



# SAN FRANCISCO PLANNING DEPARTMENT

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

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*Project Name:* California Environmental Quality Act Procedures, Appeals, and Public Notice  
*Case Number:* 2013.0463U [Board File No. 13-0248]  
*Initiated by:* Supervisor Kim  
*Introduced:* April 9, 2013  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
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*Reviewed by:* Sarah Jones, Acting Environmental Review Officer  
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*Recommendation:* Approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects.

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

**PREAMBLE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

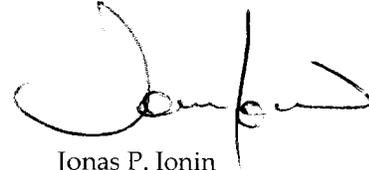
And, be it further **MOVED**, that the Commission concurs with the more detailed recommendations as described in the attached Executive Summary from the Department.

## FINDINGS

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

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

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



Jonas P. Ionin  
Acting Commission Secretary

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

NAYS: none

ABSENT: Borden and Sugaya

ADOPTED: April 25, 2013