



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Historic Preservation Commission

HEARING DATE: JULY 7, 2010  
Continued from the June 16, 2010 Hearing

1650 Mission St.  
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CA 94103-2479

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*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
[Bill.Wycko@sfgov.org](mailto:Bill.Wycko@sfgov.org), 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

### BACKGROUND

On June 16, 2010 the Historic Preservation Commission heard proposed legislation to amend CEQA appeal procedures [Board File No. 10-0495, Appeals of Certain Environmental Determinations and Providing Public Notice]. The Commission did not make a recommendation on the proposed legislation during the June 16th hearing. The Commission did, however, pass a motion requesting additional information and requesting a continuance of the item to July 7th.

### NEW INFORMATION

The following new information is attached:

- Motion No. 647 approved by the Historic Preservation Commission on July 7, 2010.
- The June 22, 2010 response from Supervisor Alioto-Pier.
- On June 24, the Planning Commission reviewed the same proposed Ordinance. At that time, the Planning Commission voted to recommend approval with the modifications recommended by the Planning Department, plus one additional recommendation from the City Attorney.

### PREVIOUS INFORMATION

In addition to the new information cited above, the Historic Preservation Commission will rely on the materials prepared for the June 16, 2010 hearing for the upcoming July 7, 2010 hearing. Any person needing the June 16, 2010 materials should contact AnMarie Rodgers.

### Attachments:

Historic Preservation Commission Motion No. 647  
June 22, 2010 Response from Supervisor Alioto-Pier  
Planning Commission Resolution No. 18116



# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Motion No. 647 Administrative Code Text Change HEARING DATE: JUNE 16, 2010

1650 Mission St.  
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*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Requesting Additional Information**

REQUESTING THAT WITHIN ONE WEEK THE LEGISLATIVE SPONSOR WILL PROVIDE ADDITIONAL INFORMATION ON THE FOLLOWING CONCERNS OF THE HISTORIC PRESERVATION COMMISSION: 1) THE FAIRNESS OF LIMITING APPELLANTS TO THOSE WHO HAVE BEEN INVOLVED OR COMMENTED AT PREVIOUS HEARINGS; 2) THE POTENTIAL TO SPECIFY THE ROLE OF THE HISTORIC PRESERVATION COMMISSION WITHIN THE PROPOSED PROCESS; 3) CATEGORICAL EXEMPTIONS MAY NOT ALWAYS BE PUBLICLY NOTICED AND THEREFORE MAY BE DIFFICULT TO SECURE EARLY PUBLIC INVOLVEMENT; AND 4) POTENTIAL TO LIMIT FUTURE ACTIONS OF THE HISTORIC PRESERVATION COMMISSION IN THE EVENT OF SIMULTANEOUS APPROVALS WHERE A CEQA APPEAL HAS BEEN FILED.

### PREAMBLE

Whereas, on November 3, 2009, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0495 which would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors by amending the Administrative Code. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites

of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing; and

Whereas, on May 27, 2010, the San Francisco Planning Commission (hereinafter "PC") continued a duly noticed public hearing to the future date of a regularly scheduled meeting on or after June 24, 2010, to consider the proposed Ordinance; and

Whereas, the San Francisco Charter Section 4.135 states under "Other Duties" that the San Francisco Historic Preservation Commission (hereinafter "HPC") has limited jurisdiction to review and comment on certain environmental documents; specifically stating, "For proposed projects that may have an impact on historic or cultural resources, the Historic Preservation Commission shall have the authority to review and comment upon environmental documents under the California Environmental Quality Act and the National Environmental Policy Act."; and

Whereas, on June 16, 2010, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

Whereas, the HPC 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

Whereas, the HPC has reviewed the proposed Ordinance; and

**MOVED**, that the HPC hereby abstains from making a recommendation to the Board of Supervisors at this time; instead the HPC intends to continue the hearing until on or after July 7, 2010; and requests that within one week the legislative sponsor will provide additional information on the following concerns of the Historic Preservation Commission:

- 1) the fairness of limiting appellants to those who have been involved or commented at previous hearings;
- 2) the potential to specify the role of the Historic Preservation Commission within the proposed process;
- 3) categorical exemptions may not always be publicly noticed and therefore may be difficult to secure early public involvement; and
- 4) potential to limit future actions of the historic preservation commission in the event of simultaneous approvals where a CEQA appeal has been filed;

and adopts the Resolution to that effect.

## **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 Planning Commission considered a similar Ordinance in 2006. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335; and
2. The proposed Ordinance considered by the Historic Preservation Commission today has incorporated the changes recommended by the Planning Commission in 2006.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on June 16, 2010.



Linda Avery  
Commission Secretary

AYES: Chase, Damkroger, Buckley, Hasz, Martinez, Matsuda, and Wolfram

NAYS:

ABSENT:

ADOPTED: June 16, 2010



MICHELA ALIOTO-PIER

**MEMORANDUM**

To: Historic Preservation Commission

From: Bill Barnes  
Aide to Supervisor Michela Alioto-Pier

Re: Chapter 31 Amendments

Date: June 22, 2010

Thank you for your recognition that some reform of San Francisco's implementation of the California Environmental Quality Act is needed, and for the opportunity to respond to the concerns raised at the Historic Preservation Commission meeting of June 16.

This memorandum responds to the four key areas of concern raised by the Historic Preservation Commission, as well as the report by Planning Department staff.

**1. The fairness of limiting appellants to those who have been involved or commented at previous hearings.**

Administrative Code Chapter 31 currently requires an appellant of an Environmental Impact Report to comment on the draft EIR in writing during the public review period, or orally or in writing at the public hearing (*see Section 31.16(a)*). The proposed ordinance applies the same standards to negative declarations and exemptions. In the case of negative declarations, an appeal may currently be filed with the Planning Commission (*see Section 31.11*).

Public Resources Code Section 21151(c) adds a new appeal right, but does not eliminate these prior opportunities. Therefore, the proposal limits those who can appeal to those who have participated in the process. This is necessary to protect certainty in the process and avoid situations where agreements reached between appellants and sponsors at the Planning Commission become unraveled at the Board of Supervisors.

It is fair to note that exemptions are not appealable to the Planning Commission under the current Administrative Code, nor does the proposed ordinance create this right. Therefore, we propose to strike this prior participation requirement for appellants of statutory, categorical, and community plan exemptions.

**2. The potential to specify the role of the Historic Preservation Commission within the proposed process.**

The Historic Preservation Commission's authority to review CEQA documents derives from the Charter, rather than the Administrative Code. Therefore, the first draft of the proposed ordinance does not specify how HPC would review and comment on CEQA documents.

Charter Section 4.104(a)(1) authorizes the HPC to adopt rules and regulations consistent with the Charter and ordinances of the City and County, subject to ten days' notice and filing with the Clerk of the Board of Supervisors. One approach would be for HPC to make a regulation on its review of CEQA documents.

If the HPC prefers that referrals to HPC be codified in the Administrative Code, the sponsor is willing to work with a designated representative of the HPC on appropriate language consistent with the existing Charter authority to review CEQA documents.

**3. Categorical exemptions may not always be publicly noticed and therefore may be difficult to secure early public involvement.**

As it relates to exemptions involving a historic resource, any demolition, or Class 31 or 32 exemptions, notice is currently required (*see Section 31.08(f)*). The current notice requirement requires a posting at the offices of the Planning Department and mailing to any individual or organizations that have previously requested such notice in writing.

The proposed ordinance seeks to significantly expand this notice requirement by including "any project for which the Planning Code or other City code or regulation requires public notice..." While Planning staff recommends clarifying this section, the sponsor believes expanding notice of exemptions serves the public interest and will continue to advocate broad dissemination of categorical exemptions to all interested parties.

HPC discussion of posting exemptions on the Internet was noted and will be incorporated. In addition, others have suggested a mailing requirement to adjacent property owners and residents for certain exemptions. This idea is under review. The sponsor does not intend to limit the right of individuals to appeal if notice is not provided.

**4. Potential to limit future actions of the historic preservation commission in the event of simultaneous approvals where a CEQA appeal has been filed.**

The proposed amendments specify that once an appeal is filed, the City shall not carry out, consider the approval of, or make any other discretionary decision

related to the project. This language codifies a current practice derived from state law.

In order to make a decision, City decision-makers must rely on CEQA findings. Since an appeal sets aside the original determination and requires the Board of Supervisors to sit for a new, or *de novo*, hearing, it would be impossible for any City decision-maker to continue making approvals. One approach here would be to stay any landmark hearing pending during an appeal, and require that hearing to recommence once the Board of Supervisors or Environmental Review Officer has certified the environmental document.

The sponsor concurs with the Planning Department staff's recommended modifications, and looks forward to substantively addressing them during the hearings on this legislation at the Board of Supervisors.

If you have any questions, I can be reached at 415-554-7752. Thank you for your work on this ordinance. On behalf of Supervisor Alioto-Pier, I would request your support for this ordinance with these proposed changes.



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18116 Administrative Code Text Change

HEARING DATE: JUNE 24, 2010

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*Project Name:* **Appeals of Certain Environmental Determinations and  
Providing Public Notice**

*Case Number:* 2010.0336U [Board File No. 10-0495]

*Initiated by:* Supervisor Alioto-Pier

*Introduced:* April 20, 2010

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

*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT AMEND ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

### **PREAMBLE**

Whereas, on November 3, 2009, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0495 which would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors by amending the Administrative Code. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing; and

Whereas, on May 27, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

Whereas, the 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

Whereas, the Commission has reviewed the proposed Ordinance; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommends *approval with modification of the proposed Ordinance* and adopts the Resolution to that effect.

## **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 Planning Commission considered a similar Ordinance in 2006. At that time, the Commission recommended approval with modification in Resolution Number 17335;
2. The proposed Ordinance considered by the Commission today has incorporated the changes recommended by the Commission in 2006;
3. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies;
4. The proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale;
5. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

### **I. ENVIRONMENTAL PROTECTION ELEMENT**

#### **OBJECTIVE 1**

ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

#### **OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

#### **OBJECTIVE 7**

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT

BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

6. The proposed Ordinance is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance with the recommended modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance not affect affordable housing supply..*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance will not impact the City's parks and open space.*

7. The proposed Ordinance is exempt from CEQA per CEQA Guidelines Section 15060(c)(2).

8. The Commission therefore recommends *approval with modifications described below*:

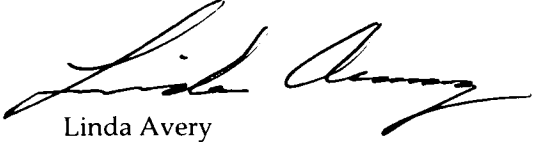
#### **Recommended Modifications**

1. **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
2. **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the "Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period". This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
3. **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to the Planning Commission is that this number is subject to change over time. We recommend leaving this matter to the more malleable "Procedures of the Clerk" rather than to fixing the number through legislation.
4. **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Department would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.

5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.
7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project.” The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

11. Change "Approval" to "Adoption" as suggested by the City Attorney. References to NegDec "approvals" by the Planning Commission should be changed to "adoption" throughout the proposed Ordinance to more accurately represent the action taken by the Commission.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on June 24, 2010.



Linda Avery  
Commission Secretary

AYES: Miguel, Olague, Antonini, Borden, Lee, and Moore

NAYS: Sugaya

ABSENT:

ADOPTED: June 24, 2010



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Administrative Code Text Change

HEARING DATE: JUNE 2, 2010  
Continued to June 16, 2010

*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

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### PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Alioto-Pier would amend Administrative Code Chapter 31 provisions for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amend the provisions for public notice of such decisions and determinations.

#### The Way It Is Now Summary:

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. In San Francisco, this means when the Planning Department or the Planning Commission acts on an environmental impact report (EIR), a negative declaration (neg dec) or a determination of exemption appeals must be granted before the elected Board of Supervisors.

Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR<sup>1</sup>, 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 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 also Chapter 31 does not provide any time limits for filing appeals. On February 22, 2008, the City Attorney drafted a memorandum<sup>2</sup> explaining how the Amended CEQA Guidelines that became effective on July 27, 2007 should be used to establish if appeals were 1) "ripe" or

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

<sup>2</sup> 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".

ready for appeal and 2) “timely” meaning not too late. All of the existing regulations and procedures for appeals are summarized in the comparison chart (Exhibit A).

**The Way It Would Be Summary:**

The proposed Ordinance would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.

**Detailed Description of Appeal Procedures:**

This document contains two summaries of appeal procedures that currently exist and those that are proposed in the Ordinance. The first summary is a comparison table. The second is a text description based upon the 2006 legislative digest that has been updated to reflect the current proposed Ordinance.

Comparison The Way It Is Now Table:

| Environmental Notice & Appeal Provisions – Existing Procedures |                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                 |                                                                                             |
|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
|                                                                | Exemption                                                                                                                                                                                                                                                                                                                                                                                               | Prelim. Neg Dec                                                                                                                                | Final Neg Dec                                                                                                                                                                                                                                                                                                                                                                                           | Draft EIR                                                                                                                                       | Final EIR                                                                                   |
| Notice                                                         | None required for most.<br><br>Cat ex as defined in 31.08 (f) requires notice for historic resources, demolitions or class 31 or 32 exemptions.)                                                                                                                                                                                                                                                        | Site Posting. Mailed notice to interested parties; approving entities; owners w/in 300' of site & adjacent occupants. Newspaper advertisement. | NONE; notice of determination may be filed after approval of project                                                                                                                                                                                                                                                                                                                                    | Site Posting. Mailed notice to interested parties; approving entities; agencies w/expertise; owners w/in 300' of site. Newspaper advertisement. | Mailed notice to all C&R document recipients (commenters on DEIR, interested parties, etc). |
| Appeal to CPC                                                  | No appeal; testimony at approval hearing                                                                                                                                                                                                                                                                                                                                                                | Allowed                                                                                                                                        | Not applicable                                                                                                                                                                                                                                                                                                                                                                                          | Not applicable                                                                                                                                  | Not necessary; Planning Commission certifies Final EIR                                      |
| Appeal to BOS                                                  | Allowed                                                                                                                                                                                                                                                                                                                                                                                                 | Not allowed                                                                                                                                    | Allowed                                                                                                                                                                                                                                                                                                                                                                                                 | Not applicable                                                                                                                                  | Allowed                                                                                     |
| Deadline for Filing Appeal to BOS - if “ripe” & “timely”       | If Building Permit: “ripe” after first approval / “timely” until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal .<br><br>If CU: “ripe” after Commission hearing until permit issued & “timely” until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal. | Not applicable                                                                                                                                 | If Building Permit: “ripe” after first approval / “timely” until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal .<br><br>If CU: “ripe” after Commission hearing until permit issued & “timely” until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal. | Not applicable                                                                                                                                  | 20 days after CPC certification of FEIR                                                     |
| Who Can Appeal to BOS                                          | Any person                                                                                                                                                                                                                                                                                                                                                                                              | Not applicable                                                                                                                                 | Any person                                                                                                                                                                                                                                                                                                                                                                                              | Not applicable                                                                                                                                  | Any person who commented prior to certification                                             |
| Deadline for BOS Appeal Hearing                                | Clerk practice is to schedule hearing within 45 days after appeal filing                                                                                                                                                                                                                                                                                                                                | Not applicable                                                                                                                                 | Clerk practice is to schedule hearing within 45 days after appeal filing                                                                                                                                                                                                                                                                                                                                | Not applicable                                                                                                                                  | 30 days after appeal filing                                                                 |

Comparison The Way It Would Be Table: \* Note: only procedures that would change are detailed below.

grey box and red underlined text.

| Environmental Appeal Provisions – Proposed Ordinance* |                                                                                                                  |                 |                                                                                                                                                                                                                                                                  |            |            |
|-------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|
|                                                       | Exemption                                                                                                        | Prelim. Neg Dec | Final Neg Dec                                                                                                                                                                                                                                                    | Draft EIR  | Final EIR  |
| Notice                                                | No change.                                                                                                       | No change.      | No change.                                                                                                                                                                                                                                                       | No change. | No change. |
| Appeal to CPC                                         | No change.                                                                                                       | No change.      | No change.                                                                                                                                                                                                                                                       | No change. | No change. |
| Appeal to BOS                                         | No change.                                                                                                       | No change.      | No change.                                                                                                                                                                                                                                                       | No change. | No change. |
| Deadline for Filing Appeal to BOS                     | <u>10 days after first project approval or permit issuance</u>                                                   | No change.      | <u>20 days after PC approval /adoption of FND NOTE: This is not the intent of the Ordinance. CEQA requires adoption of neg dec for appeal, A neg dec is “adopted” after approval of the project. This will be corrected in a later version of the Ordinance.</u> | No change. | No change. |
| Who Can Appeal to BOS                                 | <u>Any person, or any person who objected to exemption at hearing on related approval action, if applicable.</u> | No change.      | <u>Any person who appealed PND or commented at PND appeal hearing</u>                                                                                                                                                                                            | No change. | No change. |
| Deadline for BOS Appeal Hearing                       | <u>“Board decision within 45 days after appeal filing</u>                                                        | No change.      | <u>Board decision within 45 days after appeal filing</u>                                                                                                                                                                                                         | No change. | No change. |



**Detailed Text Description:**

Current Chapter 31 Procedures:

Chapter 31 currently provides procedures for appeal of an EIR, but does not provide procedures for an appeal of a neg dec or an exemption. The Clerk of the Board has provided procedures for an appeal of a neg dec or an exemption, but Chapter 31 does not provide for a process or any time limits for an appeal of a neg dec or exemption to the Board of Supervisors ("Board").

The procedures for appeal of an EIR are set forth in Administrative Code Section 31.16 and are as follows.

1. Any person who has submitted written or oral comments on a draft EIR may appeal the Planning Commission's certification of the EIR to the Board.
2. A letter of appeal must be submitted to the Board within twenty calendar days after the Planning Commission's certification of the EIR. The letter must state the specific grounds for appeal, which are limited to the adequacy, accuracy and objectiveness of the final EIR, and the correctness of its conclusions. A fee must accompany the appeal letter, and may be waived or refunded under certain circumstances as set forth in Administrative Code Section 31.22.
3. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
4. While the appeal is pending, the City may not carry out or consider approval of the project.
5. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 3D-day review period multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project.
6. The Board must act on an appeal within 30 days of the appeal of the Planning Commission's certification of the EIR, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
7. The Board conducts its own independent review of the EIR, and may consider anew the facts and evidence and may consider new evidence.
8. The Board must affirm the Planning Commission's certification of the EIR if it finds that the Planning Commission's findings are correct. If the Board reverses the Planning Commission's certification, it shall make specific findings and remand the final EIR to the Planning Commission for further action as directed by the Board. The Board may affirm or reverse the EIR but may not amend the EIR. The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal. The Board acts by a vote of a majority of all members of the Board.
9. If the Board remands an EIR to the Planning Commission, the Planning Commission must take such action as may be required by the Board's specific findings. In the event the Planning Commission re-certifies the EIR, only the new issues or the portions of the EIR that have been revised may be appealed again to the Board.
10. The date of certification of the EIR shall be the Planning Commission's date of certification if no appeal is filed or if the Board upholds the Planning Commission's certification.

Proposed Amendments to Chapter 31

New Section 31.16 sets forth an appeal process for EIRs, neg decs and exemption determinations. Section 31.16 (b) includes procedures to be followed for all appeals. Section 31.16(c) includes procedures specific to EIRs, Section 31.16(d) includes procedures specific for neg decs and 31.16(e) provides procedures to be followed for statutory exclusions or exemptions, categorical exemptions and general rule exclusions (collectively, "exemptions"). Section 31.16(a) allows appeals to the Board of the following CEQA determinations: (1) certification of an EIR, (2) approval of a neg dec, (3) determination of categorical exemption, (4) a determination that a project is statutorily exempt or excluded from CEQA where the determination involves the discretionary application of factors set forth in CEQA, and (5) a general rule exclusion.

Proposed Procedures Applicable to All Appeals:

1. 15 copies of a letter of appeal must be submitted to the Clerk of the Board, accompanied by the fee set forth in Administrative Code section 31.22 and a copy of the CEQA document or CEQA decision that is being appealed. The letter must state the specific grounds for appeal, which are limited to the adequacy of the environmental review, the completeness of the environmental analysis or the correctness of the environmental determination. All appellants must sign the letter of appeal. A copy of the letter of appeal must be submitted to the Environmental Review Officer ("ERO") at the same time it is submitted to the Clerk of the Board. The Clerk of the Board may reject an appeal if appellants fail to comply with these requirements.
2. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
3. While the appeal is pending, the City may not carry out or consider the approval of the project that is the subject of the appeal unless the activities must be undertaken immediately to abate a hazard or an emergency presenting an imminent hazard to the public and requiring immediate action.
4. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. 15 days advance notice shall be mailed to appellants and anyone else who has requested such notice in writing. All written materials regarding the appeal must be submitted 7 days in advance of the hearing to the Clerk of the Board, the ERO and other involved agencies. Multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project. Where multiple appeals are consolidated, the Board will allot to appellants the same total time for testimony as the Board allots to the applicant.
5. The Board must act on an appeal within 45 days of the date of appeal, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
6. The Board conducts its own independent review on appeal, and may consider anew the facts and evidence and may consider new evidence.
7. The Board may affirm or reverse the environmental decision or determination by majority vote of all members of the Board. A tie vote will be considered disapproval. The Board will adopt findings in support of its decision and will provide specific findings setting forth the reasons for a decision to reverse the environmental decision or determination. The Board may also reject an appeal if it finds the appeal does not comply with the requirements of this section.

8. If the Board remands an environmental determination or document to the Planning Commission, the Planning Commission shall take such action as may be required by the Board's specific findings. Any further appeal shall be limited to the portions of the environmental document or determination that have been revised, and any appellant shall have commented on the revised environmental document or determination in order to appeal to the Board.
9. The date of the environmental document or determination shall be the date of the original approval of the document or determination if the Board affirms the document or determination and the City has approved the project prior to the filing of the appeal. If the City has not approved the project prior to filing an appeal of a neg dec or EIR the date of a neg dec or EIR shall be the date upon which the Board approves the environmental document.
10. If the Board reverses an environmental decision, the previous decision and approvals shall be void.

Proposed Procedures Specific to Appeals of EIRs:

1. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's certification of the EIR.
2. Grounds for appeal, and the Board's decision, shall be limited to issues related to the adequacy, accuracy, objectiveness and correctness of the EIR.

Proposed Procedures Specific to Appeals of Neg Decs:

1. An appellant shall submit a letter of appeal to the Clerk of the Board within 15 days of the Planning Commission's approval of the negative declaration. An appellant must have appealed the preliminary neg dec to the Planning Commission. If the preliminary neg dec is not appealed to the Planning Commission, the neg dec may not be appealed to the Board.
2. The Board may affirm the neg dec if it finds that the project could not have a significant effect on the environment, or may refer the neg dec back to the Planning Department for revisions. If the Board overrules the neg dec, it shall make specific findings upon remand to the Planning Commission.
3. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's approval of the neg dec.

Proposed Procedures Specific to Appeals of Exemptions:

1. Any person may appeal an exemption within 20 days of the first approval of the project or the first permit issued for the project.
2. If the Planning Department or other City department authorized to make an exemption determination provided public notice of the determination and the approving commission's or board's intent to rely upon the determination, any appellant must have objected to the determination before the commission or board considering the exemption and the project. Section 31.08(f) currently requires notice for a subset of exemptions (generally historic resources, demolitions, and Class 31 or 32 exemptions) that involve the majority of the exemption

determinations that are appealed to the Board<sup>3</sup>. If the public notice required by Section 31.08(f) is not provided, then the appellant is not required to object at any hearing before appealing the exemption to the Board. Section 31.08(f) requires the following public notice of an exemption determination:

When the Planning Department or other City department provides any public notice of a proposed approval action related to the project and advises the public of a scheduled public hearing or the opportunity to request a public hearing, before the Planning Commission the Zoning Administrator or other City board or commission, as applicable, the notice shall (1) inform the public of the written CEQA determination, and (2) advise the public that person who wishes to object to the CEQA determination must raise an objection the Planning Commission the Zoning Administrator, or other City board or commission, as applicable, in order to preserve the opportunity to appeal the determination to the Board of Supervisors as provided in Section 31.16.

3. The 20-day appeal period for an appeal to the Board shall not commence until the date of an approval action following the conclusion of any properly noticed public hearing before any board or commission considering the project and the exemption.
4. With respect to an exemption determination for an ordinance, the first approval shall be the Planning Commission's decision to recommend an ordinance. If the Planning Commission takes no action on an ordinance, then the Board shall consider, and affirm or reject, the Planning department's recommended CEQA exemption as the Board's CEQA determination when it considers the ordinance and no separate appeal of the exemption shall be required.
5. The Board may affirm the exemption if it finds that the project conforms to the requirements set forth in CEQA for the exemption. The Board may provide additional analysis of the exemption, provided that the ERG recommends such additional analysis and no additional public notice is required. The Board may refer the determination to the Planning Department for revisions or reconsideration, or may overrule the determination and request preparation of specified environmental documentation. Any exemption that the Board remands must be sent to the Planning department, and not the department making the original exemption.

#### Changes in Public Notice Requirements

Sections 31.11 and 31.13 have been amended to delete the requirement to mail notice to owners within 300 feet of all exterior boundaries of the project area of (1) a notice of intent to adopt a neg dec, or (2) a notice of completion of a draft EIR, for projects that either are citywide in scope or where the total area of land that is part of the project is 5 acres or more.. Section 31.15 has been amended to require that the final EIR shall be available to the public no less than 10 days before the Planning Commission considers certification.

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<sup>3</sup> From Section 31.08 (f): "When the ERO . . . has determined that a project is excluded or categorically exempt from CEQA, notice to the public shall be provided for all such determinations involving the following types of projects: (1) any historical resources as defined in CEQA, including without limitation, any buildings and sites listed individually or located within districts listed (i) in Planning Code Articles 10 or 11, (ii) in City-recognized historical surveys, (iii) on the California Register, or (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3) any demolition of an existing structure; or, (4) any Class 32 categorical exemption.

## POTENTIAL COMMISSION ACTION

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

## RECOMMENDATION

The Department strongly recommends that the Historic Preservation Commission recommend *approval with modifications* to the proposed Ordinance and adopt the attached Draft Resolution to that effect.

### Recommended Modifications

- **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
- **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the “Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period”. This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
- **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to the Planning Commission is that this number is subject to change over time. We recommend leaving this matter to the more malleable “Procedures of the Clerk” rather than to fixing the number through legislation.
- **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Department would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.
- **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
- **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for

future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.

- **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
- **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project.” The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
- **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
- **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

## BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with minor modifications. The Planning Commission considered a similar Ordinance in 2006. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335. (See Exhibit C) In the Fall of 2006, the Land Use Committee considered the Ordinance but continued it to the call of the chair. The

revised Ordinance discussed in this report has incorporated the changes recommended by the Commission in 2006. Although the Administrative Code has not been amended the intervening years, there have been changes and clarifications to the City's CEQA appeals process, including the City Attorney memorandum from February 22, 2008 and the 2007 Amended CEQA Guidelines.

While these changes have added some clarity to the process, there is still room for improvement. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies. Furthermore, the proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.

## **ENVIRONMENTAL REVIEW**

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

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department received no letters in support or opposition of the proposed Ordinance.

|                        |                                                      |
|------------------------|------------------------------------------------------|
| <b>RECOMMENDATION:</b> | <b>Recommendation of Approval with Modifications</b> |
|------------------------|------------------------------------------------------|

### **Attachments:**

- Exhibit A: Draft Historic Preservation Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0495
- Exhibit C: 2006 Planning Commission Resolution Number 17335



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Historic Preservation Commission Resolution Administrative Code Text Change HEARING DATE: MAY 27, 2010

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

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*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT AMEND ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

### PREAMBLE

Whereas, on November 3, 2009, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0495 which would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors by amending the Administrative Code. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing; and

Whereas, on May 27, 2010, 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, the San Francisco Charter Section 4.135 states under “Other Duties” that the San Francisco Historic Preservation Commission (hereinafter “HPC”) has limited jurisdiction to review and comment on certain environmental documents; specifically stating, “For proposed projects that may have an impact on historic or cultural resources, the Historic Preservation Commission shall have the authority to review and comment upon environmental documents under the California Environmental Quality Act and the National Environmental Policy Act.”; and

Whereas, on June 2, 2010, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

Whereas, the HPC 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

Whereas, the HPC has reviewed the proposed Ordinance; and

**MOVED**, that the HPC hereby recommends that the Board of Supervisors recommends *approval with modification of the proposed Ordinance* and adopts the Resolution to that effect.

## **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 Planning Commission considered a similar Ordinance in 2006. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. The proposed Ordinance considered by the Historic Preservation Commission today has incorporated the changes recommended by the Planning Commission in 2006;
3. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies;
4. The proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale;
5. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

### I. ENVIRONMENTAL PROTECTION ELEMENT

**OBJECTIVE 1**

ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 7**

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

**II. URBAN DESIGN ELEMENT**

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

6. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance with the recommended modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance not affect affordable housing supply..*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance will not impact the City's parks and open space.*

7. The Historic Preservation Commission therefore recommends *approval with modifications described below*:

#### **Recommended Modifications**

1. **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
2. **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the "Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period". This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
3. **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to our Commissions is that this number is subject to change over time. The Commission recommends leaving this matter to the more malleable "Procedures of the Clerk" rather than to fixing the number through legislation.

4. **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Commission would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.
5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Commission recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Commission suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Commission would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Board agrees with this recommendation, the Commission further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.
7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project.” The Commission requests clarifications on the intent of this language. The Commission is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Commission requests that this section apply to demolitions as defined by the Planning Code in Section 317.
9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Commission believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Commission would suggest that that appellants need only to raise the issue but not discuss or resolve

the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.

10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on June 2, 2010.

Linda Avery

Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:      June 2, 2010

[California Environmental Quality Act Appeals of Certain Environmental Determinations and Providing Public Notice]

**Ordinance amending Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and providing public notice of such decisions and environmental documents.**

Note: Additions are single-underline italics Times New Roman;  
deletions are ~~strikethrough italics Times New Roman~~.  
Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by deleting Section 31.16 in its entirety and adding new Section 31.16, to read as follows:

SEC. 31.16. APPEAL OF CERTAIN ENVIRONMENTAL DETERMINATIONS.

(a) In accordance with the provisions set forth in this Section 31.16, the following determinations may be appealed to the Board of Supervisors (the "Board"): (1) Certification of a Final EIR by the Planning Commission; (2) Approval of a negative declaration or mitigated negative declaration (collectively referred to as a "negative declaration") by the Planning Commission; (3) Determination by the Planning Department or any other authorized City department that a project is categorically exempt from the California Environmental Quality Act ("CEQA"); (4) Determination by the Planning Department that a project is statutorily exempt or excluded from CEQA where such determination involves the discretionary application of factors set forth in CEQA; and (5) Determination by the Planning Department that a General Rule Exclusion applies to a project, as set forth in CEQA Guidelines Section 15061(b)(3).

1           (b) In addition to the applicable requirements of Section 31.16 (c), (d) or (e) below, the  
2           following requirements shall apply to an appeal of any of the determinations listed in Section 31.16(a).

3           (1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set  
4           forth in Subsections 31.16(c), (d) or (e), as applicable. The letter of appeal shall state the specific  
5           grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section  
6           31.22, payable to the Clerk of the Board. Appellant shall submit fifteen (15) copies of all written  
7           materials in support of the appeal with the letter of appeal. All Appellants must sign the letter of  
8           appeal and no appeal may be maintained on behalf of other individuals or entities without their express  
9           written consent. Appellants shall submit with the appeal a copy of the CEQA determination or CEQA  
10           decision that is being appealed. The grounds for appeal shall be limited to issues related to the  
11           adequacy of the environmental review, the completeness of the environmental analysis or the  
12           correctness of the determination being appealed as further set forth in subsections 31.16 (c), (d) or (e).  
13           The appellant shall submit a copy of the letter of appeal and all written materials in support of the  
14           appeal to the Environmental Review Officer at the time appellant submits a letter of appeal to the Clerk  
15           of the Board. The Clerk of the Board may reject an appeal if Appellant fails to comply with this  
16           subsection 31.16(b)(1).

17           (2) After receipt of the letter of appeal, the Environmental Review Officer shall promptly  
18           transmit copies of the environmental review documents to the Clerk of the Board and make the  
19           administrative record available to the Board.

20           (3) While the appeal is pending, the City shall not carry out, consider the approval of, or  
21           make any other discretionary decision regarding, a project that is the subject of the appeal, provided  
22           that activities may be undertaken that are essential to abate hazards to the public health and safety,  
23           including abatement of hazards on a structure or site determined by the appropriate City official,  
24           including but not limited to the Director of Building Inspection, the Director of Public Works, the  
25

1 Director of Public Health, the Fire Marshall or the Port Chief Engineer, to be an emergency  
2 presenting an imminent hazard to the public and requiring immediate action.

3 (4) The Clerk of the Board shall promptly schedule a hearing on the appeal before the full  
4 Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more  
5 than one person submits a letter of appeal on the same decision or determination, the Board shall  
6 consolidate such appeals so that they are heard simultaneously. Where the appeals are consolidated,  
7 the Board shall allot to appellants the same total time for testimony at the public hearing as the Board  
8 allots to the Applicant or Project Sponsor. The Board may consolidate or coordinate its hearing on the  
9 appeal with other hearings on the project. Notice of the appeal shall be provided by mail to the  
10 appellants and to all organizations and individuals who have previously requested such notice in  
11 writing, no less than fifteen (15) days prior to the date the appeal is scheduled to be heard by the  
12 Board. At its discretion, the Planning Department may mail additional notice to individuals and  
13 organizations that have commented on the decision or determination.

14 (5) Appellants, members of the public, the Planning Department, or other City agency  
15 sponsoring the proposed project or responsible for environmental review, shall submit fifteen (15)  
16 copies of all written materials pertaining to the appeal to the Board no later than noon, seven (7) days  
17 prior to the scheduled hearing. A copy of all written materials pertaining to the appeal shall be  
18 provided to the Environmental Review Officer or other City department authorized to make  
19 environmental determinations at the same time such materials are submitted to the Board.

20 (6) The Board shall conduct its own independent review of the CEQA determination. The  
21 Board shall consider anew all facts, evidence and/or issues related to the adequacy, accuracy and  
22 objectiveness of the environmental review and the CEQA determination and decision regarding such  
23 environmental review, including but not limited to the sufficiency of the information and the correctness  
24 of the conclusions of the Planning Commission, the Environmental Review Officer or the authorized  
25 City department. The Board shall consider the record before the Planning Commission, the

1 Environmental Review Officer or other City department, and may, at its discretion, consider new facts,  
2 evidence and/or issues that were not introduced before the Planning Commission, the Environmental  
3 Review Officer, or other City department authorized to make environmental determinations.

4 (7) The Board shall act on an appeal within forty-five (45) days of the date of filing the  
5 appeal, provided that if the full membership of the Board is not present on the last day on which said  
6 appeal is set or continued for hearing within such 45 days, the Board may postpone said hearing and  
7 decision thereon until, but not later than, the full membership of the Board is present; provided further,  
8 that the latest date to which said hearing and decision may be so postponed shall be not more than  
9 ninety (90) days from the date of filing the appeal.

10 (8) The Board may affirm or reverse the decision or determination of the Planning  
11 Commission, Planning Department or other authorized City agency by a vote of a majority of all  
12 members of the Board. A tie vote shall be deemed to be disapproval of the decision or determination;  
13 provided, however, that in the event of a tie vote the Board may continue its decision on the appeal to  
14 the next meeting at which the full Board will be present to consider the appeal. The Board shall act by  
15 motion. The Board shall adopt findings in support of its decision, which may include adoption and/or  
16 incorporation of findings made by the Planning Commission, Environmental Review Officer or other  
17 City department authorized to act on the environmental review decision or determination below. If the  
18 Board reverses the decision or determination, the Board shall adopt specific findings setting forth the  
19 reasons for its decision to reverse the decision or determination.

20 (9) In the event the Board reverses the environmental determination, the Board shall  
21 remand the environmental determination or decision to the Planning Commission or Planning  
22 Department. The Planning Commission or Planning Department shall take such action as may be  
23 required by the specific findings made by the Board and consider anew the remanded portions of its  
24 environmental determination. Any further appeal shall be limited to the portions of the environmental  
25 decision or determination that have been revised by the Planning Commission or Planning

1 Department, and appellant shall have commented on the revised environmental decision or  
2 determination to the Planning Commission or Environmental Review Officer. The Board's subsequent  
3 review, if any, also shall be so limited to the portions of the environmental decision or determination  
4 that have been revised by the Planning Commission or Planning Department. Any additional appeals  
5 to the Board shall comply with the procedures set forth in this Section 31.16.

6 (10) The Board may reject an appeal if it finds the appeal fails to comply with this Section  
7 31.16. The Board shall act by motion in rejecting an appeal.

8 (11) The date of the final EIR, the final negative declaration, the statutory exclusion,  
9 categorical exemption or General Rule Exclusion shall be the date upon which the Planning  
10 Commission, Planning Department or other authorized City department, as applicable, originally  
11 approved the environmental document or issued the determination if an appeal is filed and the Board  
12 affirms the action of the Planning Commission, Planning Department or other authorized City  
13 department, and the City approved the project prior to the filing of the appeal. If the City has not  
14 approved the project prior to the filing of an appeal of a negative declaration or an EIR, the date of the  
15 negative declaration or EIR shall be the date upon which the Board acts to approve the negative  
16 declaration or EIR.

17 (12) If the Board reverses the environmental decision or determination, the prior  
18 environmental decision or determination, and approval actions for the project, shall be deemed void.

19 (c) In addition to those requirements set forth in Section 31.16(b) above, the following  
20 requirements shall apply to appeals of EIRs.

21 (1) In order to appeal the Planning Commission's certification of an EIR to the Board, any  
22 appellant shall have submitted comments to the Planning Commission or the Environmental Review  
23 Officer on a draft EIR, either in writing during the public review period, or orally or in writing at a  
24 public hearing on the EIR.

1           (2) Appellant of a final EIR shall submit a letter of appeal to the Clerk of the Board within  
2 twenty (20) days after the Planning Commission's certification of the EIR.

3           (3) The grounds for appeal of an EIR shall be limited to issues related to the adequacy,  
4 accuracy and objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR  
5 as an informational document and the correctness of its conclusions, and the correctness of the findings  
6 contained in the Planning Commission's certification of the EIR.

7           (4) The Board shall affirm the Planning Commission's certification of the final EIR if the  
8 Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct, and  
9 that the findings contained in the Planning Commission's certification are correct. The Board may  
10 reverse the Planning Commission's certification of the EIR. If the Board reverses the Planning  
11 Commission's certification of the final EIR, it shall make specific findings and remand the final EIR to  
12 the Planning Commission for further action consistent with the Board's findings.

13           (d) In addition to those requirements set forth in Section 31.16(b) above, the following  
14 requirements shall apply to appeals of negative declarations.

15           (1) In order to appeal the Planning Commission's approval of a negative declaration to the  
16 Board, any Appellant shall have appealed the preliminary negative declaration to the Planning  
17 Commission. In the event a preliminary negative declaration is not appealed to the Planning  
18 Commission, the negative declaration may not be appealed to the Board.

19           (2) Appellant of a negative declaration shall submit a letter of appeal to the Clerk of the  
20 Board within twenty (20) days after the Planning Commission's approval of the negative declaration.  
21 The grounds for appeal of a negative declaration shall be limited to raising issues related to the  
22 adequacy of the analysis, the Planning Commission's finding that the project could not have a  
23 significant effect on the environment, including in the case of a mitigated negative declaration, the  
24 adequacy and feasibility of the mitigation measures.

1           (3) When the Board makes its determination on the appeal of a negative declaration, the  
2 Board shall affirm a negative declaration if it finds that the project could not have a significant effect  
3 on the environment. The Board may overturn the Planning Commission's approval of the negative  
4 declaration and make specific findings and remand the negative declaration to the Planning  
5 Commission for further action consistent with the Board's findings.

6           (4) In the event a negative declaration is remanded to the Planning Commission, the  
7 Planning Commission shall take action consistent with the Board's direction. If the Planning  
8 Department revises a negative declaration pursuant to the Board's direction, the revised negative  
9 declaration shall be scheduled for hearing at the Planning Commission. The Environmental Review  
10 Officer shall not be required to comply with the procedures set forth in Administrative Code Section  
11 31.11(b), (c), (d) or (e) prior to the Planning Commission hearing. The revised negative declaration  
12 shall be available for review by the public at least twenty (20) days prior to the Planning Commission  
13 hearing. The Environmental Review Officer shall provide notice to the public that the revised negative  
14 declaration is available for review and provide notice of the date of the Planning Commission hearing  
15 in the manner set forth in Administrative Code Section 31.11(f).

16           (e) In addition to those requirements set forth in Section 31.16(b) above, the following  
17 requirements shall apply to appeals of statutory exclusions or exemptions, categorical exemptions, or a  
18 General Rule Exclusion.

19           (1) Any person or entity may appeal the determination by the Planning Department or other  
20 authorized City department that a statutory exclusion from CEQA applies, that the project is  
21 categorically exempt from CEQA, or that a General Rule Exclusion as set forth in CEQA Guidelines  
22 Section 15061(b)(3) applies; provided, however, that if the Planning Department or other authorized  
23 City department provided public notice of intent to rely on any such a determination in accordance  
24 with Section 31.08(f), the appellant shall have objected to the determination before the Planning  
25 Commission, the Zoning Administrator, or other City commission or board, as applicable, in order to

1 appeal the determination to the Board. If the Planning Department or other City department did not  
2 provide a public notice of intent to rely on such a determination and advise the public in the notice of  
3 the requirement to object to the determination before the Planning Commission, the Zoning  
4 Administrator or other City board or commission, as applicable, in order to preserve a right of appeal  
5 to the Board, then no objection to the CEQA determination before the Planning Commission, Zoning  
6 Administrator or other City commission or board is required before the determination may be appealed  
7 to the Board. Any appeal shall be made within twenty (20) days of the date the first permit for the  
8 project is issued or the first approval of the project is granted, provided, however, in no event shall  
9 such twenty (20) days commence to run before the date of an approval action following the conclusion  
10 of any public hearing before the Planning Commission, Zoning Administrator or other City commission  
11 or board for which the Planning Department or other City department provided a public notice of an  
12 intent to rely on the CEQA determination for the project approval action and advised the public of an  
13 opportunity for a public hearing on the determination in accordance with the requirements of Section  
14 31.08(f). For purposes of a determination made with respect to an ordinance, the first approval shall  
15 be the Planning Commission's decision to recommend the ordinance, or, in the event there is no action  
16 by the Planning Commission on an ordinance, the Board shall consider, and affirm or reject, the  
17 Planning Department's recommended CEQA determination as the Board's CEQA determination as part  
18 of its consideration of the ordinance and no separate appeal shall be required.

19 (2) The Board shall affirm any determination if it finds, as applicable, that the project  
20 conforms to the requirements set forth in CEQA for statutory exemptions, categorical exemptions, or a  
21 General Rule Exclusion. The Board may provide additional analysis of the determination, provided  
22 that the Environmental Review Officer recommends such additional analysis and provided further that  
23 CEQA does not require additional public notice, an additional public hearing or further public review  
24 for such additional analysis. The Board may refer the determination to the Planning Department for  
25 revisions or reconsideration, or may overrule the determination and request preparation of specified

1 environmental documentation. If the Board finds that the project does not conform to the requirements  
2 set forth in CEQA for statutory exemptions, categorical exemptions, or a General Rule Exclusion, the  
3 Board shall make specific findings and remand the CEQA determination to the Planning Department  
4 for further action consistent with the Board's findings.

5 (3) In the event the Board reverses the environmental determination of any City department  
6 other than the Planning Department, the environmental determination shall be remanded to the  
7 Planning Department, and not the City department making the original environmental determination,  
8 for consideration of the environmental determination in accordance with the Board's directions.

9 Section 2. Administrative Code Section 31.08 is hereby amended as follows.

10 SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.

11 (a) CEQA provides that certain kinds of projects are statutorily excluded from  
12 CEQA, that certain classes of projects generally do not have a significant effect on the  
13 environment and therefore are categorically exempt from CEQA, and that a common sense  
14 exemption applies under the general rule that only projects with the potential for causing a significant  
15 effect on the environment are subject to CEQA (referred to in this section as the "General Rule  
16 Exclusion"). For categorical exemptions, each public agency must list the specific activities that  
17 fall within each such class, subject to the qualification that these lists must be consistent with  
18 both the letter and the intent of the classes set forth in CEQA. Except as provided in this  
19 section 31.08, projects that are ~~categorically~~ exempt are not subject to the requirements of this  
20 Chapter 31.

21 (b) The Environmental Review Officer shall maintain the required list of types  
22 of projects which are categorically exempt, and such list shall be kept posted in the offices of  
23 the Planning Department. Such list shall be kept up to date in accordance with any changes  
24 in CEQA and any changes in the status of local projects. The initial list and any additions,  
25 deletions and modifications thereto shall be adopted as administrative regulations by

1 resolution of the Planning Commission after public hearing, according to the procedure set  
2 forth in Section 31.04(c) of this Chapter.

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

8 (d) The Environmental Review Officer may adopt necessary forms, checklists  
9 and processing guidelines to aid the Planning Department and other departments in  
10 determining that a project may be statutorily excluded or categorically exempt in accordance  
11 with the letter and the intent expressed in the classes of statutory and categorical exemptions  
12 specified in CEQA and with the administrative regulations adopted by the Planning  
13 Commission.

14 (e) The Environmental Review Officer shall advise other departments of the  
15 statutory exclusions and categorical exemptions. The Environmental Review Officer may  
16 delegate the determination whether a project is statutorily excluded or categorically exempt  
17 from CEQA to other departments, provided that other departments shall consult with the  
18 Environmental Review Officer regarding the application of the statutory exclusions and  
19 categorical exemptions, and provided further that the Environmental Review Officer shall be  
20 responsible for all determinations so delegated to other departments. When the Planning  
21 Department or other City department determines that a project is statutorily excluded from CEQA,  
22 categorically exempt from CEQA or covered by the General Rule Exclusion (referred to in this Chapter  
23 31 as the "exemption determination") the issuance of the exemption determination shall be considered  
24 an exemption determination by the Planning Department.  
25

1 (f) When the Environmental Review Officer, or any other department to  
2 which the Environmental Review Officer has delegated responsibility pursuant to Section  
3 31.08(e) above, has determined that a project is excluded or categorically exempt from  
4 CEQA, notice to the public shall be provided for all such determinations involving the following  
5 types of projects: (1) any historical resources as defined in CEQA, including without limitation,  
6 any buildings and sites listed individually or located within districts listed (i) in Planning Code  
7 Articles 10 or 11, (ii) in City-recognized historical surveys, (iii) on the California Register, or  
8 (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3)  
9 any demolition of an existing structure; ~~or~~, (4) any Class 32 categorical exemption or (5) any  
10 project for which the Planning Code or other City code or regulation requires public notice of any  
11 proposed approval action related to the proposed project. Written determinations of categorical  
12 exemptions for these types of projects shall be posted in the offices of the Planning  
13 Department and shall be mailed to any individuals or organizations that have previously  
14 requested such notice in writing. In addition, when the Planning Department or other City  
15 department provides any public notice of a proposed approval action related to the project and advises  
16 the public of a scheduled public hearing, or the opportunity to request a public hearing, before the  
17 Planning Commission, the Zoning Administrator or other City board or commission, as applicable, the  
18 notice shall: (1) inform the public of the written CEQA determination, and (2) advise the public that  
19 any person who wishes to object to the CEQA determination shall raise such objection before the  
20 Planning Commission, the Zoning Administrator, or other City board or commission, as applicable, in  
21 order to preserve the opportunity to appeal the determination to the Board of Supervisors as provided  
22 in Section 31.16.

23 (g) When the Environmental Review Officer, or any other department to  
24 which the Environmental Review Officer has delegated responsibility pursuant to Section  
25 31.08(e) above, has determined that a project is excluded or categorically exempt from

1 CEQA, the Environmental Review Officer may issue a Certificate of Exemption from  
2 Environmental Review by posting a copy thereof in the offices of the Planning Department,  
3 and by mailing copies thereof to the applicant, the board(s), commission(s) or department(s)  
4 that will carry out or approve the project, and to any individuals or organizations who have  
5 previously requested such notice in writing.

6 ~~(h) — The Planning Commission may take testimony on any categorical exemption at~~  
7 ~~the public hearing, if any, in connection with the Planning Commission's consideration of the project~~  
8 ~~that is the subject of the categorical exemption.~~

9 Section 3. Administrative Code Section 31.11 is hereby amended to read as follows:

10 SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE  
11 DECLARATIONS.

12 (a) When any negative declaration is required, it shall be prepared by or at  
13 the direction of the Environmental Review Officer. The negative declaration shall describe the  
14 project proposed, include the location of the property, preferably shown on a map, and the  
15 name of the project proponent, state the proposed finding that the project could not have a  
16 significant effect on the environment, and have attached to it a copy of the initial study  
17 documenting reasons to support that finding. The negative declaration shall also indicate  
18 mitigation measures, if any, included in the project to avoid potentially significant effects.

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

23 (c) The Environmental Review Officer shall provide a notice of intent to adopt  
24 a negative declaration or mitigated negative declaration by publication in a newspaper of  
25 general circulation in the City, by posting in the offices of the Planning Department and on the

1 subject site, by mail to the owners of all real property within the area that is the subject of the  
2 negative declaration and within 300 feet of all exterior boundaries of such area, and by mail to  
3 all organizations and individuals who have previously requested such notice in writing,  
4 sufficiently prior to adoption of the negative declaration to allow the public and agencies a  
5 review period of not less than twenty (20) days, or thirty (30) days if required by CEQA. In the  
6 case of projects that either are citywide in scope or where the total area of land that is part of the  
7 project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review  
8 Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of  
9 the project area.

10 (d) The notice of intent shall specify the period during which comments are to  
11 be received, a brief description of the project and its location, and the address where copies of  
12 the negative declaration and all documents referenced in the negative declaration are  
13 available for review.

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

18 (f) The Planning Commission shall hold a public hearing on any such appeal  
19 within not less than twenty-one (21) nor more than ninety (90) days after the close of the  
20 appeal period. Notice of such hearing shall be posted in the offices of the Planning  
21 Department, and shall be mailed to the appellant, to the applicant, to the board(s),  
22 commission(s) or department(s) that will carry out or approve the project, to any individual or  
23 organization that has submitted comments on the proposed negative declaration, and to any  
24 other individual or organization that has requested such notice in writing.

1 (g) After such hearing the Planning Commission shall affirm the proposed  
2 negative declaration if it finds that the project could not have a significant effect on the  
3 environment, may refer the proposed negative declaration back to the Planning Department  
4 for revisions, or shall overrule the proposed negative declaration and order preparation of an  
5 environmental impact report if it finds that the project may have a significant effect on the  
6 environment.

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

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

19 (j) After the City has decided to carry out or approve the project, the  
20 Environmental Review Officer may file a notice of determination with the county clerk in the  
21 county or counties in which the project is to be located. If required by CEQA, the notice of  
22 determination shall also be filed with the California Office of Planning and Research.

23 Section 4. Administrative Code Section 31.13 shall be amended to read as follows:

24 SEC. 31.13. DRAFT ENVIRONMENTAL IMPACT REPORTS.  
25

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

4 (b) The applicant or the board, commission or department that is to carry out  
5 or approve the project shall submit to the Environmental Review Officer such data and  
6 information as may be necessary to prepare the draft EIR. If such data and information are  
7 not submitted, the Environmental Review Officer may suspend work on the draft EIR. The  
8 data and information submitted shall, if the Environmental Review Officer so requests, be in  
9 the form of all or a designated part or parts of the proposed draft EIR itself, although the  
10 Environmental Review Officer shall in any event make his or her own evaluation and analysis  
11 and exercise his or her independent judgment in preparation of the draft EIR for public review.

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

18 (d) When the draft EIR has been prepared, the Environmental Review Officer  
19 shall file a notice of completion of such draft as required by CEQA. A copy of such notice, or  
20 a separate notice containing the same information, shall thereupon be posted in the offices of  
21 the Planning Department and on the subject site, and mailed to the applicant, the board(s),  
22 commission(s) or department(s) that will carry out or approve the project, and to any individual  
23 or organization that has requested such notice in writing. The notice of completion shall be  
24 sent by mail to the owners of all real property within the area that is the subject of the  
25 environmental impact report and within 300 feet of all exterior boundaries of such area. In the

1 case of projects that either are citywide in scope or where the total area of land that is part of the  
2 project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review  
3 Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of  
4 the project area. A copy of the draft EIR shall be provided to the applicant and to such  
5 board(s), commission(s) or department(s) and to any individual or organization that has so  
6 requested.

7 Section 5. Administrative Code Section 31.15 shall be amended to read as follows:

8 SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.

9 (a) A final EIR shall be prepared by, or at the direction of, the Environmental  
10 Review Officer, based upon the draft EIR, the consultations and comments received during  
11 the review process, and additional information that may become available. The final EIR shall  
12 be made available to the public no less than ten (10) days prior to the Planning Commission hearing to  
13 consider certification of the final EIR.

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

19 (c) A public record shall be kept of each case in which an EIR is prepared,  
20 including all comments received in writing in addition to a record of the public hearing. The  
21 final EIR shall indicate the location of such record. Any transcription of a hearing record shall  
22 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  
24 Planning Commission it is adequate, accurate and objective, reflecting the independent  
25 judgment and analysis of the Planning Commission, the Planning Commission shall certify its

1 completion in compliance with CEQA. The certification of completion shall contain a finding as  
2 to whether the project as proposed will, or will not, have a significant effect on the  
3 environment.

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 Kate Herrmann Stacy  
9 Deputy City Attorney

**Exhibit C: 2006 Planning Commission Resolution**  
**Planning Commission Hearing: May 27, 2010**  
**Historic Preservation Commission Hearing: June 2, 2010**

**CASE NO. 2010.0336U**  
**Board File No. 100495**  
**CEQA Appeals and Noticing**

Case No. 2006.1221E  
Administrative Code Chapter 31  
Environmental Appeal Amendments

SAN FRANCISCO  
PLANNING COMMISSION  
RESOLUTION NO. 17335

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND ADMINISTRATIVE CODE CHAPTER 31 TO PROVIDE FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND PROVIDING PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.

WHEREAS, on September 19, 2006, Supervisor Fiona Ma introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 061311 that would amend Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act ("CEQA"), and providing public notice of such decisions and determinations.

The proposed ordinance has been determined to be exempt from CEQA pursuant to CEQA Guidelines Section 15060(c)(2) as a non-physical project.

The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 19, 2006. At that hearing, the Commission took public testimony, closed the public hearing, and continued it to October 26, 2006 with instructions to staff to respond to concerns raised at the hearing. The Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 26, 2006. At that hearing, the Commission deliberated and continued the hearing to November 2, 2006 with instructions to staff to respond to concerns raised at the hearing. The Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 2, 2006.

WHEREAS, CEQA requires local agencies to allow an appeal of an environmental impact report ("EIR"), a Negative Declaration ("Neg Dec") or a determination of exemption to the elected decision-making body if a non-elected decision-making body certifies the EIR, approves a Neg Dec or makes a determination of exemption. At present, Chapter 31 provides procedures for an appeal of an EIR, but does not provide procedures for an appeal of a Neg Dec or an exemption.

The proposed ordinance would codify procedures for appeal of Neg Decs and exemptions to the Board of Supervisors, pursuant to CEQA. The ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, Neg Decs, and

exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, Neg Decs, and exemptions. In addition, the legislation would amend the public notice requirements for Neg Decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects meeting certain requirements. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.

Procedures for appeals to the Board are currently set forth by the Clerk of the Board, but those procedures are limited in scope and do not establish time limits for the appeals.

WHEREAS, the Planning Commission supports the proposed ordinance, with modifications. The proposed ordinance generally requires that the Board must act on an appeal within 30 days of the date of the appeal. The Commission recommends that 45 days be allowed before the Board must act, consistent with the current Board practice. This would best ensure that the Planning Department has the opportunity to address all of the issues raised in the appeal and consider any facts and evidence submitted in support of the appeal. The Commission also recommends minor text revisions to clarify the intent of the proposed legislation, and in particular to clarify the intent of provisions related to Notice requirements for Categorical Exemptions. The Commission also recommends that the deadline for filing appeals of Negative Declarations should be within twenty (20) days after the Planning Commission's approval of the Negative Declaration, and further that the deadline for filing appeals of exemptions should be within twenty (20) days after the date the first permit for the project is issued or the first approval of the project is granted.

AND, WHEREAS, the Planning Commission also recommends that the Board of Supervisors reconsider the provisions within the proposed legislation that modify Chapter 31 with respect to Notice requirements on sites of 5 acres or greater.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance, as described in this Resolution and in the proposed Ordinance, with modifications recommended by the Planning Department and Planning Commission.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 2, 2006.

Linda Avery  
Commission Secretary

AYES: Alexander, Antonini, Lee, Sugaya

NOES: Moore, Olague

ABSENT: None

ADOPTED: November 2, 2006