



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: JULY 18, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: JULY 17, 2013

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: **California Environmental Quality Act Procedures, Appeal of Exempt Project Modification**

Case Number: 2013.0911U [Supervisor Kim Proposal Board File No. 13-0464] / [Supervisor Chiu Proposal Board File No. Pending]

Initiated by: Supervisor Kim / Supervisor Chiu

Introduced: May 14, 2013/pending

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: **Approval with Modifications**

ADMINISTRATIVE CODE AMENDMENT

Supervisor Kim Proposal: The proposed Ordinance introduced by Supervisor Kim, as a trailing ordinance to her larger CEQA procedures ordinance, would amend the Administrative Code, Chapter 31, to provide for appeal to the Planning Commission of a Planning Department determination that an exempt project modification does not require a new decision under the California Environmental Quality Act; and making environmental findings.

Supervisor Chiu Proposal: The proposed Ordinance, yet to be introduced by Supervisor Chiu, has been described as an amendment to Administrative Code, Chapter 31, to provide for appeal to the Environmental Review Officer of a Planning Department determination that an exempt project modification does not require a new decision under the California Environmental Quality Act; and making environmental findings.

Background:

Supervisor Wiener's original CEQA Procedures Ordinance. 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 Kim's original CEQA Procedures Ordinance. On March 12, 2013 Supervisor Kim introduced an alternative proposal [Board File No. 13-0248] 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 a revised version of the proposal that was considered by the Planning Commission on April 25, 2013 and by the Historic Preservation Commission on May 15, 2013. Both Commissions recommended approval of certain portions and disapproval of certain portions.

Board Hearings on Supervisor Wiener's and Supervisor Kim's original CEQA Procedures Ordinance. Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued to be considered with Supervisor Kim's proposal on April 22, May 6, May 13, May 20, and June 17. These two proposals were considered on June 25 and July 9 at the Full Board of Supervisors. During the course of these hearings, Supervisor Jane Kim has amended her original proposal and Supervisor David Chiu has amended Supervisor Wiener's proposal. Both amended ordinances are still pending before the Board of Supervisors.

Discussion of need for a new component to CEQA procedures proposals. In addition to the two ordinances described above, Supervisor Kim first identified what she called a flaw in the system in that there currently is and would be no oversight of Planning Department decisions that a modified project did not require the issuance of a new exemption. To remedy this, she introduced the proposed ordinance described in this case report. Planning Department staff have stated that the decision that a modified project has not changed under the Planning Code and therefore does not require a new exemption, is a ministerial decision that does not warrant commission review. Supervisor Chiu has responded with what he has identified as "middle ground", where there would be a public hearing on these modified projects but that the hearing would be before the Environmental Review Officer.

The Way It Is Now Summary:

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.

There is no mechanism under CEQA for an addendum to an exemption determination when an approved, exempt project is changed by the sponsor. Under both the state CEQA law, and the city's local codified procedures, if a project that received an exemption is modified, the need for a new exemption is up to the discretion of the ERO. In many cases, if the project as modified still falls within the same exemption class as the original project, the ERO does not require a new exemption.

Under both the original Supervisor Kim and Supervisor Wiener proposed ordinances pending before the Board of Supervisors, any exempt project for which a modification is proposed for an aspect addressed in

the Building Permit Application and exemption project description that is regulated under the Planning Code would need a new CEQA determination. Therefore, a change such as a height increase, additional units, or larger building envelope would require a new exemption, but a change in architectural finishes or window placement typically would not.

Under both existing law and under either of the proposed ordinances pending before the Board, a determination that a project has not been modified, as regulated by the Planning Code, would not be appealable.

The Way It Would Be Summary:

Supervisor Kim Proposal: This trailing ordinance amends one section of current Chapter 31. The amendment provides for a process of appealing a determination by the Planning Department to the Planning Commission when the Planning Department determines that the nature of a modification to a project it has determined to be exempt from CEQA, is insufficient to trigger the need for a new CEQA decision before a subsequent project approval action is taken.

Supervisor Chiu Proposal: This proposal would either amend Supervisor Kim's trailing ordinance or via separate measure would amend Chapter 31 to provide for a process of appealing a determination by the Planning Department to the Environmental Review Officer (hereinafter "ERO") when the Planning Department determines that the nature of a modification to a project it has determined to be exempt from CEQA, is insufficient to trigger the need for a new CEQA decision before a subsequent project approval action is taken. As described, this hearing would take place before the regularly scheduled Planning Commission hearings to provide additional visibility to the hearing. If possible, the hearing should be televised live, or videotaped if live broadcasting does not occur. The timeliness for this process should be of short duration, perhaps 10 days to file the request for the hearing and an additional two to three weeks to conduct the hearing.

The Way It Would Be: Details and Analysis

Details: Definition of Substantial Modification

Section 31.08(k)(1) of Supervisor Kim's trailing legislation, as currently drafted, states that "a modification requiring reevaluation under Section 31.19(b) shall mean that the Planning Department is presented with a change in the scope of a project as described in the original application upon which Planning based the exemption determination, or the Planning Department is presented with new information regarding the environmental impacts of the project." In the context of discussion at the Land Use Committee of the Board of Supervisors, the participating Board members (including Supervisor Kim) recognized that this language does not provide specific guidance to the ERO on the circumstances under which a project should be considered to have substantively changed. The Planning Department concurs that more specific guidance regarding evaluation of project changes would result in clearer understanding and direction for the ERO, project sponsors, and the public.

Since the drafting of this legislation, the definition of a "substantial modification" for the purposes of Chapter 31 has been revised in the context of Supervisor Chiu's amendments to Supervisor Wiener's legislation. This definition is contained in Section 31.08(i)(1) of Supervisor Wiener's legislation dated July

2, 2013. In this version of the definition, a substantial modification is specifically designed to include all changes to project scope that are regulated under the Planning Code or the submittal of new information.

To illustrate the level of specificity included in a project scope that the Department would use to evaluate any changes, two examples from exemptions currently posted on the Department’s website are listed in the chart below. All issued exemptions are posted at <http://sf-planning.org/index.aspx?page=3447>.

Property Address	Project Scope	Staff Discussion
930 Clayton Street ¹	“As per application and plans for new deck on grade at rear, retaining walls to maintain existing grade, fire place, and stairs. No other work.”	By referencing the building application, all details of the project reviewed in the exemption are captured.
207 Nevada Street ²	“Convert portion of garage to living space. Meets ZA Bulletin #1 for developing ground floor accessory rooms in residential buildings. Non-visible window replacements. Convert one door to window (non-visible, ground floor).”	The project scope describes the work to be done and cites the Zoning Administrator Bulletin that provides regulation beyond the Code requirements. Any changes exceeding this description would require a new exemption to be issued.

Analysis: Definition of Substantial Modification

The Department supports the use of the definition of “substantial modification” in Wiener’s ordinance. Whereas currently the decision as to the need for a new exemption when a project changes is solely up to the discretion of the ERO, under the proposed Wiener legislation this decision would involve application of established standards, rendering it ministerial and providing assurance that environmental issues will be considered in light of project changes. The remainder of this report’s analysis, and the Department’s position, presumes that the Board will approve the definition of “substantial modification” now contained in the Wiener ordinance, and no discretion of the ERO will be required to determine when a new exemption is needed.

Details: Supervisor Kim’s Proposal for Appeal to the Planning Commission

The proposed trailing legislation establishes an opportunity for appeal to the Planning Commission of the department’s determination that no substantial modification has occurred on a project, and no additional environmental review is needed. Such appeal must be filed within 30 days of the department’s determination, and heard by the Planning Commission within 30 days of the filing of the appeal. The proposed legislation stipulates that the project may not be approved until this 30-day filing period has expired.

¹ http://ec2-50-17-237-182.compute-1.amazonaws.com/docs/Decision_Documents/CatEx/BuildingPermit/201307010880.pdf

² http://ec2-50-17-237-182.compute-1.amazonaws.com/docs/Decision_Documents/CatEx/BuildingPermit/201307031107.pdf

Analysis: Supervisor Kim's Proposal for Appeal to the Planning Commission

As stated above, the Department feels that the overall amendments to Chapter 31 would make the department's decision regarding the occurrence of a substantial modification ministerial, and feels that this decision should not be appealable to any decision making body, for the three reasons discussed below.

1. **Existing avenue for appeal.** If a building permit is issued for a change to a project that does not rise to the level of a substantial modification, and a member of the public believes that the new permit is based on CEQA review of a substantively different project, that permit may be appealed to the Board of Appeals, an existing mechanism for oversight and recourse. Any new avenue for appeal would be redundant.
2. **Substantial New Process without Overriding Need.** A review of the exemption appeals over the last 10 years indicates that the issue of project modification has not been the source of contention in past appeals. Most commonly, exemptions that are appealed are those that were prepared for projects that received Discretionary Review, that is, projects that were of concern to neighbors at the time of their initial approval. Based on this history, the Department does not feel that there is evidence that inadequate CEQA review of modified projects is an issue of concern and, as explained above, it would be of less concern with the approval of the Wiener legislation as amended which would establish concrete standards. Therefore, providing an additional opportunity for project opponents to appeal a project to the Planning Commission could result in appeals filed on minor project changes that are not regulated by the Planning Code for the purpose of bringing a project before the Planning Commission where the Discretionary Review period has expired; it would also serve as an opportunity to bring projects that had already undergone Discretionary Review back to the Planning Commission for a second consideration. Since a primary goal of the Chapter 31 amendments is to provide clarity and certainty in the review and appeals process, creation of this additional appeal opportunity at the Planning Commission could serve to undermine this goal, adding potential expenses without real public benefits.
3. **Effect on project schedule.** The appeal windows proposed in the trailing legislation could add two months or more to a project schedule for minor project changes. As proposed, all project approvals for modified projects would be delayed for 30 days to allow the appeal period to run; if projects are appealed, these projects would be delayed up to an additional 30 days for the hearing. In cases where the Planning Commission determined that a new exemption was required, the project could be delayed further for preparation of the exemption. In contrast, under current rules, project sponsors may proceed with modified projects as soon as the building permits are approved, with the caveat that an appeal to the Board of Appeals might be filed within the 15-day appeal period. The Department does not support the extension of project schedules for 30-60 days or more for small changes to approved projects that are outside of the regulatory authority of the Planning Code.

Details of Supervisor Chiu's Alternative: ERO as Hearing Officer

Supervisor Chiu has requested that the Planning Commission and Historic Preservation Commission also consider a different approach to oversight of the department's decision on whether a proposed change to a project constitutes a substantial modification requiring a new exemption. This approach would

establish the ERO as a hearing officer. Individuals wishing to contest the department's decision regarding the absence of a substantial modification could do so at a public hearing noticed to interested parties, which would occur prior to the start of Planning Commission proceedings.

Analysis of Supervisor Chiu's Alternative: ERO as Hearing Officer

As with Supervisor Kim's proposal, the Department's concerns regarding Supervisor Chiu's proposal are related to the ministerial nature of the decision regarding substantial modification, and to the potential for a new process to require a substantial amount of time and effort to address a minor area of concern that can be considered through the existing mechanism of the Board of Appeals.

POTENTIAL COMMISSION ACTION

The proposals (one a draft ordinance, the other yet to be drafted) are 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 with modifications* of the two proposals and adopt the attached Draft Resolution to that effect. The recommended modifications would replace the proposed appeal hearing with a proposed written request for reconsideration from the ERO.

BASIS FOR RECOMMENDATION

The Department supports the concept of public accountability, oversight, and transparency on all matters. The Department would support a written mechanism to address the modification question, whereby individuals with concerns about a substantial modification decision could submit a written petition stating their concerns and the ERO would provide a written response to support the decision.

Under the proposed Chapter 31 amendments, there is substantially more certainty that projects that change in any substantive manner after their initial approval would require new CEQA analysis, which would be newly appealable. The issue of minor project changes does not merit the creation of a new hearing mechanism, which would require unsupported staff time and provide an opportunity for opponents to delay projects.

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 neither Supervisor Kim's trailing ordinance nor Supervisor Chiu's yet to be drafted proposal.

RECOMMENDATION: Approval with Modifications

Attachments:

- Exhibit A: Draft PC/HPC Resolution
- Exhibit B: Supervisor Kim's Ordinance and Legislative Digest for Board of Supervisors File No. 130464
- Exhibit C: July 7, 2013 Letter from Supervisor David Chiu



SAN FRANCISCO PLANNING DEPARTMENT

Draft HPC/PC Resolution Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: JULY 18, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: JULY 17, 2013

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: **California Environmental Quality Act Procedures, Appeal of Exempt Project Modification**

Case Number: 2013.0911U [Supervisor Kim Proposal Board File No. 13-0464] / [Supervisor Chiu Proposal Board File No. Pending]

Initiated by: Supervisor Kim / Supervisor Chiu

Introduced: May 14, 2013/pending

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: **Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE WITH MODIFICATIONS THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEAL TO THE PLANNING COMMISSION OF A PLANNING DEPARTMENT DETERMINATION THAT AN EXEMPT PROJECT MODIFICATION DOES NOT REQUIRE A NEW DECISION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on May 14, 2013, Supervisor Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 130464 which would amend the Administrative Code, Chapter 31, to provide for appeal to the Planning Commission of a Planning Department determination that an exempt project modification does not require a new decision under the California Environmental Quality Act; and making environmental findings; and

Whereas, on July 9, 2013, Supervisor Chiu sent a letter to the San Francisco Historic Preservation Commission and the San Francisco Planning Commission outlining his interest in legislation that would amend the Administrative Code, Chapter 31, to provide for appeal to the Environmental Review Officer of a Planning Department determination that an exempt project modification does not require a new decision under the California Environmental Quality Act; and

Whereas, on July 17, 2013 the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on July 18, 2013, the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, this proposed Administrative Code amendments 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 HPC/PC 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 HPC/PC has reviewed both the proposed ordinance from Supervisor Kim and the proposal as outlined in Supervisor Chiu's July 9, 2013 letter both of which would revise the Administrative Code; and

Be it further MOVED, that this Commission recommends the proposals be modified to provide for a written reconsideration request instead of an appeal hearing. Specifically, the Commission recommends a written mechanism to address the modification question, whereby individuals with concerns about a substantial modification decision could submit a written petition stating their concerns and the ERO would provide a written response to support the decision.

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. The Commission supports the concept of public accountability, oversight, and transparency on all matters.
2. The Commission would support a written mechanism to address the modification question, whereby individuals with concerns about a substantial modification decision could submit a written petition stating their concerns and the ERO would provide a written response to support the decision.

3. Under the an early proposed and still pending Ordinance [Board of Supervisors File Number 12-1019] that would also amend Administrative Chapter 31, there is substantially more certainty that projects that change in any substantive manner or for which new information is provided after the initial approval, this would require new CEQA analysis, which would be newly appealable.
4. The issue of minor project changes does not merit the creation of a new hearing mechanism, which would require unsupported staff time and provide an opportunity for opponents to delay projects.

I hereby certify that the **PC/HPC** Commission ADOPTED the foregoing Resolution on **_____** 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES:
NAYS:
ABSENT:
ADOPTED:

FILE NO. 130464

LEGISLATIVE DIGEST

[Administrative Code - California Environmental Quality Act Procedures, Appeal of Exempt Project Modification]

Ordinance amending Administrative Code, Chapter 31, to provide for appeal to the Planning Commission of a Planning Department determination that an exempt project modification does not require a new decision under the California Environmental Quality Act; 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

This ordinance amends one section of current Chapter 31. The amendment provides for a process of appealing a determination by the Planning Department to the Planning Commission when the Planning Department determines that the nature of a modification to a project it has determined to be exempt from CEQA, is insufficient to trigger the need for a new CEQA decision before a subsequent project approval action is taken.

Background Information

The ordinance is proposed to revise one aspect of the City's existing CEQA implementation procedures. A companion ordinance is also proposed that would further revise the City's existing CEQA implementation procedures.

FILE NO. 130464

ORDINANCE NO.

1 [Administrative Code - California Environmental Quality Act Procedures, Appeal of Exempt
2 Project Modification]

3 **Ordinance amending Administrative Code, Chapter 31, to provide for appeal to the**
4 **Planning Commission of a Planning Department determination that an exempt project**
5 **modification does not require a new decision under the California Environmental**
6 **Quality Act; and making environmental findings.**

7
8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are *strike-through italics Times New Roman*.
10 Board amendment additions are double-underlined;
11 Board amendment deletions are ~~strike-through normal~~.

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

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

17 Section 2. The Administrative Code is hereby amended by adding new Section
18 31.08(k), to read as follows:

19 **SEC. 31.08. ~~CATEGORICAL EXEMPTIONS.~~**

20 * * * *

21 (k) **Modification of Exempt Project.** Where a modification occurs to a project that the
22 Planning Department has determined to be exempt, prior to any subsequent approval actions, the
23 Environmental Review Officer shall determine whether the modification requires a new CEQA
24 decision.

1 (1) For purposes of exempt projects, a modification requiring reevaluation under
2 Section 31.19(b) shall mean that the Planning Department is presented with a change in the scope of a
3 project as described in the original application upon which Planning based the exemption
4 determination, or the Planning Department is presented with new information regarding the
5 environmental impacts of the project. If the Environmental Review Officer determines that the
6 modification does not require reevaluation, such determination may be appealed to the Planning
7 Commission as provided for in Section 31.08(k)(2). If the Environmental Review Officer determines
8 that the project requires reevaluation as provided for in Section 31.19(b), the new CEQA decision
9 rendered by the Planning Department or Planning Commission, may be appealed to the Board of
10 Supervisors as provided for in Section 31.16.

11 (2) When the Environmental Review Officer determines that the modification does
12 not require a new CEQA decision, the Environmental Review Officer shall post a notice of the
13 determination in the offices of the Planning Department and on the Planning Department website, and
14 mail such notice to the applicant, board(s), commission(s) or department(s) that will carry out or
15 approve the project, and to any individuals or organizations that have previously requested such notice
16 in writing. Any person may appeal such determination to the Planning Commission within 30 days
17 from the posting of such notice on the Planning Department website. The Planning Commission shall
18 schedule a hearing on the appeal within 30 days of the filing of the appeal and take action on the
19 appeal within 60 days of the posting of the notice on the Planning Department website. The Planning
20 Commission shall uphold the appeal if it finds that the Planning Department determination is
21 adequately supported by the record before the Planning Department and the Planning Commission. If
22 the Planning Commission rejects the Planning Department's determination, the Planning Department
23 shall prepare a new CEQA decision for the modified project as provided for in Section 31.19(b). The
24 City shall not take any action to approve the project until the appeal period has expired with no appeal

25

1 filed, or, if an appeal is filed, until the Planning Commission upholds the Planning Department's
2 determination.

3 Section 3. Effective Date. This ordinance shall become effective 30 days from the
4 date of passage.

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

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 ELAINE WARREN
16 Deputy City Attorney

17
18
19
20
21
22
23
24
25

President, Board of Supervisors
District 3



City and County of San Francisco

DAVID CHIU

邱信福 · 市參事主席

July 9, 2013

President Rodney Fong & Members
San Francisco Planning Commission

President Karl Hasz & Members
Historic Preservation Commission

Via Email

Dear President Fong, President Hasz and Commissioners:

I write to provide you with an update regarding the ongoing effort at the Board of Supervisors initiated by Supervisor Scott Wiener to amend Chapter 31 of the Administrative Code, which as you know establishes local procedures regarding the California Environmental Quality Act (CEQA). I provide my comments in light of the consideration at your respective July 17, 2013 and July 18, 2013 meetings of Supervisor Jane Kim's proposed ordinance File No. 130464. This proposal creates a right of appeal to the Planning Commission of a Planning Department staff decision that a change to an exempt project does not require a new CEQA decision.

Over the past several months, my office has been engaged in discussions with individuals who opposed Supervisor Wiener's original proposal to amend Chapter 31. These individuals instead worked with Sup. Kim's office on alternative legislation. Both commissions have considered these proposals and provided extensive recommendations to the Board of Supervisors, for which we are grateful. As you know, both items are now pending at the Board of Supervisors.

Through the course of my conversations with the individuals opposing Sup. Wiener's initial legislation, I have worked to bridge the gap between the competing approaches and to make changes to Sup. Wiener's proposal to bring the parties closer together. I have made a series of amendments at the Land Use Committee, and I have an additional package of amendments I anticipate proposing at the Board of Supervisors meeting on July 16. The goal of these amendments is to achieve the broadest possible support for the legislation.

To this end, one final piece of this puzzle remains to be assembled. Sup. Kim's ordinance before you next week raises a new concept that you have not previously considered. Namely, what happens when a project changes and the Environmental Review Officer (ERO) determines that such a change, whether it be a new building permit or other approval action, does not constitute a modification under the new ordinance? A modification, under my proposed amendments, would be strictly defined and would trigger a new CEQA determination and hence a new right of appeal.

Some advocates have argued that such a determination by the ERO that no modification has occurred should itself be appealable to the Planning Commission, as outlined in Sup. Kim's ordinance. Planning staff has stated to my office that this decision is a ministerial one not reasonably subject to review or appeal.

I believe a middle ground is possible on this issue. I plan to support, either through a substitute amendment to Sup. Kim's ordinance or via a separate measure, a procedure whereby the ERO's determination that no modification has occurred would be subject to a public hearing before the ERO herself. In my discussions with the advocates who have been supporting Sup. Kim's ordinance, I have also stated that I believe such a hearing should take place before the regularly scheduled Planning Commission meetings on Thursdays to provide additional visibility to the hearing. If possible, the hearing should be televised live, or videotaped if broadcasting it live does not occur. The timelines for this process should be of short duration, perhaps 10 days to file the request for the hearing and an additional 2-3 weeks to hold it. Beyond these initial parameters, I am open to a dialogue around this ERO hearing.

I look forward to your consideration of my suggestions.

Finally, I want to take this opportunity to appreciate the dedicated work of Planning Department staff, particularly Acting ERO Sarah Jones, as well as Deputy City Attorney Elaine Warren, throughout this long and arduous process. I look forward to bringing this work to a close.

Sincerely,



David Chiu

cc: John Rahaim, Planning Director
AnMarie Rodgers, Manager of Legislative Affairs, Planning Department
Sarah Jones, Acting Environmental Review Officer, Planning Department