writing or have commented on the decision of determination on appeal.
19 No less than 14 days prior to the scheduled hearing date, the Clerk of the Board shall provide notice of
20 the appeal by mail to the appellant or appellants and to all organizations and individuals on the list
21 provided by the Planning Department.

22 (5) If more than one person submits a letter of appeal on the same decision or
23 determination, the Board President may consolidate such appeals so that they are heard
24 simultaneously, and up to 3 individual appellants each shall have its own time for testimony as if such
25 appeals were being heard separately. Where the appeals are consolidated, the Board shall provide the

1 same total time for testimony at the public hearing to appellants, the Planning Department and the
2 project applicant or project sponsor. The Board may coordinate its hearing on the CEQA appeal with
3 other hearings on the project, provided that the CEQA appeal shall be heard prior to and separate
4 from any other hearings or decisions on the project.

5 (6) Appellants shall submit all written materials pertaining to the appeal to the
6 Board and the Environmental Review Officer no later than noon, 11 days prior to the scheduled
7 hearing. The Planning Department shall submit a written response to the Board no later than noon,
8 eight days prior to the scheduled hearing. Appellants, members of the public, real parties in interest or
9 City agencies sponsoring the proposed project may also submit a written response to the Board no
10 later than noon, eight days prior to the scheduled hearing. The Clerk will distribute any written
11 documents submitted by these deadlines to the Board through the Board's normal distribution
12 procedures and such written materials will be part of the record. Written materials submitted later
13 than noon, eight days prior to the scheduled hearing, will not be considered part of the record unless
14 the Board affirmatively votes to include such written materials in the record.

15 (7) The Board shall conduct its own independent review of the CEQA decision
16 including the correctness of any supporting findings contained in the record. The Board shall consider
17 anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA
18 decision, including but not limited to, the sufficiency of the CEQA decision and the correctness of its
19 conclusions. The Board shall consider the written record before it, the Planning Commission, the
20 Environmental Review Officer or other City department, and shall also consider any additional new
21 facts, evidence or issues presented in testimony prior to the close of the appeal hearing.

22 (8) The Board shall act on an appeal within 30 days of the date set for the hearing,
23 provided that if the full membership of the Board is not present on the last day on which said appeal is
24 set for hearing within such 30 days, the Board may postpone the hearing and decision until the full
25 membership of the Board is present. If the Board does not conduct at least three regular Board

1 meetings during such 30 day period, the Board shall decide such appeal within 40 days of the date set
2 for the hearing; and provided further that the latest date to which the hearing and decision may be so
3 postponed under this Section shall not be more than 90 days from the date the Clerk schedules the
4 appeal for hearing as provided for in Section 31.16(b)(4).

5 (9) The Board may affirm or reverse any CEQA decision by motion adopted by a
6 vote of a majority of all members of the Board. A tie vote shall be deemed to be disapproval of the
7 CEQA decision. The Board shall adopt findings in support of its decision to affirm or reverse the
8 CEQA decision based on the record.

9 (10) If the Board reverses the CEQA decision, the Board shall remand the matter to
10 the Planning Commission or Planning Department with directions to take further action consistent with
11 the Board's findings.

12 (11) If the Board affirms the CEQA decision, the date of the final EIR, the final
13 negative declaration, exemption determination, or determination of modification, shall be the date upon
14 which the environmental document was originally approved or the exemption determination or
15 determination of modification was issued and any decisions made prior to the date that the Clerk
16 determined the appeal qualified for hearing shall be deemed valid.

17 (12) If the Board reverses the CEQA decision, the prior CEQA decision and any
18 actions approving the project in reliance on the reversed CEQA decision shall be deemed void.

19 (13) The date the project shall be considered finally approved shall occur no earlier
20 than either the expiration date of the appeal period, if no appeal is filed, or the date the Board affirms
21 the CEQA decision, if the CEQA decision is appealed.

22 (c) **Appeal of Final Environmental Impact Reports.** In addition to those requirements set
23 forth in Section 31.16(b) above, the following requirements shall apply only to appeals of EIRs.

1 (1) Any person or entity may appeal a final EIR by submitting a letter of appeal to
2 the Clerk of the Board after the Planning Commission's certification of the final EIR as complete and
3 no later than 30 days after a City decision-maker first approves the project in reliance on the EIR.

4 (2) The grounds for appeal of an EIR shall be limited to issues related to whether the
5 final EIR complies with the requirements of CEQA, is adequate, accurate and objective, reflects the
6 independent judgment and analysis of the City, and the EIR conclusions and the findings contained in
7 the Planning Commission's certification of the EIR are correct.

8 (3) The Board shall affirm the Planning Commission's certification of the final EIR
9 if the Board finds that the final EIR complies with the requirements of CEQA, it is adequate, accurate
10 and objective and reflects the independent judgment and analysis of the City, and its conclusions and
11 the findings contained in the Planning Commission's certification motion are correct.

12 (4) The Board shall reverse the Planning Commission's certification of the EIR if
13 the Board finds that the final EIR does not comply with the requirements of CEQA, it is not adequate,
14 accurate and objective, it does not reflect the independent judgment and analysis of the City, or its
15 conclusions or the findings contained in the Planning Commission's certification motion are incorrect.
16 If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific
17 findings as to the reasons for its action and remand the final EIR to the Planning Commission for
18 further action consistent with the Board's findings.

19 (d) **Appeal of Negative Declarations.** In addition to those requirements set forth in Section
20 31.16(b) above, the following requirements shall apply only to appeals of negative declarations.

21 (1) Any person or entity may appeal a negative declaration by submitting a letter of
22 appeal to the Clerk of the Board after the Planning Commission has affirmed the negative declaration
23 on appeal, or, if no one appealed the negative declaration to the Planning Commission, after the
24 Planning Department has issued a final negative declaration and no later than 30 days after a City
25 decision-maker adopts the final negative declaration.

1 (2) The grounds for appeal of a negative declaration shall be limited to raising
2 issues related to whether the negative declaration conforms to the requirements of CEQA, the
3 correctness of the finding that the project could not have a significant effect on the environment and
4 that there is no substantial evidence to support a fair argument that the project may have a significant
5 impact on the environment, and the adequacy and feasibility of any proposed mitigation measures.

6 (3) The Board shall affirm the approval of a negative declaration if it finds that the
7 negative declaration conforms to the requirements of CEQA and that the record does not include
8 substantial evidence to support a fair argument that the project may have a significant effect on the
9 environment.

10 (4) The Board shall reverse the approval of the negative declaration if it finds that
11 the record includes substantial evidence to support a fair argument that the project may have a
12 significant effect on the environment, or that the negative declaration does not otherwise comply with
13 the requirements of CEQA. If the Board reverses the negative declaration, the Board shall make
14 specific findings as to the reasons for its action and remand the negative declaration to the Planning
15 Department for further action consistent with the Board's findings.

16 (5) If the Board requires the Planning Department to prepare an EIR, it shall be
17 prepared in accordance with the procedures and requirements set forth in this Chapter 31. If the Board
18 requires the negative declaration to be revised, including the addition or revision of mitigation
19 measures in the project to avoid potentially significant effects, the Environmental Review Officer shall
20 finalize the revised negative declaration consistent with the Board's direction and send notice to the
21 public, as set forth in Section 31.11 of this Chapter 31, of the availability of the revised negative
22 declaration. In the event any organization or individual wishes to appeal the revised negative
23 declaration, such appeal shall be made directly to the Board of Supervisors within 30 days of
24 publication of the revised negative declaration in accordance with the procedures and requirements set
25 forth in this Section 31.16 of this Chapter.

1 (e) Appeal of Exemption Determinations. In addition to those requirements set forth in
2 Section 31.16(b) above, the following requirements shall apply to appeals of exemption determinations
3 to the Board of Supervisors.

4 (1) Any person or entity may appeal a final exemption determination for a project by
5 submitting a letter of appeal to the Clerk of the Board within the following time periods:

6 (A) As to any exemption determination for a project for which the
7 Environmental Review Officer or any other City department has provided public notice of the
8 exemption determination as provided for in Section 31.08(e), Section 31.08(f), Section 31.08(g), Section
9 31.08(h), Section 31.08(i), or Section 31.19(b)(1), after the Environmental Review Office or any other
10 City department has provided public notice of the exemption determination and no later than 30 days
11 after a City decision-maker has issued a discretionary permit for the project or taken any other project-
12 related approval action for the project. However, for a project involving multiple approval actions, the
13 Clerk shall reject an appeal if at the time of the appeal the Board has already considered and upheld
14 the same exemption determination following an earlier appeal.

15 (B) As to any exemption determination for a project for which neither the
16 Environmental Review Officer nor any other City department has provided public notice of the
17 exemption determination as provided for in Section 31.08(e), Section 31.08(f), Section 31.08(g), Section
18 31.08(h), Section 31.08(i) or Section 31.19(b)(1), an appeal may be filed at any time following the
19 appellant's discovery of the exemption determination, provided that such appeal shall be filed no later
20 than 60 days after the issuance of the discretionary permit or other project-related approval action.

21 (C) The appeal periods in this Section 31.16(e) shall apply even if the
22 conclusion of any appeal period for the discretionary permit or permits or project approval or
23 approvals is less than the appeal period for the exemption determination. Departments that issue
24 discretionary permits or other project approvals that are subject to separate, shorter appeal periods for
25 the permits or other project approvals than provided for in this Chapter 31 for the appeal of an

1 exemption determination, shall take steps as they determine appropriate to advise applicants seeking
2 permits or other appealable project approvals of the longer appeal period for exemption
3 determinations provided for in this Chapter 31.

4 (2) The grounds for appeal of an exemption determination shall be limited to
5 whether the project conforms to the requirements of CEQA for an exemption.

6 (3) The Board shall affirm the exemption determination if it finds that the project
7 conforms to the requirements of CEQA for an exemption.

8 (4) The Board shall reverse the exemption determination if it finds that the project
9 does not conform to the requirements of CEQA for an exemption. If the Board finds that the project
10 does not conform to the requirements of CEQA for an exemption, the Board may remand the exemption
11 determination to the Environmental Review Officer for revisions or reconsideration, or may reverse the
12 determination and require preparation of an appropriate environmental document. If the Board
13 reverses the exemption determination, the Board shall make specific findings as to the reasons for its
14 action and shall remand the matter to the Planning Department for the preparation of a negative
15 declaration or an EIR, as appropriate.

16 (f) Appeal of Determinations on Modified Projects.

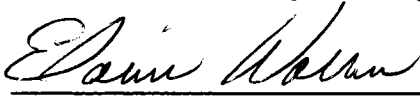
17 (1) In addition to those requirements set forth in Section 31.16(b) of this Chapter, any
18 person or entity may appeal the Environmental Review Officer's determination in Section 31.19(c)(1)
19 of this Chapter that no additional environmental review is necessary for modifications to a project that
20 was the subject of a prior EIR or negative declaration, following the written notice given by the
21 Environmental Review Officer pursuant to Section 31.19(c)(1) of this Chapter and for up to 30 days
22 following the notice.

23 (2) The grounds for appeal under this Section 31.16(f) shall be limited to whether
24 the project modification requires additional environmental review.

1 Section 4. Effective Date. This ordinance shall become effective 30 days from the
2 date of passage.

3 Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to
4 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
5 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
6 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
7 and Board amendment deletions in accordance with the "Note" that appears under the official
8 title of the legislation.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: 
13 ELAINE WARREN
14 Deputy City Attorney

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CEQA Categorical Exemption Determination

SAN FRANCISCO
 PLANNING
 DEPARTMENT

Property Information/Project Description

PROJECT ADDRESS	BLOCK/LOT(S)

CASE NO.	PERMIT NO.	PLANS DATED

- Addition/ Alteration (detailed below)
 Demolition (requires HRER if over 50 years old)
 New Construction

STEP 1 EXEMPTION CLASS

- Class 1: Existing Facilities**
 Interior and exterior alterations; additions under 10,000 sq.ft.; change of use if principally permitted or with a CU.
- Class 3: New Construction**
 Up to three (3) single family residences; six (6) dwelling units in one building; commercial/office structures under 10,000 sq.ft.; accessory structures; utility extensions.

NOTE:
 If neither class applies, an *Environmental Evaluation Application* is required.

STEP 2 CEQA IMPACTS (To be completed by Project Planner)

If ANY box is initialed below an *Environmental Evaluation Application* is required.

- Transportation:** Does the project create six (6) or more net new parking spaces or residential units? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?
- Air Quality:** Would the project add new sensitive receptors (specifically, schools, colleges, universities, day care facilities, hospitals, residential dwellings [subject to Article 38 of the Health Code], and senior-care facilities)?
- Hazardous Materials:** Would the project involve 1) change of use (including tenant improvements) and/or 2) soil disturbance; on a site with a former gas station, auto repair, dry cleaners, or heavy manufacturing use, or on a site with underground storage tanks?
Phase I Environmental Site Assessment required for CEQA clearance (E.P. initials required)
- Soil Disturbance/Modification:** Would the project result in the soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in non-archeological sensitive areas?
Refer to: EP ArcMap > CEQA CatEx Determination Layers > Archeological Sensitive Areas
- Noise:** Does the project include new noise-sensitive receptors (schools, colleges, universities, day care facilities, hospitals, residential dwellings, and senior-care facilities) fronting roadways located in the noise mitigation area?
Refer to: EP ArcMap > CEQA CatEx Determination Layers > Noise Mitigation Area
- Subdivision/Lot-Line Adjustment:** Does the project site involve a subdivision or lot-line adjustment on a lot with a slope of 20% or more?
Refer to: EP ArcMap > CEQA CatEx Determination Layers > Topography

CONTINUED ON PAGE 2

Slope = or > 20%: Does the project involve excavation, square footage expansion, shoring, underpinning, retaining wall work, grading – including excavation or fill?

Exceptions: Do not check box for work performed on previously graded level portion of site; stairs, patio, deck and fence work.

Geotechnical report required and a Certificate or higher level CEQA document required – File an Environmental Application

Seismic: Landslide Zone: Does the project involve excavation, square footage expansion, shoring, underpinning, retaining wall work, grading – including excavation and fill on a landslide zone – as identified in the San Francisco General Plan?

Exceptions: Do not check box for stairs, patio, deck and fence work.

Geotechnical report required and a Certificate or higher level CEQA document required – File an Environmental Application

Seismic: Liquefaction Zone: Does the project involve excavation, square footage expansion, shoring, underpinning, retaining wall work, grading – including excavation and fill on either seismic, flooding, or liquefaction zone?

Exceptions: Do not check box for stairs, patio, deck and fence work.

Geotechnical report will likely be required. File an Environmental Application

Serpentine Rock: Does the project involve any excavation in a property containing serpentine rock?

No exceptions.

File an Environmental Application to determine the applicable level of CEQA analysis

NOTE:
Project Planner must initial box below before proceeding to Step 3.

Project Can Proceed With Categorical Exemption Review.

The project does not trigger any of the CEQA Impacts and can proceed with categorical exemption review.

GO TO STEP 3

STEP 3 PROPERTY STATUS - HISTORICAL RESOURCE

Property is one of the following: (Refer to: San Francisco Property Information Map)

Category A: Known Historical Resource **GO TO STEP 5**

Category B: Potential Historical Resource (over 50 years of age) **GO TO STEP 4**

Category C: Not a Historical Resource or Not Age Eligible (under 50 years of age) **GO TO STEP 6**

STEP 4 PROPOSED WORK CHECKLIST (To be completed by Project Planner)

If condition applies, please initial.

1. **Change of Use and New Construction** (tenant improvements not included).
2. **Interior alterations/interior tenant improvements.** Note: Publicly-accessible spaces (i.e. lobby, auditorium, or sanctuary) require preservation planner review.
3. **Regular maintenance and repair** to correct or repair deterioration, decay, or damage to the building.
4. **Window replacement** that meets the Department's *Window Replacement Standards* (does not include storefront window alterations).
5. **Garage work**, specifically, a new opening that meets the *Guidelines for Adding Garages and Curb Cuts*, and/or replacement of garage door in an existing opening.
6. **Deck, terrace construction, or fences** that are not visible from any immediately adjacent public right-of-way.
7. **Mechanical equipment installation** not visible from any immediately adjacent public right-of-way.
8. **Dormer installation** that meets the requirements for exemption from public notification under *Zoning Administrator Bulletin: Dormer Windows*.
9. **Additions** that are not visible from any immediately adjacent public right-of-way for 150' in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.

NOTE:
Project Planner must check box below before proceeding.

Project is **not listed:**

GO TO STEP 5

Project **does not conform** to the scopes of work:

GO TO STEP 5

Project involves **4 or more** work descriptions:

GO TO STEP 5

Project involves **less than 4** work descriptions:

GO TO STEP 6

STEP 5 CEQA IMPACTS - ADVANCED HISTORICAL REVIEW (To be completed by Preservation Planner)

If condition applies, please initial.

- 1. Project involves a **Known Historical Resource (CEQA Category A)** as determined by Step 3 and conforms entirely to Scope of Work Descriptions listed in Step 4. (Please initial scopes of work in STEP 4 that apply.)
 - 2. **Interior alterations to publicly-accessible spaces.**
 - 3. **Window replacement** of original/historic windows that are not "in-kind" but are is consistent with existing historic character.
 - 4. **Façade/storefront alterations** that do not remove, alter, or obscure character-defining features.
 - 5. **Raising the building** in a manner that does not remove, alter, or obscure character-defining features.
 - 6. **Restoration** based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
 - 7. **Addition(s)**, including mechanical equipment that are minimally visible from a public right of way and meets the *Secretary of the Interior's Standards for Rehabilitation*.
 - 8. **Other work consistent** with the *Secretary of the Interior Standards for the Treatment of Historic Properties*
Specify: _____
 - * 9. **Reclassification of property status** to Category C
 - a. Per Environmental Evaluation Evaluation, dated: _____
* Attach Historic Resource Evaluation Report
 - b. Other, please specify: _____
- * Requires initial by Senior Preservation Planner / Preservation Coordinator

NOTE:
If ANY box is initialed in STEP 5, Preservation Planner MUST review & initial below.

Further Environmental Review Required.

Based on the information provided, the project requires an *Environmental Evaluation Application* to be submitted.

GO TO STEP 6

Preservation Planner Initials

Project Can Proceed With Categorical Exemption Review.

The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review.

GO TO STEP 6

Preservation Planner Initials

STEP 6 CATEGORICAL EXEMPTION DETERMINATION (To be completed by Project Planner)

- Further Environmental Review Required.**
Proposed Project does not meet scopes of work in either:
(check all that apply)
 - Step 2 (CEQA Impacts) or
 - Step 5 (Advanced Historical Review)

STOP!

Must file *Environmental Evaluation Application*.

- No Further Environmental Review Required.** Project is categorically exempt under CEQA.

Planner's Signature

Date

Print Name

Once signed and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.

Existing Requirements for Specific Project Types

With any amendment to Article 31 of the Administrative Code, the Department would pair notification of CEQA determination and notification of the right to appeal the CEQA determination with these existing mailed notifications.

311 Notification for Owners and Occupant in Residential Districts:

- Any expansion beyond existing building envelope (visible or not from public right-of-way)
- Addition of dwelling unit(s)
- Change of use
- Demolition or defacto demolition of an existing building

312 Notification for Owners and Occupant in Neighborhood Commercial, RTO and RED Districts and the Western SoMa SUD

- Demolition or defacto demolition
- New construction
- Expansion of building envelope
- Change of use to a bar, liquor store, walk-up facility, other large institution, other small institution, restaurant, limited restaurant, massage establishment, outdoor activity, adult or other entertainment use, fringe financial service use, or formula retail

Additional Notifications to Owners & Occupants

- Discretionary Review request by the public per 311(d) 312(e)
- Staff DR for the loss of dwelling unit or medical cannabis dispensary
- Conditional Use for Wireless Antenna
- Office allocation
- Certificate of Appropriateness
- Changes to Sutro Tower

Additional Notifications to Owners

- Conditional Use in commercial/mixed use district
- Downtown Permit Review
- Large Project Authorization in EN
- Variances by the Zoning Administrator
- Permit to alter historic building
- Institutional Master Plan Hearing



SAN FRANCISCO PLANNING DEPARTMENT

Supplemental Memorandum

Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: APRIL 25, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013

PUBLISH DATE OF THIS REPORT: APRIL 30, 2013

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Information:
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Project Name: **California Environmental Quality Act Procedures, Appeals, and Public Notice**

Case Number: 2013.0463U [Board File No. 13-0248]

Initiated by: Supervisor Kim

Introduced: April 9, 2013

Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Reviewed by: **Sarah Jones, Acting Environmental Review Officer**
sarah.b.jones@sfgov.org, 415-575-9034

This memorandum is intended to provide a summary of information that has been made newly available since the publication of the Executive Summary on April 18, 2013.

- The Department has received a memorandum from the San Francisco Municipal Transit Agency. This memorandum from SFMTA is included here as Attachment A.
- On April 22, 2013, the Board of Supervisors Land Use and Economic Development Committee, considered both Supervisor Jane Kim's CEQA Procedures Ordinance [BF 130248] and Supervisor Scott Wiener's CEQA Procedures Ordinance [BF 121019]. During this committee hearing, Supervisor David Chiu amended Supervisor Wiener's draft ordinance. Attachment B provides the conceptual framework for Supervisor Chiu's amendments and Attachment C provides the specific text of these amendments.
- Further, during this public hearing by the committee and in subsequent emails to the Department, Supervisor Kim has made some clarifications about her proposed Ordinance that have increased the Department's understanding of her intent.
- The result of both the amendments provided by Supervisor Chiu to Supervisor Wiener's proposal and of the clarifications provided by Supervisor Kim is that the two proposals are now much closer in content.
- On April 25, 2013, the San Francisco Planning Commission passed a resolution making recommendations to the Board of Supervisors regarding Supervisor Kim's ordinance. The Commission resolution was to "approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects." This resolution is provided here as Attachment D.

The remainder of this memorandum to the Commission will focus on illustrating the remaining differences between Supervisor Kim's draft ordinance (hereinafter "Supe. Kim proposal") and Supervisor Wiener's ordinance as amended by Supervisor Chiu (hereinafter "Supe. Wiener/Chiu proposal").

APPEAL PERIODS

- For EIRs and Neg Decs, the appeal period and the time for scheduling the appeal in Supe. Kim's proposal and Supe. Wiener/Chiu's proposals are similar although they use different wording. It's important to note that the result of both proposals is the same result: the appeal gets scheduled 30 days after the first approval. Under both proposals, the appeal could be filed at the time of final environmental document publication (EIR certification in case of EIR; final negative declaration issuance in case of neg dec) but the remaining difference is that under Supervisor Wiener's proposal the neg dec is required to be appealed to the Planning Commission prior to filing an appeal before the Board of Supervisors. Supervisor Kim's proposal does not require this appeal to the Planning Commission. The final opportunity for appeals would extend to 30 days after the approval of either the environmental document (Kim) or approval action (Wiener).
- Exemptions. Under Supe. Wiener/Chiu's proposal, exemption appeals can be filed from the time of issuance of the exemption until 30 days after the Approval Action (The Approval Action is either Planning Commission approval, if needed, or the first approval that commits the city to carry out the whole of the project). Under Supe. Kim's proposal, appeals could be filed from exemption issuance until 30 days after the last discretionary approval (if the exemption was noticed) or 60 days after last approval (if the exemption was not noticed). Note: only one appeal can be filed per project, unless the project is modified - see section titled "Modification of Projects" below.

NOTICING AND POSTING

- Supe. Kim's proposal would have no major change in posting or noticing for Neg Decs and EIRs. New postings or notifications would be required in the following circumstances: additions to the list of exemptions currently noticed to include new categories such as all buildings over 50 years old, parks, the requirement for noticed written determinations on projects involving multiple approvals, and the requirement for a subscription-based electronic notification list. As the Department understands the intent of "notice" in Supe. Kim's proposal, "notice" would mean mailed notice to anyone requesting mailed notice, certain mailed notice to Boards and Commissions and posting at the Department and on our website.
- Supe. Wiener/Chiu's proposal would add notification about CEQA review and appeal for all publicly noticed project approvals regardless of the type of CEQA decision (e.g. EIR neg dec, and exemption). Further, this notification would identify the approval action associated with the exemption that triggers the right to appeal to the Board and provide notification about the upcoming project approvals or hearings. The Department would need to identify the Approval Action that triggers appeal right for all projects, including those approved administratively, and make the information available to the public. All exemption determinations issued would need to be posted on the Department's website. Further, the approval of all City projects without a public hearing also would be posted online and the 30-day appeal window would not begin until such posting occurred.
- In summary, Supe. Wiener/Chiu's proposal adds CEQA notice to project notice **and** requires substantial increased posting of exemptions, posting of approval of City projects and public identification of the Approval Action that would trigger the conclusion of the appeal period. In Supe. Kim's proposal, CEQA notice stands alone and (except for approvals with exemptions at public meetings) and focuses on notice of the issuance of exemptions, not approval actions.

- Both proposals would require a geographically searchable record of exemption issuance on the Planning Department website. .
- Under Supe. Wiener/Chiu's proposal, the effective date of the ordinance would be tied to completion of this new website posting system.

MODIFICATION OF PROJECTS

- The substantive difference for exemptions is that the Supe. Kim proposal establishes that submittal of new information regarding a project for which an exemption was issued constitutes a "modification", which requires a new exemption. It is staff's understanding, based on discussions with Supervisor Kim's staff, that the intent of the Kim's proposal is to make the ERO's decision that a project is within the scope of the original exemption appealable; however, the Kim ordinance as it is currently drafted does not accomplish this.
- The Supe. Wiener/Chiu proposal addresses the step of a changed project being referred to Planning and to the ERO. In the Supe. Kim proposal, there is no discussion of a project that has changed but is still addressed by the original project description. Under the Supe Wiener/Chiu proposal, if the ERO determines that changes to a project are still within the original description, a written determination to that effect is added to the project file.
- Addenda to EIRs and negative declarations would be appealable under the Supe. Kim's proposal but would not be appealable under the Supe. Wiener/Chiu proposal. Currently they are not appealable.

OTHER

- The Supe. Wiener/Chiu proposal generally requires exhaustion of administrative remedies by commenting on the DEIR or appealing a Negative Declaration in order to appeal at the Board of Supervisor. The Supe. Kim proposal does not.
- Project approvals that do not allow physical changes to the environment to occur are allowed while an appeal to the Board is pending under the Supe. Wiener/Chiu proposal. Under the Supe. Kim, only health and safety or landmarking approvals could occur during a pending appeal.
- The Planning Commission must approve an exemption determination when they approve a project under the Supe. Kim proposal.
- The Kim proposal adds hearings at the Historic Preservation Commission (HPC). This proposal would require a draft EIR hearing at the HPC for any structure over 50 years old, although many such structures are not historical resources under CEQA. It also requires that such hearings occur at least 10 days before the Planning Commission hearing on a DEIR. The HPC must also review at a public hearing any changes to department regulations or new procedures concerning historic or cultural resources.



SFMTA

Municipal Transportation Agency

MEMORANDUM

DATE: April 22, 2013
FROM: Jerry Robbins and Rana Ahmadi
TO: AnMarie Rogers, San Francisco Planning Department
RE: Preliminary Analysis of Supervisor Kim's proposed Chapter 31 Amendments

We concur with all of the comments made in the Planning Department's staff report dated April 9, 2013 regarding Case Number 13.0463U (Board File 13-0248) regarding proposed changes to California Environmental Quality Act (CEQA) Procedures, Appeals and Public Notice.

We are providing further comments on two proposals that would severely affect time sensitive SFMTA projects, some of which involve safety.

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
Director of
Transportation

Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)). SFMTA receives categorical exemption determinations under CEQA for a large number of its public projects needing to be processed and implemented quickly. The majority of SFMTA projects receiving categorical exemption determination are public projects, some of which deal with safety improvements, seismic upgrades, transit, bicycle, pedestrian and traffic improvements.

This proposed legislation would lengthen the CEQA clearance process for SFMTA projects and would require increased review time for the staff of the Planning Department to process SFMTA's applications. This would also result in increased costs for SFMTA to receive CEQA clearance for its projects. This proposal would delay the implementation of SFMTA projects, some of which deal with public safety and transportation improvement issues, and would increase the cost for our agency to implement its projects.

Sec 31.08(d): The proposed legislation would eliminate the delegation authority that the Planning Department has granted to the SFMTA and the PUC for issuing "in-house" exemptions for routine legislation such as the establishment of yellow, blue, white and red zones, minor traffic changes such as corner bulbouts, bus stop changes, stop signs, and turn restrictions. SFMTA handles several hundred such small-scale traffic, bicycle, parking and transit changes every year. Without the authority to issue these exemptions, SFMTA would need to have the Planning Department review these items for possible environmental impacts, adding another layer of review to an already cumbersome process. This would greatly slow down

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the process of legislating and implementing these changes that are essential to responding to the constant changes that take place in the City's streets at a rapid pace. SFMTA has issued CEQA exemptions for over ten years without any issues or problems. We feel this program is working well and see no reason for modifying it. Elimination of this delegation would also result in financial impacts to our projects as it would increase review time for Planning Department staff, which SFMTA needs to cover. SFMTA strongly opposes this amendment to the ordinance.

In conclusion, this amendment would result in delay of the implementation of SFMTA projects dealing with public safety and transportation improvements and would result in financial impacts and time delays for SFMTA to legislate changes.

Board File 13-0428 comments

SUMMARY OF POTENTIAL CEQA AMENDMENTS

Supervisor David Chiu

Friday, April 19, 2013

1. Require that all hearings on CEQA appeals be before the full Board.

- a. Delete references to Board as CEQA decision-maker.
- b. Clarify that the Board can't approve the project until the CEQA decision is affirmed but it can hold hearings on the project and pass pending approvals out of committee without recommendation for the purpose of consolidating the approvals with the appeal before the full Board.
- c. Other boards and commissions can continue to take approval actions.

2. Minimize changes to EIR appeal process

- a. Delete requirement to submit written materials with the appeal; to have an agent authorized in writing, if an agent files the appeal; to not require submittal of the approval action with the appeal.
- b. Provide that an EIR appeal can be filed after certification and no later than 30 days after the Date of the Approval Action. This allows appeals to be filed, but not scheduled for hearing, before an approval AND allows appeals after approval.
- c. Provide for the hearing on appeal to be set no more than 45 days from the deadline for filing the appeal. Current law says schedule the appeal as soon as possible and provide a 10 day notice. Sup. Wiener's proposal says schedule no less than 30 and no more than 45 days from the deadline for filing an appeal. A 14-day notice is required and materials must be submitted 11 days before the hearing.

3. Fair argument.

The "fair argument" language is added in three places: Section 31.11(g), Section 31.16(d)(3) and Section 31.16(d)(5).

4. Online notice up and running for all exemptions, even those issued for over-the-counter permits.

A new, uncodified Section 5 is added at the end of the ordinance to address an "Operative Date." It provides that the ordinance will become operative on the later of September 1, 2013 or after the Planning Commission sends a memo to the Board of Supervisors confirming that the department has updated its website to provide up-to-date information to the public about each CEQA exemption determination in a searchable format by location and has held a public hearing to demonstrate the tool. See also #6 below.

5. Keep status quo on submitting documents.

Revise the ordinance so that the Appellant is not required to submit all written materials at the time an appeal is filed. See #2a above. Other provisions in Sup. Wiener's ordinance on the timing of submittal of documents are not revised – 11 days for appellant, 8 for Planning [note that current law does not address this issue; Clerk's interim guidelines somewhat address the issue for negative declarations and exemptions and the proposed ordinance is consistent with those guidelines].

6. First approval – clarify

- a. New language is added to provide that Planning must identify the Approval Action for each project and provide that information to the public either in the CEQA document or in information it posts on its

website or in other public information it provides to the public about a CEQA decision. The effect of this provision is to not only require Planning to inform the public of the Approval Action (to address complaints that the definitions are unclear) but it also effectively requires Planning to post information about every exemption that is not otherwise publicly noticed.

b. New language is added to provide that Planning may issue guidance to other city departments in determining the type of project modifications that might occur after an Approval Action that would require additional review. It states that it could also advise on the process and considerations that Planning would use to determine whether to issue a new determination or undertake additional environmental review.

7. Allow Exemption and Neg Dec Appeals after Determination and before Approval

Consistent with EIRs (see 2b above), revised ordinance would allow appeals to be filed, but not scheduled for hearing, before an approval but opens the 30-day appeal window after approval. This helps (along with 6a above) to address any uncertainty around what the approval is for a particular determination.

8. Strengthens Language Around Project Modifications after CEQA Determinations for Exemptions

New language is added to provide that the Environmental Review Officer shall review project applications that are re-referred to Planning because they have changed if the Environmental Review Officer determines that the project description is no longer within the scope of the previous project description, the Environmental Review Officer shall issue a new CEQA determination. The ERO would have to put any notice that the project has not changed in writing in the case file. Sup. Wiener's ordinance provides that new exemption determinations are appealable to the Board.

9. Provides Notices in Hard Copy Form if Requested

New language clarifies electronic mailing language in 31.04(g) to continue to allow individuals and organizations to request hard copy mailings of any mailed notices required by Chapter 31.

LEGISLATIVE DIGEST

[Administrative Code – California Environmental Quality Act Procedures]

Ordinance amending Administrative Code Chapter 31 to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including without limitation: codifying procedures for appeals of exemptions and negative declarations; providing for the Board to make the final CEQA decision on projects requiring Board legislative action, negating the need to file formal CEQA appeals; revising noticing procedures for environmental impact reports and negative declarations for plan area projects exceeding 20 acres; expanding noticing requirements for certain exempt projects; clarifying existing noticing requirements for exempt projects; and making environmental findings.

Existing Law

The City of San Francisco, in accordance with the requirements of California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* ("CEQA"), and CEQA Guidelines, Title 14, California Code of Regulations, Section 15000 *et seq.* has adopted local procedures for administering its responsibilities under CEQA. These procedures are codified in San Francisco Administrative Code Chapter 31. These procedures tailor the general provisions of the CEQA Guidelines to the specific operations of the City and incorporate by reference the provisions of CEQA and the CEQA Guidelines.

Amendments to Current Law

The proposed ordinance establishes procedures for appeal of exemption determinations and negative declarations to the Board of Supervisors and updates some of the procedures in San Francisco Administrative Code Chapter 31 to reflect revisions to CEQA and the CEQA Guidelines and to codify certain administrative procedures that the San Francisco Planning Department has found workable in practice. The primary updates to Chapter 31 are as follows:

- Section 31.04.
 - Deletes a no longer relevant reference to the San Francisco Redevelopment Agency.
 - Clarifies certain administrative functions of entities within the City and County to reflect actual practice and changes in local law, including activities of the Clerk of

BOARD OF SUPERVISORS

Page 1
4/22/2013

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revised on: 4/25/2013 – i:\board of supervisors\legislation\130248 kim ceqa procedures appeals and notice\pc docs\supplemental memo attach c.plus.pdf.doc

the Board, the Historic Preservation Commission and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk.

- Provides for notices electronically unless someone requests a hard copy or if otherwise specified by CEQA.
- Adds Section 31.04(h) to define "Approval Action," "Building Permit," "Date of the Approval Action," and "Entitlement of Use for the Whole of the Project," all of which relate to describing the approval action for a project that triggers the ability to file an appeal of a CEQA determination to the Board of Supervisors.
- Defines "Approval Action" for an exempt project as:
 - (1) for private projects:
 - (A) the first approval of the project in reliance on the exemption at a noticed public hearing at the Planning Commission, or, if no such hearing is required,
 - (B) the first approval in reliance on the exemption that grants an entitlement for the whole of the project, either by another commission, board or official after a public hearing or by any official of the City without a public hearing.
 - (2) for City's own projects (e.g. not private projects):
 - (A) the first approval in reliance on the exemption of the project at a noticed public hearing, or
 - (B) if approved without a public hearing, the decision in reliance on the exemption that commits the City to a definite course of action in regard to the project.
- Defines "Approval Action" for projects covered by a negative declaration to mean the approval of the project by the first City decision-making body that adopts the negative declaration.
- Defines "Approval Action" for projects covered by an EIR to mean the approval of the project by the first City decision-making body following the certification of the completion of the EIR by the Planning Commission as provided in Section 31.15(d).

- Adds new Section 31.04(i) to require the Planning Department or its delegates to identify the Approval Action for each project as part of the CEQA decision and make that information available to the public.
- Section 31.05. Clarifies existing practice, which is that all projects subject to CEQA are referred to the ERO unless the ERO has delegated specified exemption determinations to another City entity.
- Section 31.08. Clarifies the procedures for handling exemptions from CEQA, including:
 - Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for projects covered by statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
 - Updates existing ordinance language as to when public notice of an exemption determination is required by: (1) clarifying the definition of projects involving historic resources for which notice is required, and (2) defining demolition projects for which notice is required to be consistent with Planning Code Section 317. Projects involving historic resources that require noticing of an exemption determination include those involving sites or districts listed on the California Register, listed in Planning Code Articles 10 or 11, listed on an historic resource survey that has been adopted or officially recognized by the City, and any other resource that the ERO determines to be an historic resources under CEQA criteria.
 - Updates the ordinance language to be consistent with existing Planning Department practice to produce a written determination for any project for which a notice is required and by posting the determinations on its web page.
 - Requires in Section 31.08(f)(1) that public hearing notices inform the public if the City will take an Approval Action that triggers the ability to file an appeal of a CEQA exemption determination to the Board of Supervisors. Such notices must advise the public of the exemption determination, how to obtain a copy, and the consequences of failing to timely raise objections to the exemption.
 - Requires in Section 31.08(f)(2) that the Planning Department notices under Planning Code Sections 311 and 312 (advising of the right to request a discretionary review hearing) contain the information in Section 31.08(f)(1) and advise those noticed that if a discretionary review hearing is requested and the project is approved by the Planning Commission, such approval will be the Approval Action that triggers the ability to file an appeal of the CEQA exemption

determination. If a discretionary review hearing is not requested, the issuance of the Building Permit will trigger the Approval Action.

- Requires in Section 31.08(g) that when City entities take an Approval Action on a City project (e.g. a project not involving private entitlements) without a noticed public hearing, the City entity shall arrange for Planning to post a notice on Planning's website informing the public that the CEQA exemption may be appealed to the Board of Supervisors within 30 days after the first date of posting of the notice.
- Provides in Section 31.08(i) that the ERO has the authority, as provided for in Section 31.19, to re-evaluate the application of an exemption to a project in the event the project changes after the Approval Action. In such a case, following a new Approval Action for the project, the new exemption determination may be appealed to the Board under Section 31.16 as to those issues associated with the project changes. As explained below, Section 31.19 is revised to clarify the process for re-evaluation of exemption determinations when a project is modified.
- Sections 31.09 and 31.10.
 - Makes minor clarifying revisions to these sections to reflect actual practice of the Planning Department in its initial evaluation of projects.
 - Clarifies in Section 31.10(f) the language as to when a negative declaration, a mitigated negative declaration, and an environmental impact report are required. The language used is drawn from CEQA Guidelines Sections 15064(f) and 15070 and explains that the phrase used in CEQA Sections 21080(b) through (d) "substantial evidence in light of the whole record, that a project may have a significant impact on the environment" has been judicially interpreted to mean substantial evidence to support a fair argument of a significant impact. Although it does not change the meaning of the current wording, similar "fair argument" language has been included in Sections 31.11(g), 31.16(d)(3) and 31.16(d)(5). Language now in Section 31.12 regarding when to prepare an EIR is deleted.
- Section 31.11.
 - Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.
 - Provides in Section 31.11(c)(4) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to adopt a negative declaration to each property owner within the project area

or within 300 feet of the exterior boundaries of the project area, but, requires Planning to post all negative declarations on its web page.

- Provides in Section 31.11(d) that the notice of intent shall inform the public that only persons appealing the preliminary negative declaration to the Planning Commission will be permitted to appeal the final negative declaration to the Board of Supervisors.
- Provides in Section 31.11(h) that a notice proposing to adopt the negative declaration and take the Approval Action for the project shall advise the public of its appeal rights to the Board of Supervisors following the Approval Action in reliance on the negative declaration.
- Sections 31.12 – 31.15.
 - In addition to deleting language at the beginning of Section 31.12 concerning when to prepare an EIR as explained previously, updates and clarifies the noticing, posting and distribution requirements of CEQA and the practices of the Planning Department with respect to environmental impact reports (EIRs).
 - Provides in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of the Draft EIR to each property owner within the project area or within 300 feet of the exterior boundaries of the project area, but provides that Planning shall post all draft EIRs on its web page.
 - Provides in Section 31.14(b)(3) that the notice of availability shall inform the public that only commenters on the Draft EIR will be permitted to file an appeal of the certified EIR to the Board of Supervisors.
 - Provides in Section 31.15(c) that a phonographic reporter record all public hearings on draft EIRs.
 - Provides in Section 31.15(d) that the notice of the certification hearing shall inform the public of the expected Date of the Approval Action on the project and of its appeal rights to the Board of Supervisors after such date.
- Section 31.16. Deletes existing Section 31.16 pertaining to appeals of final EIRs and proposes a new Section 31.16 to address appeals of exemption determinations, negative declarations and environmental impact reports. The key provisions of the new section include:

- Provides in Section 31.16(a) that exemption determinations, negative declarations and environmental impact reports may be appealed to the Board of Supervisors
- Specifies the period in which appeals must be filed:
 - (1) For an EIR, after certification and within 30 days of the Date of the Approval Action.
 - (2) For a negative declaration, after the Planning Commission approves the negative declaration and within 30 of the Date of the Approval Action taken in reliance on the negative declaration.
 - (3) For exemptions, after an exemption is issued and within one of these periods as applicable:
 - (A) For a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process for the entitlement, within 30 days of the Date of the Approval Action, even where the appeal period for the entitlement is shorter. Departments that grant entitlements supported by an exemption determination shall take steps to advise applicants that the appeal period for exemption determinations is 30 days after approval of the entitlement.
 - (B) For the City's own projects not involving a private entitlement, if the Approval Action is taken at a public hearing, within 30 days of the Date of the Approval Action; if the Approval Action is taken without a public hearing, within 30 days of the posting on Planning's web site of a notice as provided in Section 31.08(g).
- Specifies the requirements for filing an appeal: one must pay a fee, and the person filing the appeal must have submitted comments during the public comment period on the draft EIR if the appeal is of an EIR; if the appeal pertains to a negative declaration, one must have first appealed the negative declaration to the Planning Commission. The grounds for the appeal must be filed with the appeal.
- Specifies that for projects requiring multiple approvals, while the appeal is pending at the Board, other City agencies and officials may approve the project but shall not take actions to implement the project that will physically change the environment except essential actions to abate hazards to public health and safety. The Board must affirm the CEQA decision before it approves the project but may hold hearings on the project and pass proposed approval actions out of committee without recommendation so that the project approvals and CEQA appeal may be consolidated before the full Board. If the Board reverses the CEQA determination

of Planning, all approvals taken by other City agencies and officials, including those taken during the pendency of the appeal, are void.

- Specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with lists of interested parties.
- Directs the Clerk to schedule the appeal hearing before the full Board. The Clerk shall schedule the CEQA appeal hearing no more than 45 days following the expiration of the time for filing the appeal and provide at least a 14 day notice of the appeal hearing.
- Specifies when materials related to the appeal may be submitted to the Clerk: the appellant and members of the public may submit written materials to the Board up to 11 days, and Planning may submit written materials up to 8 days, before the hearing. The Board shall act within 30 days of the scheduled hearing date but may extend this to not more than 90 days from the deadline for filing the appeal under specified circumstances.
- Specifies the actions that the Board may take for each kind of appeal and the process for then completing the CEQA document in the event the Board reverses the decision of the Planning Commission or Planning Department. If the Board upholds the CEQA decision, prior approval actions are valid. If the Board reverses the CEQA decision, prior approval actions are void.

(1) In the case of EIRs, if the Board reverses Planning's certification, any further appeals of the revised EIR are limited to revised portions, including any new information, and an appellant must comment on the revised EIR at any earlier public hearing on the revisions.

(2) In the case of a negative declaration, if the Board reverses Planning's approval, the Board may remand the negative declaration to Planning for revision and if so, further appeals of the revised negative declaration are limited to the revised portions. The Board may alternatively require preparation of an EIR, in which case, Planning shall prepare the EIR in accordance with CEQA and the requirements of this Chapter 31.

- Revises Section 31.19(b) to clarify the process Planning will follow when an exempt project is modified after the Approval Action. Planning will determine if the projects still fits within the scope of the project description in the original application. If it is consistent, Planning will put a written note to this effect in the file. If it is not consistent, Planning will prepare a new CEQA decision – either an exemption determination or an

initial study, and if necessary, an EIR. The new CEQA decision is subject to appeal to the Board as provided for in Section 31.08(i).

- Provides in Section 5 of the ordinance for an “Operative Date” of no earlier than September 1, 2013, and not until after the Planning Department has demonstrated to the Planning Commission that it has updated its website to provide up-to-date information to the public about each CEQA exemption determination in a format searchable by location, such as through the “Active Permits In My Neighborhood” tool now used by the Planning Department and the Building Department.

Background Information

The ordinance is proposed to update the City’s existing CEQA procedures so that they conform to current provisions of CEQA and CEQA Guidelines, reflect current Planning Department practices, and provide codified procedures for appealing negative declarations and exemption determinations to the Board. The provisions concerning appeals to the Board are intended to respond to requirements in the CEQA statute that if the Board, as the elected body of the City, does not make the final decision regarding a CEQA decision, and instead, such decisions are made by the Planning Commission or Planning Department, the public has the right to appeal those decisions of Planning to the elected Board.

Prior to 2003, the CEQA statute provided for appeals of EIR certifications to the elected decision-making body where a non-elected decision-making body certified the project. In response to this earlier provision of CEQA, the City codified an appeal process for EIRs, which is currently found in Administrative Code Chapter 31.16. The Legislature amended the CEQA statute in 2003 to provide that where a non-elected decision-making body of a lead agency adopts a negative declaration or makes a determination that a project is exempt from CEQA, the negative declaration or CEQA exemption may be appealed to the lead agency’s elected decision-making body, if any, after the project is approved. Since 2003, the City has not amended Chapter 31 to provide for an appeal process for negative declarations or exemption determinations. Instead, the City has relied on interim guidelines issued by the Clerk’s Office, City Attorney opinions on ripeness and timeliness of appeals and Board Rules of Order for conducting land use appeal hearings.

[Administrative Code – California Environmental Quality Act Procedures]

1
2
3 **Ordinance amending Administrative Code Chapter 31 to reflect revisions in the**
4 **California Environmental Quality Act and to update and clarify certain procedures**
5 **provided for in Chapter 31, including without limitation: codifying procedures for**
6 **appeals of exemptions and negative declarations; providing for the Board to make the**
7 **final CEQA decision on projects requiring Board legislative action, negating the need**
8 **to file formal CEQA appeals; revising noticing procedures for environmental impact**
9 **reports and negative declarations for plan area projects exceeding 20 acres; expanding**
10 **noticing requirements for certain exempt projects; clarifying existing noticing**
11 **requirements for exempt projects; and making environmental findings.**

12 NOTE: Additions are *single-underline italics Times New Roman*;
13 deletions are ~~*strike-through italics Times New Roman*~~.
14 Board amendment additions are double-underlined;
15 Board amendment deletions are ~~strikethrough normal~~.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. _____ and is incorporated herein by reference.

21 Section 2. The Administrative Code Chapter 31 is hereby amended by amending
22 Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, ~~and~~ 31.15, and
23 31.19 to read as follows:

24 **SEC. 31.04. RESPONSIBILITY AND DEFINITIONS.**

1 (a) The City and all its officials, boards, commissions, departments, bureaus and
2 offices shall constitute a single "local agency," "public agency" or "lead agency" as those
3 terms are used in CEQA. ~~except that the San Francisco Redevelopment Agency shall be a separate~~
4 ~~"local agency" or "public agency" as specified in CEQA. With regard to establishment of any~~
5 ~~redemption area, the City shall be the "lead agency."~~

6 (b) The administrative actions required by CEQA with respect to the preparation of
7 environmental documents, giving of notice and other activities, as specified in this Chapter,
8 shall be performed by the San Francisco Planning Department as provided herein, acting for
9 the City. When CEQA requires posting of a notice by the county clerk of the county in which the
10 project will be located, the Planning Department shall transmit the required notice to the applicable
11 county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the
12 posting shall commence.

13 (c) For appeals to the Board of Supervisors under Section 31.16 of this Chapter, the Clerk
14 of the Board of Supervisors shall perform any administrative functions necessary for resolution of the
15 appeal.

16 (d) For proposed projects that the Environmental Review Officer of the Planning
17 Department has determined may have an impact on historic or cultural resources, the Historic
18 Preservation Commission may review and comment on such environmental documents and
19 determinations in a manner consistent with CEQA and this Chapter 31.

20 (e)(e) Where adoption of administrative regulations by resolution of the Planning
21 Commission after public hearing is specified herein, there shall be notice by publication in a
22 newspaper of general circulation in the City at least ~~twenty (20)~~ days prior to the hearing and
23 by posting in the offices of the Planning Department, with copies of the proposed regulations
24 sent to the Board of Supervisors and any other affected boards, commissions and
25 departments of the City and to all organizations and individuals who have previously

1 requested such notice in writing. The decision of the Commission in adopting administrative
2 regulations shall be final.

3 ~~(d)(f)~~ The City shall be responsible for conducting environmental review for projects
4 undertaken by the City within the City's territorial limits and for projects undertaken by the City
5 outside the territorial limits of the City.

6 (g) Unless CEQA requires a mailed notice by the United States Postal Service in hard copy
7 form, or an individual or organization requests notice in hard copy form, a City official may
8 provide any mailed notice required by this Chapter using electronic mail transmission whenever the
9 City official has an email address for the individual or organization.

10 (h) Definitions.

11 "Approval Action" means:

12 (1) For a private project seeking an entitlement from the City and determined to be
13 exempt from CEQA:

14 (A) The first approval of the project in reliance on the exemption by the City
15 Planning Commission following a noticed public hearing, including, without limitation, a discretionary
16 review hearing as provided for in Planning Code Section 311 or Section 312, or, if no such hearing is
17 required, either:

18 (B) The first approval of the project in reliance on the exemption by another
19 City commission, board or official following a noticed public hearing granting an Entitlement of Use
20 for the Whole of the Project; or

21 (C) The issuance of the Building Permit or other Entitlement of Use for the
22 Whole of the Project in reliance on the exemption without a noticed public hearing.

23 (2) For all other projects determined to be exempt from CEQA:

24 (A) The first approval of the project in reliance on the exemption by a City
25 decision-making body at a noticed public hearing; or

1 (B) If approved without a noticed public hearing, the decision by a City
2 department or official in reliance on the exemption that commits the City to a definite course of action
3 in regard to a project intended to be carried out by any person.

4 (3) For all projects determined to require the preparation of a negative declaration,
5 the approval of the project by the first City decision-making body that adopts the negative declaration
6 or mitigated negative declaration as provided for in Section 31.11(h) of this Chapter.

7 (4) For all projects determined to require the preparation of an environmental
8 impact report, the approval of the project by the first City decision-making body following the
9 certification of completion of the environmental impact report by the Planning Commission as provided
10 for in Section 31.15(d) of this Chapter.

11 “Building Permit” means a permit issued by the Department of Building Inspection as provided
12 by Building Code Section 106A, including, without limitation, a site permit as defined in Building Code
13 Section 106A.3.4.2.

14 “Date of the Approval Action” means the date the City takes the action on the project that is
15 defined as the “Approval Action,” regardless of whether the Approval Action is subject to an
16 administrative appeal.

17 “Entitlement of Use for the Whole of the Project” means an entitlement that authorizes the
18 project applicant to carry out the project as described in the CEQA determination for the project.
19 Incidental permits needed to complete a project, such as a tree removal permit or a street
20 encroachment permit that alone do not authorize the use sought, would not be an Entitlement of Use for
21 the Whole of the Project, unless such permit is the primary permit sought for the project.

22 (i) The Planning Department or other City department as authorized by Section
23 31.08(d), when rendering a CEQA decision, shall identify the Approval Action for the project
24 and provide that information to the public prior to or at the time of project approval. The
25 information may be provided in an environmental review document or exemption

1 determination, in information posted by the Planning Department at its offices or on its website,
2 or in a notice about the project or the CEQA decision provided to the public by the Planning
3 Department or other City department.

4 **SEC. 31.05. OFFICE OF ENVIRONMENTAL REVIEW.**

5 (a) An Office of Environmental Review is hereby created in the Planning
6 Department, which shall be responsible, acting through the Director of Planning, for the
7 administration *of those actions ~~of~~in* this Chapter 31 assigned to the Planning Department by Section
8 31.04.

9 (b) Said office shall be under the direction of an Environmental Review Officer, who
10 shall supervise the staff members of the office and have charge of the collection of fees by the
11 office. The Environmental Review Officer shall report to, and coordinate and consult with, the
12 Director of Planning.

13 (c) In addition to the powers and duties conferred below, the Environmental Review
14 Officer may, upon delegation by the Planning Commission as to specific projects, take
15 testimony at supplemental public hearings on draft environmental impact reports, in addition
16 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section
17 31.14 of this Chapter, and shall report to, and make all such testimony available to, the
18 Planning Commission at a public hearing.

19 (d) The Environmental Review Officer shall also take such measures, within his or
20 her powers, as may be necessary to assure compliance with this Chapter 31 by persons
21 outside the Planning Department, and shall periodically review the effectiveness and
22 workability of the provisions of this Chapter 31 and recommend any refinements or changes
23 that he or she may deem appropriate for improvement of such provisions.

24 (e) All projects ~~that are not excluded or categorically exempt from CEQA~~ shall be
25 referred to the Environmental Review Officer except those exempt projects covered by a delegation

1 agreement with the Environmental Review Officer as provided for in Section 31.08(d) of this Chapter.

2 All other officials, boards, commissions, departments, bureaus and offices of the City shall
3 cooperate with the Environmental Review Officer in the exercise of his/her responsibilities,
4 and shall supply necessary information, consultations and comments.

5 (f) The Environmental Review Officer shall be responsible for assuring that the City
6 is carrying out its responsibilities set forth in CEQA. In addition, when the City is to carry out or
7 approve a project and some other public agency is the "lead agency," as defined by CEQA,
8 and where projects are to be carried out or approved by the State and Federal governments,
9 the Environmental Review Officer shall provide consultation and comments for the City to the
10 other government agencies when appropriate.

11 (g) To the extent feasible, the Environmental Review Officer shall combine the
12 evaluation of projects, preparation of environmental impact reports and conduct of hearings
13 with other planning processes; and shall coordinate environmental review with the Capital
14 Improvement Program, the San Francisco General Plan and the San Francisco Planning
15 Code.

16 (h) Adoption and/or revision of administrative regulations to implement CEQA shall
17 be by resolution of the Planning Commission after a public hearing. The Environmental
18 Review Officer may adopt necessary forms, checklists and processing guidelines to
19 implement CEQA and this Chapter 31 without a public hearing.

20 (i) Upon prior authorization by the Planning Commission, the Environmental
21 Review Officer may attend hearings and testify on matters related to CEQA before
22 governmental organizations and agencies other than governmental agencies of the City and
23 County of San Francisco and may advocate on behalf of the City on matters related to CEQA.

24 (j) The Environmental Review Officer may provide information to other
25 governmental or environmental organizations and members of the public.

1 (k) The Environmental Review Officer may delegate his or her responsibilities to an
2 employee of the Office of Environmental Review. All references herein to the Environmental
3 Review Officer shall be deemed to include the Environmental Review Officer's delegate.

4 **SEC. 31.06. COVERAGE OF STATE LAW.**

5 CEQA provides that certain kinds of projects may be subject to CEQA. Some of these
6 projects may be excluded or ~~categorically~~ exempt from CEQA. If not excluded or ~~categorically~~
7 exempt, CEQA provides a process whereby an initial study is completed, then a determination
8 is made as to whether a negative declaration, mitigated negative declaration, or an
9 environmental impact report ("EIR") should be prepared. In accordance with the requirements
10 of CEQA and as specified herein, the Planning Commission and/or the Environmental Review
11 Officer shall determine when CEQA applies to a project, when the project is excluded or
12 exempt, or when a negative declaration, mitigated negative declaration, or environmental impact
13 report is required.

14 **SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.**

15 (a) CEQA provides that certain ~~classes projects are exempt from CEQA because: the~~
16 project is exempt by statute ("statutory exemption"); the project is in a class of projects that generally
17 do not have a significant effect on the environment and therefore are categorically exempt from
18 CEQA ("categorical exemption"); CEQA streamlining procedures allow reliance on a prior
19 environmental document prepared on a zoning or planning level decision, for example, as provided in
20 community plan areas and for specified urban infill projects ("community plan exemption"); or the
21 activity is covered under the general rule that CEQA applies only to projects that have the potential for
22 causing a significant effect on the environment, thus, where it can be seen with certainty that there is no
23 possibility that the activity in question may have a significant effect on the environment, the activity is
24 not subject to CEQA ("general rule exclusion"). Unless otherwise specifically stated, reference in this
25 Chapter 31 to "exemptions" or "exempt from CEQA" or an "exemption determination" shall

1 collectively refer to statutory exemptions, categorical exemptions, community plan exemptions and
2 general rule exclusions.

3 (b) For categorical exemptions:

4 (1) Each public agency must list the specific activities that fall within each
5 such class, subject to the qualification that these lists must be consistent with both the letter
6 and the intent of the classes set forth in CEQA. ~~Except as provided in this section 31.08, projects~~
7 ~~that are categorically exempt are not subject to the requirements of this Chapter 31.~~

8 ~~(b)(2)~~ The Environmental Review Officer shall maintain the required list of types
9 of projects which are categorically exempt, and such list shall be kept ~~posted~~ in the offices of
10 the Planning Department. Such list shall be kept up to date in accordance with any changes in
11 CEQA and any changes in the status of local projects. The initial list and any additions,
12 deletions and modifications thereto shall be adopted as administrative regulations by
13 resolution of the Planning Commission after public hearing, according to the procedure set
14 forth in Section 31.04~~(e)~~(e) of this Chapter.

15 ~~(e)~~(3) CEQA provides for public agencies to request additions, deletions and
16 modifications to the classes of projects listed as categorically exempt in CEQA. The Planning
17 Commission shall make any such requests, after a public hearing thereon held according to
18 the procedure specified in Section 31.04~~(e)~~(e) of this Chapter for adoption of administrative
19 regulations.

20 ~~(d)~~(c) The Environmental Review Officer may adopt necessary forms, checklists and
21 processing guidelines to aid the Planning Department and other departments in determining
22 that a project may be ~~categorically~~ exempt in accordance with the letter and the intent
23 expressed in ~~the classes of categorical exemptions specified in~~ CEQA and with the administrative
24 regulations adopted by the Planning Commission.

1 ~~(e)(d)~~ The Environmental Review Officer shall advise other departments of ~~the~~
2 ~~category~~ exemptions. The Environmental Review Officer may delegate the determination
3 whether a project is ~~category~~ exempt from CEQA to other departments, provided that other
4 departments shall consult with the Environmental Review Officer regarding the application of
5 ~~the category~~ exemptions, and provided further that the Environmental Review Officer shall
6 be responsible for all determinations so delegated to other departments. When the Planning
7 Department or other City department determines that a project is exempt from CEQA, the issuance of
8 the exemption determination shall be considered an exemption determination by the Planning
9 Department.

10 ~~(f)(e)~~ When the Environmental Review Officer, or any other department to which the
11 Environmental Review Officer has delegated responsibility pursuant to Section 31.08~~(e)(d)~~
12 above, has determined that a project is ~~excluded or category~~ exempt from CEQA, the
13 Environmental Review Officer:

14 (1) May issue a Certificate of Exemption from Environmental Review by posting a
15 copy in the offices of the Planning Department and on the Planning Department website, and by
16 mailing copies to the applicant, the board(s), commission(s) or department(s) that will carry out or
17 approve the project, and to any individuals or organizations who previously have requested such notice
18 in writing.

19 (2) Shall provide notice to the public ~~shall be provided~~ for all such
20 determinations involving the following types of projects: ~~(A)~~ any historical resources, ~~as~~
21 defined ~~in CEQA, including without limitation, as~~ any buildings and sites listed individually or
22 located within districts (i) listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-recognized~~
23 ~~historical surveys, (iii) on an historic resource survey that has been adopted or officially recognized by~~
24 the City, on the California Register or determined eligible for listing on the California Register by the
25 State Historical Resources Commission, including, without limitation, any location, ~~or (iv)~~ on the

1 National Register of Historic Places, or (ii) a resource that the Environmental Review Officer
2 determines, based on substantial evidence, to be a historical resource under Public Resources Code
3 Section 5024.1; ~~(2)(B)~~ any Class 31 categorical exemption; ~~(3)(C)~~ any demolition as defined in
4 Planning Code Section 317 of an existing structure; or, ~~(4)(D)~~ any Class 32 categorical
5 exemption. ~~Written determinations of categorical exemptions~~ All exemption determinations for these
6 types of projects shall be in writing, posted in the offices of the Planning Department and on the
7 Planning Department's website, and ~~shall be~~ mailed to any individuals or organizations that have
8 previously requested such notice in writing.

9 ~~(g)(f)~~ Informing the public of the Approval Action for a project as part of public hearing
10 notice.

11 (1) When the Planning Department or other City department provides notice of a
12 public hearing on the Approval Action for a project that it has determined to be exempt from CEQA,
13 the notice shall:

14 (A) Inform the public of the exemption determination and how the public may
15 obtain a copy of the exemption determination;

16 (B) Inform the public of its appeal rights to the Board of Supervisors with
17 respect to the CEQA exemption determination following the Approval Action and within the time frame
18 specified in Section 31.16 of this Chapter; and

19 (C) Inform the public that under CEQA, in a later court challenge a litigant
20 may be limited to raising only those issues previously raised at a hearing on the project or in written
21 correspondence delivered to the Planning Department or other City department at, or prior to, such
22 hearing, or as part of the appeal hearing process, if any, on the CEQA determination.

23 (2) Additionally, when the Planning Department provides a notice under Planning
24 Code Section 311 or Section 312 of the opportunity to request a discretionary review hearing before
25 the Planning Commission on a Building Permit application, the notice shall:

1 (A) Contain the information required by this Section 31.08(f) in addition to
2 any notice requirements in the Planning Code;

3 (B) Inform the notification group that if a discretionary review hearing is
4 requested before the Planning Commission, the Approval Action for the project under this Chapter 31
5 will occur upon the Planning Commission's approval of the Building Permit application, if such
6 approval is granted; and

7 (C) Inform the notification group that if a discretionary review hearing is not
8 requested, the Approval Action for the project will occur upon the issuance of a Building Permit by the
9 Department of Building Inspection, if such permit is granted. The notice also shall advise the
10 notification group of how to request information about the issuance of the Building Permit.

11 (g) A City board, commission, department or official that grants the Approval Action for a
12 project of the type defined in Section 31.16(f)(e)(2)(B) of this Chapter, which Approval Action is taken
13 without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, shall thereafter
14 arrange for the Planning Department to post on the Planning Department's website a written decision
15 or written notice of the Approval Action for the project that informs the public of the first date of
16 posting on the website and advises the public that the exemption determination may be appealed to the
17 Board of Supervisors as provided in Section 31.16(f)(e)(2)(B) of this Chapter within 30 days after the
18 first date of posting of the notice. When the Environmental Review Officer, or any other department to
19 which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e)
20 above, has determined that a project is excluded or categorically exempt from CEQA, the
21 Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by
22 posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the
23 applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and
24 to any individuals or organizations who have previously requested such notice in writing.
25

1 (h) After the City has decided to carry out or approve the project and the project is
2 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
3 procedures, the Environmental Review Officer may file a notice of exemption with the county clerk in
4 the county or counties in which the project is to be located. The Planning Commission may take
5 testimony on any categorical exemption at the public hearing, if any, in connection with the Planning
6 Commission's consideration of the project that is the subject of the categorical exemption.

7 (i) The Environmental Review Officer has the authority under Section 31.19(b) to re-
8 evaluate the application of an exemption to a project in the event that a project changes after the
9 Approval Action for the project. If the Planning Commission or Planning Department renders a new
10 CEQA exemption determination decision for a project after the Approval Action, as provided for
11 in Section 31.19(b), and the City takes a new Approval Action for the project in reliance on the new
12 CEQA determination decision, the new CEQA determination decision may be appealed in
13 accordance with the provisions of Section 31.16 of this Chapter, as to those issues associated with the
14 project changes since the original exemption determination.

15 **SEC. 31.09. DETERMINATION OF NEED FOR EVALUATION.**

16 Upon receiving an environmental evaluation application for a project; upon referral of a
17 project by the board, commission or department that is to carry out or approve the project; or through
18 such other process for rendering an exemption determination as the Environmental Review Officer
19 shall authorize, the Environmental Review Officer shall determine whether such project is exempt from
20 environmental review. For all All projects that are not statutorily excluded or categorically exempt
21 from CEQA shall be referred to the Environmental Review Officer, prior to the City's decision as to
22 whether to carry out or approve the project, the Environmental Review Officer shall conduct for an
23 initial study to establish whether a negative declaration or an environmental impact report is
24 required. In the event it is clear at the outset that an environmental impact report is required, the
25

1 Environmental Review Officer may make an immediate determination and dispense with the initial
2 study.

3 **SEC. 31.10. INITIAL EVALUATION OF PROJECTS.**

4 (a) ~~Upon receiving an environmental evaluation application for a project, or upon referral~~
5 ~~of a project by the board, commission or department that is to carry out or approve the project, the~~
6 ~~Environmental Review Officer shall determine whether such project is exempt from environmental~~
7 ~~review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the~~
8 ~~level of environmental analysis required. In the event it is clear at the outset that an environmental~~
9 ~~impact report is required, the Environmental Review Officer may, with the consent of the applicant,~~
10 ~~make an immediate determination and dispense with the initial study.~~ Each environmental
11 evaluation application or referral shall include a project description using as its base the
12 environmental information form set forth as Appendix H of the CEQA Guidelines, which form
13 shall be supplemented to require additional data and information applicable to a project's
14 effects, including consistency with the environmental issues included in the Eight Priority
15 Policies set forth in Section 101.1 of the Planning Code and incorporated into the General
16 Plan; shadow impacts, including the analysis set forth in Planning Code Section 295; and
17 such other data and information specific to the urban environment of San Francisco or to the
18 specific project. Each environmental evaluation application or referral shall be certified as true
19 and correct by the applicant or referring board, commission or department. Each initial study
20 shall include an identification of the environmental effects of a project using as its base the
21 environmental checklist form set forth in Appendix G of the CEQA Guidelines and addressing
22 each of the questions from the checklist form that are relevant to a project's environmental
23 effects; provided that the checklist form shall be supplemented to address additional
24 environmental effects, including consistency with the environmental issues included in the
25 Eight Priority Policies set forth in Section 101.1 of the Planning Code and incorporated into

1 the General Plan, shadow impacts, ~~including the analysis set forth in Planning Code Section 295,~~
2 and such other environmental effects specific to the urban environment of San Francisco or to
3 the specific project.

4 (b) The initial study shall provide data and analysis regarding the potential for the
5 project to have a significant effect on the environment. The basic criteria for determination of
6 significant effect shall be consistent with the provisions set forth in CEQA.

7 (c) The applicant or the board, commission or department that is to carry out or
8 approve the project shall submit to the Environmental Review Officer such data and
9 information as may be necessary for the initial study. If such data and information are not
10 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

11 (d) During preparation of the initial study, the Environmental Review Officer may
12 consult with any person having knowledge or interest concerning the project. In cases in
13 which the project is to be carried out or approved by more than one government agency and
14 the City is the lead agency, the Environmental Review Officer shall solicit input from all other
15 government agencies that are to carry out or approve the project.

16 (e) If a project is subject to CEQA and the National Environmental Policy Act, an
17 initial evaluation prepared pursuant to the National Environmental Policy Act may be used to
18 satisfy the requirements of this Section.

19 (f) Based on the analysis and conclusions in the initial study, the Environmental
20 Review Officer shall:

21 (1) Prepare a negative declaration if there is no substantial evidence, in light of the
22 whole record before the Planning Department, that the project may have a significant effect on the
23 environment.

24 (2) Prepare a mitigated negative declaration if the initial study identified potentially
25 significant effects, but (A) revisions in the project plans or proposals made by or agreed to by the

1 applicant before a proposed mitigated negative declaration and initial study are released for public
2 review would avoid the effects or mitigate the effects to a point where clearly no significant effects
3 would occur, and (B) there is no substantial evidence, in light of the whole record before the Planning
4 Department, that the project as revised may have a significant effect on the environment.

5 (3) Prepare an environmental impact report if the Planning Department determines
6 based on substantial evidence in the record that the project may have a significant effect on the
7 environment. In other words, if the Planning Department is presented with a fair argument that a
8 project may have a significant effect on the environment, the Planning Department shall prepare an
9 environmental impact report even though it may also be presented with other substantial evidence that
10 the project will not have a significant effect.

11 ~~determine, based on the requirements of CEQA, whether there is a "fair argument" that the~~
12 ~~project could have a significant effect on the environment, and whether a negative declaration or~~
13 ~~environmental impact report shall be prepared.~~

14 ~~(f) Based on the analysis and conclusions in the initial study, the Environmental Review~~
15 ~~Officer shall determine, based on the requirements of CEQA, whether the project could have a~~
16 ~~significant effect on the environment, and whether a negative declaration or environmental impact~~
17 ~~report shall be prepared.~~

18 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**
19 **DECLARATIONS.**

20 (a) When the Environmental Review Officer determines that a ~~any~~ negative declaration
21 or a mitigated negative declaration is the appropriate level of environmental review required by
22 CEQA, such determination shall be prepared by or at the direction of the Environmental
23 Review Officer. Unless otherwise specifically stated, reference in this Chapter 31 to "negative
24 declaration" shall collectively refer to a negative declaration and a mitigated negative declaration.
25 The negative declaration shall include the information required by CEQA and in any event shall

1 describe the project proposed, include the location of the property, preferably shown on a
2 map, and the name of the project proponent, state the proposed finding that the project could
3 not have a significant effect on the environment, and have attached to it a copy of the initial
4 study documenting reasons to support that finding. The negative declaration shall also
5 indicate mitigation measures, if any, included in the project to avoid potentially significant
6 effects.

7 (b) The Environmental Review Officer shall first prepare a negative declaration on a
8 preliminary basis, and shall post a copy of the proposed negative declaration in the offices of
9 the Planning Department and on the Planning Department website. and mail notice thereof to the
10 applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.

11 (c) The Environmental Review Officer shall provide a notice of intent to adopt a
12 negative declaration ~~or mitigated negative declaration~~ ("notice of intent") to those persons required
13 by CEQA. In each instance, the Environmental Review Officer shall provide notice by:

14 (1) Mail to the applicant and the board(s), commission(s) or department(s) that will
15 carry out or approve the project.

16 (2) ~~by publication~~ Publication in a newspaper of general circulation in the City.

17 (3) ~~by posting~~ Posting in the offices of the Planning Department and on the
18 subject site.

19 (4) ~~by mail~~ Mail to the owners of all real property within the area that is the
20 subject of the negative declaration and within 300 feet of all exterior boundaries of such area,
21 and by mail to all organizations and individuals who have previously requested such notice in
22 writing, sufficiently prior to adoption of the negative declaration to allow the public and
23 agencies a review period of not less than ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day
24 circulation period is required by CEQA. In the case of City-sponsored projects that involve rezonings,
25 Area Plans or General Plan amendments and are either citywide in scope or the total area of land that

1 is part of the project, excluding the area of public streets and alleys, is 20 acres or more, the
2 Environmental Review Officer shall not be required to provide notice by mail pursuant to this Section
3 31.11(c)(4) except to all organizations and individuals who previously requested such notice in writing.

4 (d) The notice of intent shall specify the period during which comments are to be
5 received, the date, time and place of any public hearings on the project when known to the
6 Planning Department at the time of the notice, a brief description of the project and its location,
7 ~~and~~ the address where copies of the negative declaration and all documents referenced in the
8 negative declaration are available for review, and shall include a statement that no appeal of the
9 negative declaration to the Board of Supervisors under Section 31.16 of this Chapter will be permitted
10 unless the appellant first files an appeal of the preliminary negative declaration to the Planning
11 Commission, and any other information as required by CEQA.

12 (e) Within ~~twenty (20)~~ days, or ~~thirty (30)~~ days if required by CEQA, following the
13 publication of ~~such the~~ notice of intent, any person may appeal the proposed negative
14 declaration to the Planning Commission, specifying the grounds for such appeal, or. ~~Any~~
15 ~~person may~~ submit comments on the proposed negative declaration.

16 (f) The Planning Commission shall ~~hold~~ schedule a public hearing on any such
17 appeal within ~~not less than fourteen (14) nor more than thirty (30)~~ days after the close of the
18 appeal period. Notice of such hearing shall be posted in the offices of the Planning
19 Department, and shall be mailed to the appellant, to the applicant, to the board(s),
20 commission(s) or department(s) that will carry out or approve the project, to any individual or
21 organization that has submitted comments on the proposed negative declaration, and to any
22 other individuals or organizations that previously have requested such notice in writing.

23 (g) After holding such hearing the Planning Commission shall affirm the proposed
24 negative declaration if it finds that the project could not have a significant effect on the
25 environment, may refer the proposed negative declaration back to the Planning Department

1 for specified revisions, or shall overrule the proposed negative declaration and order
2 preparation of an environmental impact report if it finds ~~based on~~ substantial evidence to
3 support a fair argument that the project may have a significant effect on the environment.

4 (h) If the proposed negative declaration is not appealed as provided herein, or if it is
5 affirmed on appeal, the negative declaration shall be considered final, subject to any
6 necessary modifications. Thereafter, the first City decision-making body to act on approval of
7 the project shall review and consider the information contained in the final negative
8 declaration, together with any comments received during the public review process, and, upon
9 making the findings as provided in CEQA, shall adopt the negative declaration, prior to
10 approving the project. A public notice of the proposed action to adopt the negative declaration and
11 take the Approval Action for the project shall advise the public of its appeal rights to the Board of
12 Supervisors with respect to the negative declaration following the Approval Action in reliance on the
13 negative declaration and within the time frame specified in Section 31.16 of this Chapter. All
14 decision-making bodies shall review and consider the negative declaration and make findings
15 as required by CEQA prior to approving the project.

16 (i) If the City adopts a mitigated negative declaration, the decision-making body
17 shall also adopt a program for reporting on or monitoring the mitigation measures for the
18 project that it has either required or made a condition of approval to mitigate or avoid
19 significant environmental effects.

20 (j) After the City has decided to carry out or approve the project and the project is
21 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
22 procedures, the Environmental Review Officer ~~may~~ shall file a notice of determination with the
23 county clerk in the county or counties in which the project is to be located. If required by
24 CEQA, the notice of determination shall also be filed with the California Office of Planning and
25 Research.

1 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**
2 **REQUIRED.**

3 When the Environmental Review Officer determines ~~If it is determined that a project may have a~~
4 ~~significant effect on the environment and~~ that an environmental impact report is required by CEQA,
5 the Environmental Review Officer shall distribute a notice of preparation in the manner and
6 containing the information required by CEQA and provide such other notice as required by CEQA. In
7 addition, the Environmental Review Officer shall prepare a notice advising the public of the notice of
8 preparation and of any scheduled scoping meetings and publish the notice of preparation in a
9 newspaper of general circulation in the City, ~~shall~~ post the notice of preparation in the offices
10 of the Planning Department and on the Planning Department website, and ~~shall~~ mail the notice of
11 preparation to the applicant, the board(s), commission(s) or department(s) that will carry out
12 or approve the project and to all organizations and individuals who have previously requested
13 such notice in writing. The Environmental Review Officer shall provide such other notice as
14 required by CEQA.

15 **SEC. 31.13. DRAFT ENVIRONMENTAL IMPACT REPORTS.**

16 (a) When an environmental impact report ("EIR") is required, it shall be prepared by
17 or at the direction of the Environmental Review Officer. The EIR shall first be prepared as a
18 draft report.

19 (b) The applicant or the board, commission or department that is to carry out or
20 approve the project shall submit to the Environmental Review Officer such data and
21 information as may be necessary to prepare the draft EIR. If such data and information are
22 not submitted, the Environmental Review Officer may suspend work on the draft EIR. The
23 data and information submitted shall, if the Environmental Review Officer so requests, be in
24 the form of all or a designated part or parts of the proposed draft EIR itself, although the
25

1 Environmental Review Officer shall in any event make his or her own evaluation and analysis
2 and exercise his or her independent judgment in preparation of the draft EIR for public review.

3 (c) During preparation of the draft EIR, the Environmental Review Officer may
4 consult with any person having knowledge or interest concerning the project. If he/she has not
5 already done so in accordance with Section 31.10 above, in cases in which the project is to be
6 carried out or approved by more than one public agency, the Environmental Review Officer
7 shall consult with all other public agencies that are to carry out or approve the project.

8 (d) When the draft EIR has been prepared, the Environmental Review Officer shall
9 file a notice of completion of such draft with the California Office of Planning and Research as
10 required by CEQA and make the draft EIR available through the State Clearinghouse if and as
11 required by the California Office of Planning and Research. ~~A copy of such notice, or a separate~~
12 ~~notice containing the same information, shall thereupon be posted in the offices of the Planning~~
13 ~~Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or~~
14 ~~department(s) that will carry out or approve the project, and to any individual or organization that has~~
15 ~~requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real~~
16 ~~property within the area that is the subject of the environmental impact report and within 300 feet of all~~
17 ~~exterior boundaries of such area. A copy of the draft EIR shall be provided to the applicant and to such~~
18 ~~board(s), commission(s) or department(s) and to any individual or organization that has so requested.~~

19 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

20 (a) The Environmental Review Officer shall provide public notice of the availability of the
21 draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The
22 Environmental Review Officer shall provide the notice of availability at the same time that the notice of
23 completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days
24 prior to the scheduled public hearing on the draft EIR. The Environmental Review Officer shall

1 distribute the notice of availability in the manner required by CEQA and in each instance.—~~Notice~~
2 ~~shall be:~~

3 (1) ~~sent~~ Send the notice to any public agencies with jurisdiction by law that CEQA
4 requires the lead agency to consult with and request comments from on the draft EIR, and, in the
5 discretion of the Environmental Review Officer, other persons with special expertise with respect to
6 any environmental impact involved. as follows: after filing a notice of completion as required by
7 CEQA, the Environmental Review Officer shall send a copy of the draft EIR to any public agencies as
8 required by CEQA, and may send copies to and consult with persons who have special expertise with
9 respect to any environmental impact involved.

10 (b) ~~In sending such copies, the Environmental Review Officer shall request comments on the~~
11 draft EIR from such agencies and persons, with particular focus upon the sufficiency of the draft EIR in
12 discussing possible effects on the environment, ways in which adverse effects may be minimized, and
13 alternatives to the project.

14 (2) Post the notice in the offices of the Planning Department, on the Planning
15 Department website, and on the site of the project.

16 (3) Publish the notice in a newspaper of general circulation in the City.

17 (4) Mail the notice to the applicant, the board(s), commission(s) or department(s)
18 that will carry out or approve the project, and to any individuals or organizations that previously have
19 requested such notice in writing.

20 (5) Mail the notice to the owners of all real property within the area that is the
21 subject of the environmental impact report and within 300 feet of all exterior boundaries of such area.
22 In the case of City-sponsored projects that involve rezonings, area plans or General Plan amendments
23 and are either citywide in scope or the total area of land that is part of the project, excluding the area
24 of public streets and alleys, is 20 acres or more, the Environmental Review Officer shall not be
25 required to provide notice by mail pursuant to this Section 31.14(a)(5).

1 **(b) The notice of availability shall contain the information required by CEQA and in each**
2 **instance shall:**

3 **(1) State the starting and ending dates for the draft EIR review period during which**
4 **the Environmental Review Officer will receive comments and if comments are not returned within that**
5 **time it shall be assumed that the agency or person has no comment to make. The public review period**
6 **shall not be less than 30 days nor more than 60 days except under unusual circumstances. When a draft**
7 **EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall**
8 **not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State**
9 **Clearinghouse. The Planning Commission or the Environmental Review Officer may, upon the request**
10 **of an agency or person with special expertise from whom comments are sought, grant an extension of**
11 **time beyond the original period for comments, but such extension shall not prevent with the holding of**
12 **any hearing on the draft EIR for which notice has already been given.**

13 **(2) State the time, place and date of the scheduled Planning Commission hearing on**
14 **the draft EIR and all hearings at which the Environmental Review Officer will take testimony.**

15 **(3) State that only commenters on the Draft EIR will be permitted to file an appeal of**
16 **the certification of the Final EIR to the Board of Supervisors under Section 31.16 of this Chapter.**

17 **(c) The Planning Department shall make the draft EIR available to the public upon the**
18 **filing of the notice of completion with the California Office of Planning and Research. The Planning**
19 **Department shall post a copy of the draft EIR on the Planning Department website and provide a copy**
20 **of the draft EIR to the applicant and to such board(s), commission(s) or department(s) and to any**
21 **individuals or organizations that previously have requested a copy in writing, in electronic form on a**
22 **diskette or by electronic mail transmission when an email address is provided, unless a printed hard**
23 **copy is specifically requested.**

24 ~~**(e) Each notice and request for comments shall state that any comments must be returned**~~
25 ~~**within a certain time after the sending of the draft EIR, and if comments are not returned within that**~~

1 ~~time it shall be assumed that the agency or person has no comment to make. The time limit shall~~
2 ~~normally be thirty (30) days, or forty-five (45) days if required by CEQA. The Environmental Review~~
3 ~~Officer may allow a longer period for comments on projects of exceptional size or complexity. The~~
4 ~~Planning Commission or the Environmental Review Officer may, upon the request of an agency or~~
5 ~~person from whom comments are sought, grant an extension of time beyond the original period for~~
6 ~~comments, but such extension shall not interfere with the holding of any hearing on the draft EIR for~~
7 ~~which notice has already been given.~~

8 ~~(d) — Notice to the general public shall be provided as follows:~~

9 ~~(1) — (d) _____ Public participation, both formal and informal, shall be encouraged at all~~
10 ~~stages of review, and written comments shall be accepted at any time up to the conclusion of~~
11 ~~the public comment period. The Environmental Review Officer may give public notice at any~~
12 ~~formal stage of the review process, beyond the notices required by this Chapter 31 and CEQA,~~
13 ~~in any manner ~~the Environmental Review Officer~~ may deem appropriate, ~~and may maintain a~~~~
14 ~~public log as the status of all projects under formal review. Members of the general public shall be~~
15 ~~encouraged to submit their comments in writing as early as possible.~~

16 ~~(2) — The draft EIR shall be available to the general public upon filing of the notice of~~
17 ~~completion.~~

18 ~~(3) (e) The Planning Commission shall hold a public hearing on every draft EIR during~~
19 ~~the public comment period, with such hearing combined as much as possible with other~~
20 ~~activities of the Planning Commission. The Environmental Review Officer may, upon~~
21 ~~delegation by the Planning Commission, take testimony at supplemental public hearing(s) on~~
22 ~~draft EIRs, in addition to, and not in lieu of, the hearing conducted by the Planning~~
23 ~~Commission, and shall report to and make all testimony received by the Environmental~~
24 ~~Review Officer available to the Planning Commission at a public hearing. Notice of the Planning~~
25 ~~Commission hearings and all hearings at which the Environmental Review Officer takes testimony shall~~

1 ~~be given by publication in a newspaper of general circulation in the City at least 30 days prior to the~~
2 ~~hearing, by posting in the offices of the Planning Department, by posting on or near the site proposed~~
3 ~~for the project; and by mail sent not less than 30 days prior to the hearing to the applicant, to the~~
4 ~~board, commission or department that is to carry out or approve the project, and to any other~~
5 ~~individual or organization requesting such notice.~~

6 ~~(4) The draft EIR, including any revisions made prior to or during the public hearing, shall~~
7 ~~be the basis for discussion at the hearing. To the extent feasible, any comments already received from~~
8 ~~any agency, organization or individual shall be available at the public hearing.~~

9 **SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.**

10 (a) A final EIR shall be prepared by, or at the direction of, the Environmental Review
11 Officer, based upon the draft EIR, the consultations and comments received during the review
12 process, and additional information that may become available.

13 (b) The final EIR shall include a list of agencies and persons consulted, the
14 comments received, either verbatim or in summary, and a response to any comments that
15 raise significant points concerning effects on the environment. The response to comments
16 may take the form of revisions within the draft EIR, or by adding a separate section in the final
17 EIR, or by providing an explanation in response to the comment.

18 (c) A public record of proceedings shall be kept of each case in which an EIR is
19 prepared, including all comments received in writing in addition to a record of the public
20 hearing. The final EIR shall indicate the location of such record. The Environmental Review
21 Officer shall cause the hearing record to be recorded by a phonographic reporter. Any transcription
22 of a hearing record shall be at the expense of the person requesting such transcription.

23 (d) When the final EIR has been prepared and in the judgment of the Planning
24 Commission it is adequate, accurate and objective, reflecting the independent judgment and
25 analysis of the Planning Commission, the Planning Commission shall certify its completion in

1 compliance with CEQA. The notice of the Planning Commission hearing on the certification of the
2 final EIR shall inform the public of the expected Date of the Approval Action on the project and of its
3 appeal rights to the Board of Supervisors with respect to the final EIR after such date and within the
4 time frame specified in Section 31.16 of this Chapter. The certification of completion shall contain
5 a finding as to whether the project as proposed will, or will not, have a significant effect on the
6 environment.

7 (e) After the City has decided to carry out or approve the project and the project is
8 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
9 procedures, the Environmental Review Officer shall file a notice of determination with the county clerk
10 in the county or counties in which the project is to be located. If required by CEQA, the notice of
11 determination shall also be filed with the California Office of Planning and Research.

12 **SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.**

13
14 (a) After evaluation of a proposed project has been completed pursuant to this
15 Chapter, a substantial modification of the project may require reevaluation of the proposed
16 project.

17 (b) ~~Where such a modification occurs as to a project that has been determined to~~
18 ~~be excluded or categorically exempt pursuant to this Chapter, a new determination shall be~~
19 ~~made as provided in this Chapter.~~ For a project that the Planning Department has determined
20 is exempt, when a project changes and a City department re-refers the project application to
21 the Planning Department for review, such review shall include the Environmental Review
22 Officer.

23 (1) If the Environmental Review Officer determines that the project
24 description as modified is still within the scope of the previous project description, the
25

1 Environmental Review Officer shall note this determination in writing in the case record and
2 no further evaluation shall be required by this Chapter.

3 (2) If the Environmental Review Officer determines that the project
4 description is no longer within the scope of the previous project description, the Environmental
5 Review Officer shall issue a new CEQA decision.

6 ~~(1)(A)~~ If the modified project is again determined to be excluded or
7 ~~categorically exempt, no further evaluation shall be required by the Environmental Review~~
8 Officer shall issue a new exemption determination in accordance with this Chapter.

9 ~~(2)(B)~~ If the modified project is determined not to be excluded or
10 ~~categorically exempt, an initial study shall be conducted as provided in this Chapter.~~

11 (C) The Planning Department may issue guidance to other City
12 departments in determining the type of project modification that might occur after an Approval
13 Action that would require additional CEQA review. The guidance may also advise on the
14 process and considerations that the Planning Department would use in such cases to
15 determine whether to issue a new exemption determination or undertake further
16 environmental review.

17 * * * *

18 Section 3. The Administrative Code Chapter 31 is hereby amended by deleting
19 Section 31.16 in its entirety and adding new Section 31.16 to read as follows:

20 ***SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS.***

21 ~~(a) — Any person or entity that has submitted comments to the Planning Commission or the~~
22 ~~Environmental Review Officer on a draft EIR, either in writing during the public review period, or~~
23 ~~orally or in writing at a public hearing on the EIR, may appeal the Planning Commission's certification~~
24 ~~of a final EIR to the Board of Supervisors (the "Board").~~

1 ~~———— (1) ——— A letter of appeal shall be submitted to the Clerk of the Board within twenty (20)~~
2 ~~calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for~~
3 ~~appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the~~
4 ~~Board. The grounds for appeal shall be limited to issues related to the adequacy, accuracy and~~
5 ~~objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an~~
6 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~
7 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~
8 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~
9 ~~to the Clerk of the Board.~~

10 ~~———— (2) ——— After receipt of the letter of appeal, the Environmental Review Officer shall~~
11 ~~promptly transmit copies of the EIR to the Clerk of the Board and make the administrative record~~
12 ~~available to the Board.~~

13 ~~———— (3) ——— While the appeal is pending, and until the EIR is affirmed or re-certified as may~~
14 ~~be required by the Board, the City shall not carry out or consider the approval of a project that is the~~
15 ~~subject of the EIR on appeal.~~

16 ~~(b) ——— The Clerk of the Board shall promptly schedule a hearing on the appeal before the full~~
17 ~~Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more~~
18 ~~than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so~~
19 ~~that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal~~
20 ~~with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and~~
21 ~~to all organizations and individuals who have previously requested such notice, not less than ten (10)~~
22 ~~days prior to the date of the hearing.~~

23 ~~(c) ——— The Board shall conduct its own independent review of the final EIR. The Board shall~~
24 ~~consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of~~
25 ~~the final EIR, including but not limited to the sufficiency of the final EIR as an informational document~~

1 ~~and the correctness of its conclusions, and the Planning Commission's certification of the EIR. The~~
2 ~~Board may consider new facts, evidence and/or issues that were not introduced before the Planning~~
3 ~~Commission or the Environmental Review Officer.~~

4 (d) ~~— The Board shall affirm the Planning Commission's certification of the final EIR only if~~
5 ~~the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct,~~
6 ~~and that the findings contained in the Planning Commission's certification are correct. The Board may~~
7 ~~affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of~~
8 ~~the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make~~
9 ~~specific findings and remand the final EIR to the Planning Commission for further action consistent~~
10 ~~with the Board's findings. The Board shall act by motion in affirming or reversing the Planning~~
11 ~~Commission's certification of the final EIR.~~

12 (e) ~~— The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~
13 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~
14 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~
15 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~
16 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~
17 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~
18 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~
19 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~
20 ~~certification of the final EIR is affirmed by action of the Board.~~

21 (f) ~~— In the event the Board remands an EIR to the Planning Commission, the Planning~~
22 ~~Commission shall take such action as may be required by the specific findings made by the Board and~~
23 ~~consider re-certification of the EIR. In the event the EIR is re-certified by the Planning Commission,~~
24 ~~only the portions of the EIR which have been revised, or the new issues which have been addressed, by~~
25

1 ~~the Planning Commission may be appealed again to the Board pursuant to the procedures set forth~~
2 ~~herein.~~

3 ~~(g) — The Board may reject an appeal if it finds that the appeal fails to state proper grounds~~
4 ~~for appeal. The Board shall act by motion in rejecting an appeal.~~

5 **SEC. 31.16. APPEAL OF CERTAIN CEQA DECISIONS.**

6 **(a) Decisions Subject to Appeal. In accordance with the provisions set forth in this Section**
7 **31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the “Board”)**
8 **where the Board is not otherwise the CEQA decision-making body for the project as provided**
9 **below in Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption**
10 **of a negative declaration by the first decision-making body; and (3) determination by the Planning**
11 **Department or any other authorized City department that a project is exempt from CEQA.**

12 ~~(b) — Board as CEQA Decision-Making Body.~~

13 ~~—— (1) — CEQA decisions are not appealable to the Board if the Board is the~~
14 ~~CEQA decision-making body for the project because the Board of Supervisors must affirm the~~
15 ~~CEQA decision of the Planning Commission or the Planning Department, prior to or as part of~~
16 ~~its approval of the project.~~

17 ~~—— (2) — For purposes of this Chapter 31, the Board is the CEQA decision-making~~
18 ~~body for the project if any of the following circumstances apply:~~

19 ~~—— (A) — At the time an appeal is filed, the Board has affirmed the CEQA~~
20 ~~decision rendered by a non-elected body of the City and approved the project;~~

21 ~~—— (B) — One or more proposed approval actions for the project are~~
22 ~~pending before the Board of Supervisors prior to the expiration of the time frames set forth in~~
23 ~~Sections 31.16 (d),(e), or (f), as applicable, for filing the appeal; or~~

24 ~~—— (C) — The Planning Department prepared the CEQA decision in support~~
25 ~~of a proposed ordinance.~~

1 ~~—— (3) ——~~ For any project for which the Board is the CEQA decision-making body as
2 defined by this Section 31.16, any person may raise objections to the CEQA decision in
3 writing prior to or at a public hearing on the project held by the Board or a committee of the
4 Board. ~~The Board shall consider any written or oral objections raised prior to the close of the~~
5 ~~public hearing on the project. Procedures for the submittal of materials to the Board by the~~
6 ~~public or the preparation of a response by the Planning Department to any objections raised~~
7 ~~shall be as set forth by the Board in its Rules of Order, provided, however, that before the~~
8 ~~Board takes action to approve the project, the Board shall provide the Planning Department~~
9 ~~with an adequate opportunity to submit a written response to any objections to the CEQA~~
10 ~~decision raised by the public prior to the close of the public hearing.~~

11 ~~—— (4) ——~~ For any project for which the Board is the CEQA decision-making body as
12 defined by this Section 31.16, prior to or as part of its consideration of the project, the Board
13 shall affirm or reject the CEQA decision for the project rendered by the Planning Commission
14 or the Planning Department.

15 ~~(e)(b)~~ Appeal Procedures. In addition to the applicable requirements of Section 31.16 (d)(c)
16 pertaining to EIRs, Section 31.16(e)(d) pertaining to negative declarations or Section 31.16 (f)(e)
17 pertaining to exemption determinations, the following requirements shall apply to an appeal of any of
18 the decisions listed in Section 31.16(a).

19 ~~(1)~~ The appellant shall submit a letter of appeal along with all written materials in
20 support of the appeal to the Clerk of the Board within the time frames set forth in Sections 31.16 (c),
21 (d), or (e), or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and
22 shall be accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San
23 Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,
24 authorized in writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a
25 copy of the CEQA EIR certification or the negative declaration approval by the Planning Commission,

1 or a copy of the exemption determination by the Planning Department that is being appealed and a
2 copy of the Approval Action taken for the project by a City board, commission, department or
3 official. The appellant shall submit a copy of the letter of appeal and all any written materials in
4 support of the appeal to the Environmental Review Officer at the time appellant submits the letter of
5 appeal to the Clerk of the Board. The Clerk of the Board shall have three business days from the
6 time of submittal of the appeal to assess the appeal package for completeness and
7 compliance with this subpart. If complete and compliant with this subpart, the Clerk shall
8 process the appeal within the time limits from provisional acceptance. The Clerk of the Board
9 may reject an appeal if appellant fails to comply with this Section 31.16(e)(b)(1).

10 (2) After receipt of the letter of appeal, the Environmental Review Officer shall
11 promptly transmit copies of the environmental review document no later than 11 days prior to the
12 scheduled hearing to the Clerk of the Board and make the administrative record available to the Board.

13 (3) For projects that require multiple City approvals, while the appeal is pending,
14 and until the CEQA determination is affirmed by the Board, (A) the Board may not take action to
15 approve the project but may hold hearings on the project and pass any pending approvals out
16 of committee without a recommendation for the purpose of consolidating project approvals
17 and the CEQA appeal before the full Board, and (B) other City boards, commissions, departments
18 and officials may consider the approval of the project that is the subject of the CEQA determination on
19 appeal but shall not undertake activities to implement the project that physically change the
20 environment except activities that are essential to abate hazards to the public health and safety,
21 including abatement of hazards on a structure or site determined by the appropriate City official,
22 including but not limited to the Director of Building Inspection, the Director of Public Works, the
23 Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency presenting
24 an imminent hazard to the public and requiring immediate action.

1 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
2 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the
3 hearing no less than 30 and no more than 45 days following expiration of the time frames set forth in
4 Sections 31.16 (c), (d), or (e), or (f), as applicable, for filing an appeal. The Planning Department
5 shall assist the Clerk in determining when the time period for filing an appeal of a particular
6 project has expired. If more than one person submits a letter of appeal, the Board shall
7 consolidate such appeals so that they are heard simultaneously. The Clerk shall provide notice
8 of the appeal by mail to the appellant or appellants and to all organizations and individuals who have
9 previously requested such notice in writing. The Clerk shall provide such notice no less than 14 days
10 prior to the date the appeal is scheduled to be heard by the Board. The Planning Department shall
11 provide to the Clerk of the Board the list of individuals and organizations that have commented on the
12 decision or determination in a timely manner, or requested notice of an appeal, no less than 20 days
13 prior to the scheduled hearing.

14 (5) Members of the public, appellant and real parties in interest or City agencies
15 sponsoring the proposed project may submit written materials to the Clerk of the Board no later than
16 noon, 11 days prior to the scheduled hearing. The Planning Department shall submit to the Clerk of the
17 Board a written response to the appeal no later than noon, eight days prior to the scheduled hearing.
18 Any written document submitted after these deadlines shall not be distributed to the Supervisors as part
19 of their hearing materials.

20 (6) The Board shall conduct its own independent review of whether the CEQA
21 decision adequately complies with the requirements of CEQA.

22 (7) The Board shall act on an appeal within 30 days of the date scheduled for the
23 hearing, provided that if the full membership of the Board is not present on the last day on which the
24 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but
25 not later than, the full membership of the Board is present; and provided further, if the Board of

1 Supervisors does not conduct at least three regular Board meetings during such 30 day period, the
2 Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon;
3 and provided further that the latest date to which said decision may be so postponed under this Section
4 shall be not more than 90 days from the expiration of the time frames set forth in Sections 31.16 (c),
5 (d), ~~or (e), or (f)~~, as applicable, for filing an appeal.

6 (8) The Board may affirm or reverse the CEQA decision of the Planning
7 Commission, Planning Department or other authorized City agency by a vote of a majority of all
8 members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board
9 shall act by motion. The Board shall adopt findings in support of its decision, which may include
10 adoption or incorporation of findings made by the Planning Commission, Environmental Review
11 Officer or other City department authorized to act on the CEQA decision below. If the Board reverses
12 the CEQA decision, the Board shall adopt specific findings setting forth the reasons for its decision.

13 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final
14 negative declaration, or final exemption determination shall be the date upon which the Planning
15 Commission, Planning Department or other authorized City department, as applicable, first approved
16 the EIR or negative declaration or issued the exemption determination and any actions approving the
17 project made prior to the appeal decision shall be deemed valid.

18 (10) If the Board reverses the CEQA decision, the prior CEQA decision and any
19 actions approving the project, including, but not limited to, any approvals of the project granted during
20 the pendency of the appeal, shall be deemed void.

21 (11) The date the project shall be considered finally approved shall occur no earlier
22 than either the expiration date of the appeal period, if no appeal is filed, or the date the Board affirms
23 the CEQA decision, if the CEQA decision is appealed.

24 ~~(d)~~(c) **Appeal of Environmental Impact Reports.** In addition to those requirements set forth in
25 Section 31.16~~(e)~~(b) above, the following requirements shall apply only to appeals of EIRs.

1 (1) Any person or entity that has submitted comments to the Planning Commission
2 or the Environmental Review Officer on a draft EIR, either in writing during the public review period,
3 or orally or in writing at a public hearing on the EIR, may appeal the Planning Commission's
4 certification of the final EIR.

5 (2) The appellant of a final EIR shall submit a letter of appeal and written materials
6 in support of the appeal to the Clerk of the Board after the Planning Commission certifies the final
7 EIR as complete and no later than ~~within~~ 30 days after the Date of the Approval Action for the
8 project following the Planning Commission's certification of the EIR.

9 (3) The grounds for appeal of an EIR shall be limited to whether the EIR complies
10 with CEQA, is adequate, accurate and objective, and reflects the independent judgment and analysis of
11 the City.

12 (4) The Board shall affirm the Planning Commission's certification of the final EIR
13 if the Board finds that the final EIR complies with CEQA, is adequate, accurate and objective, and
14 reflects the independent judgment and analysis of the City.

15 (5) The Board shall reverse the Planning Commission's certification of the EIR if the
16 Board finds that the EIR does not comply with CEQA or is not adequate, accurate and objective or
17 does not reflect the independent judgment and analysis of the City. If the Board reverses the Planning
18 Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission
19 for further action consistent with the Board's findings. Any further appeals of the EIR shall be limited
20 only to the portions of the EIR that the Planning Commission has revised and any appellant shall have
21 commented on the revised EIR at or before a public hearing held on the revised EIR or the project, if
22 any. The Board's subsequent review, if any, also shall be limited to the portions of the EIR that the
23 Planning Commission has revised including, without limitation, new issues that have been addressed.
24 Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.
25

1 (e)(d) **Appeal of Negative Declarations.** In addition to those requirements set forth in Section
2 31.16(e)(b) above, the following requirements shall apply only to appeals of negative declarations.

3 (1) Any person or entity that has filed an appeal of the preliminary negative
4 declaration with the Planning Commission during the public comment period provided by this Chapter
5 31 for filing comments on the preliminary negative declaration may appeal the Planning Commission's
6 approval of the final negative declaration.

7 (2) The appellant of a negative declaration shall submit a letter of appeal to the
8 Clerk of the Board after the Planning Commission approves the final negative declaration and
9 within 30 days after the Date of the Approval Action for the project taken in reliance on the negative
10 declaration.

11 (3) The grounds for appeal of a negative declaration shall be limited to whether, in
12 light of the whole record before the Board, the negative declaration conforms to the requirements of
13 CEQA and there is no substantial evidence to support a fair argument that the project may have a
14 significant effect on the environment, including in the case of a mitigated negative declaration, the
15 adequacy and feasibility of the mitigation measures.

16 (4) The Board shall affirm the Planning Commission approval of the negative
17 declaration if it finds that the negative declaration conforms to the requirements of CEQA and the
18 project could not have a significant effect on the environment.

19 (5) The Board shall reverse the Planning Commission approval of the negative
20 declaration if it finds that the negative declaration does not conform to the requirements of CEQA or
21 there is substantial evidence to support a fair argument that the project may have a significant
22 effect on the environment that has not been avoided or mitigated to a less than significant level by
23 mitigation measures or project modifications agreed to by the project sponsor or incorporated into the
24 project. If the Board reverses the decision of the Planning Commission, it shall remand the negative
25 declaration to the Planning Department for further action consistent with the Board's findings.

1 (A) In the event the Board remands the negative declaration to the Planning
2 Department for revision, the Environmental Review Officer shall finalize the revised negative
3 declaration and send notice to the public, as set forth in Section 31.11 of this Chapter, of the
4 availability of the revised negative declaration. No appeal to the Planning Commission of the revised
5 negative declaration shall be required. In the event an organization or individual wishes to appeal the
6 revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30
7 days of publication of the revised negative declaration and shall comply with the procedures set forth
8 in this Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the
9 negative declaration that the Planning Department has revised.

10 (B) In the event the Board determines that a project may have a significant
11 effect on the environment that cannot be avoided or mitigated to a less than significant level and,
12 therefore, an EIR is required, the Planning Department shall prepare an EIR in accordance with
13 CEQA and this Chapter 31. Any subsequent appeal to the Board shall comply with the procedures set
14 forth in this Section 31.16.

15 (f)(e) Appeal of Exemption Determinations. In addition to those requirements set forth in
16 Section 31.16(e)(b) above, the following requirements shall apply to appeals of exemption
17 determinations.

18 (1) Any person or entity may appeal the exemption determination by the Planning
19 Department or other authorized City department to the Board.

20 (2) The appellant of an exemption determination shall submit a letter of appeal and
21 written materials in support of the appeal to the Clerk of the Board within the following time frames as
22 applicable:

23 (A) For a private project seeking a permit, license or other entitlement for
24 use for which the City otherwise provides an appeal process for the entitlement, the appeal of an
25 exemption determination shall be filed after the Planning Department issues the exemption

1 determination and within 30 days after the Date of the Approval Action, regardless of whether the
2 Approval Action is subject to a shorter appeal period. Departments that issue permits or entitlements
3 supported by exemption determinations shall take steps as they determine appropriate to advise
4 applicants seeking permits, licenses or other entitlements for use of the 30-day appeal period for the
5 exemption determination.

6 (B) For all projects not covered by Section (A):

7 (i) If the Approval Action is taken following a noticed public hearing
8 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
9 filed after the Planning Department issues the exemption determination and within 30 days after
10 the Date of the Approval Action.

11 (ii) If the Approval Action is taken without a noticed public hearing
12 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
13 filed after the Planning Department issues the exemption determination ~~an approval of the~~
14 ~~project in reliance on the exemption determination~~ and within 30 days after the first date the
15 Planning Department posts on the Planning Department's website a notice as provided in Section
16 31.08(g) of this Chapter.

17 (3) The grounds for appeal of an exemption determination shall be limited to
18 whether the project conforms to the requirements of CEQA for an exemption.

19 (4) The Board shall affirm the exemption determination if it finds that the project
20 conforms to the requirements set forth in CEQA for an exemption.

21 (5) The Board shall reverse the exemption determination if it finds that the project
22 does not conform to the requirements set forth in CEQA for an exemption. If the Board finds that the
23 project does not conform to the requirements set forth in CEQA for an exemption, the Board shall
24 remand the exemption determination to the Planning Department for further action consistent with the
25 Board's findings. In the event the Board reverses the exemption determination of any City department

1 other than the Planning Department, the exemption determination shall be remanded to the Planning
2 Department, and not the City department making the original exemption determination, for
3 consideration of the exemption determination in accordance with the Board's directions.

4 Section 4. Effective Date. This ordinance shall become effective 30 days from the
5 date of passage.

6 Section 5. Operative Date. This ordinance shall become operative on the later date of
7 September 1, 2013, or five business days after the Secretary of the Planning Commission
8 provides a memorandum to the Clerk of the Board of Supervisors advising that the Planning
9 Commission has held a public hearing at which the Planning Department has demonstrated to
10 the Planning Commission that it has updated its website to provide up-to-date information to
11 the public about each CEQA exemption determination in a format searchable by location,
12 such as through the "Active Permits In My Neighborhood" tool now used by the Planning
13 Department and the Building Department.

14 Section 56. This section is uncodified. In enacting this Ordinance, the Board intends to
15 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
16 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
17 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
18 and Board amendment deletions in accordance with the "Note" that appears under the official
19 title of the legislation.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 ELAINE C. WARREN
25 Deputy City Attorney

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SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18852 Administrative Code Text Change PLANNING COMMISSION HEARING DATE: APRIL 25, 2013

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Project Name: California Environmental Quality Act Procedures, Appeals, and Public Notice
Case Number: 2013.0463U [Board File No. 13-0248]
Initiated by: Supervisor Kim
Introduced: April 9, 2013
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: Sarah Jones, Acting Environmental Review Officer
sarah.b.jones@sfgov.org, 415-575-9034

Recommendation: Approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects.

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE OF CERTAIN PORTIONS, DISAPPROVE OF CERTAIN PORTIONS AND CONDUCT FURTHER REVIEW AND ANALYSIS OF FOUR TOPICS: NOTIFICATION FEASIBILITY, FURTHER PROJECT APPROVALS WHILE AN APPEAL IS PENDING, "SEARCH-ABILITY" OF CEQA DETERMINATIONS, AND PRIORITIZATION OF AFFORDABLE HOUSING PROJECTS RELATED TO THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEALS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL IMPACT REPORTS, NEGATIVE DECLARATIONS, EXEMPTION DETERMINATIONS, AND DETERMINATIONS ON MODIFIED PROJECTS; TO CLARIFY AND UPDATE EXISTING CHAPTER 31 PROCEDURES, INCLUDING WITHOUT LIMITATION: TO PROVIDE FOR THE PLANNING DEPARTMENT OR PLANNING COMMISSION TO APPROVE ALL EXEMPTION DETERMINATIONS; TO REQUIRE THE PLANNING DEPARTMENT TO ESTABLISH AN ELECTRONIC NOTIFICATION SYSTEM; TO EXPAND NOTICING OF EXEMPT PROJECTS; TO REQUIRE NEW NOTICING WHEN FILING NOTICES OF EXEMPTION AND NOTICES OF DETERMINATION; TO REVISE NOTICING OF NEGATIVE DECLARATIONS AND ENVIRONMENTAL IMPACT REPORTS FOR PLANS OF 20 ACRES OR MORE; TO PROVIDE AN EXPANDED ROLE FOR THE HISTORIC PRESERVATION COMMISSION; AND MAKING ENVIRONMENTAL FINDINGS.

Resolution No. 18852
PC Hearing: April 25, 2013

CASE NO. 2013.0463U
Board File No. 130248

CEQA Procedures, Appeals, and Notice

PREAMBLE

Whereas, on October 16, 2012, Supervisor Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1019 which would to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations.

Whereas, on November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted to make advisory recommendations to Supervisor Wiener concerning the proposal; and

Whereas, the HPC's recommendations are recorded in Resolution Number 694; and

Whereas, on November 29, 2012, the Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning Commission's recommendations are recorded in Resolution Number 18754; and

Whereas, on March 14, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on March 20, 2013, the HPC conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019; and

Whereas, at these March 2013 hearings, Commissions recommended approval of the Ordinance with two modifications in HPC Resolution No. 704 and PC Resolution No. 18826; and

Whereas, Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks to April 22, 2013; and

Whereas, at the April 8 2013 Land Use Committee hearing Supervisor Kim announced that she would be introducing an alternative proposal; and

Whereas on April 9, 2013 Supervisor Kim introduced an ordinance titled "Administrative Code-California Environmental Quality Act Procedures, Appeals and Public Notice [BF 130248]; and

Whereas, this proposed Administrative Code amendment has been determined to be categorically exempt from environmental review under the CEQA Section 15060(c)(2); and

Whereas on April 25, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas on May 15, 2013, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the legislative sponsor, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Therefore be it resolved that, the Planning Commission has reviewed the proposed Ordinance;

Be it further resolved that in March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826) and **MOVED, in light of that recommendation, Commission recommends that the Board approve of certain portions, disapprove of certain portions and conduct review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects** in regard to this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation; and

Be it further **MOVED, that in general, this Commission recommends the following by subject area:**

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.

Resolution No.18852
PC Hearing: April 25, 2013

CEQA Procedures, Appeals, and Notice

- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

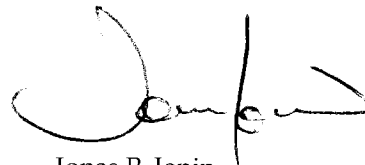
And, be it further MOVED, that the Commission concurs with the more detailed recommendations as described in the attached Executive Summary from the Department.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.
3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.
7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.
9. The Commission reaffirms their earlier decision to approve Board File Number 121019 CEQA Procedures and recommends forwarding certain portions of this proposal with a positive recommendation to the Board.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on April 25, 2013.



Jonas P. Ionin
Acting Commission Secretary

AYES: Fong, Wu, Antonini, Hillis, and Moore

NAYS: none

ABSENT: Borden and Sugaya

ADOPTED: April 25, 2013