



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: MARCH 14, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: MARCH 20, 2013

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Project Name: California Environmental Quality Act Procedures
Case Number: 2012.1329U [Board File No. 12-1019, Version 3]
Initiated by: Supervisor Wiener
Introduced: October 16, 2012, substituted on 1/29/13
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
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Reviewed by: Sarah Jones, Acting Environmental Review Officer
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Recommendation: Approval with modifications.

ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Wiener would amend Administrative Code Chapter 31 provisions 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.

Background:

On November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 12-1019. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code. The Historic Preservation Commission recommendation to Supervisor Wiener was that the Commission was: "seeking additional time or if no additional time is provided, (the Commission was) recommending that the Board of Supervisors adopt a proposed Ordinance with modifications that amends Administrative Code Chapter 31 provisions 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." Specifically, the Historic Preservation Commission's recommended modifications were as follows:

- 1) The Historic Preservation Commission agrees with the two previous recommendations from the Department:

- a. Provide the adequate opportunity for all parties to provide written materials to the Board.
 - b. All Sections- Increase consistency concerning "Date of Decision".
- 2) The Historic Preservation Commission believes that the appeal window should generally be 30 days for all CEQA documents. The HPC believes that once the "date of decision" on the first approval has started the countdown on the ability to appeal, the proposed 20 days may not provide sufficient time for appellants to prepare their appeal.
 - 3) Amend the definitions of Historic Resources that would require notice. The proposed Ordinance would amend Section 31.08(e)(2) to require that notice be given for certain types of historical resources. The HPC believes that this section should be revised to clarify that all historic resources found in any adopted survey, regardless of the age of that survey, would require notice.
 - 4) Lastly, the Historic Preservation Commission directs staff to ensure that notices posted on the website must be provided in a clear and obvious manner.

On November 29, 2012, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code. The Planning Commission recommendation to Supervisor Wiener was as follows:

- 1) engage the public;
- 2) consider this Commission's recommendations, including
 - a. define the "first discretionary action",
 - b. consider extending appeal period, and
 - c. default to a longer appeal period for actions that are not noticed; and then
- 3) bring the proposal back to the Planning Commission so that a revised Ordinance which takes public and Commission input into account may be reviewed.

On December 5, 2012, the Historic Preservation Commission conducted a second hearing to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) in favor of the following recommendation to Supervisor Wiener:

- 1) Support the Planning Commission resolution (summarized above);
- 2) Conduct outreach to the public, particularly the historic preservation community; and
- 3) Bring the proposal back the Historic Preservation Commission so that a revised Ordinance may be reviewed.

Since the Commission hearings, the Supervisor has conducted three large public outreach meetings with the participation of Planning Staff. Groups represented at these meetings include:

January 9th, 2013

- Coalition for San Francisco Neighborhoods
- Cole Valley Improvement Association
- Sierra Club
- D-5 Action

- SF Green Party/Our City
- ENUF
- Arc-Ecology
- San Francisco Tomorrow
- SaveMuni.com
- Community Economic Development Clinic – UC Hastings

January 24th, 2013 Morning Meeting

- Community Economic Development Clinic – UC Hastings
- San Francisco Beautiful
- Sierra Club
- Wild Equity Institute
- SF Preservation Consortium

January 24th, 2013 Afternoon Meeting

- Russian Hill Neighbors
- Coalition for San Francisco Neighborhoods
- SF Ocean Edge
- Planning Association for the Richmond
- Pacific Heights Residents Association
- Haight Ashbury Neighborhood Association
- Sierra Club
- Parkmerced Action Coalition
- Glen Park Association
- Friends of Noe Valley
- Marina Community Association
- San Francisco Tomorrow
- SF Preservation Consortium
- Community Economic Development Clinic – UC Hastings

March 1st, 2013 Meeting

- Coalition for San Francisco Neighborhoods
- Planning Association for the Richmond
- Parkmerced Action Coalition
- Glen Park Association
- San Francisco Tomorrow
- SF Preservation Consortium
- Community Economic Development Clinic – UC Hastings
- San Francisco Green Party
- Aquatic Park Neighbors
- SF Beautiful

For a complete list of attendees for the March 1, 2013 meeting please see Exhibit H

In addition to these large public meetings, private meetings with a variety of stakeholders meetings including affordable housing developers, neighborhood organizations and others throughout the month of January.

As a result of this outreach, Supervisor Wiener introduced Version 3 on January 29th, 2013. The Supervisor has provided time for the public to review Version 3 and he held an open meeting for the public on March 1, prior to the commission hearings.

The Way It Is Now Summary:

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

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

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

The Way It Would Be Summary:

The proposed Ordinance would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors and update and revise other provisions in Chapter 31.

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

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

The Ordinance would amend Section 31.08, which now establishes procedures for categorical exemptions, so that the procedures would apply to all exemptions (including statutory exemptions and community plan exemptions) and not just categorical exemptions. It would also expand noticing provisions related to exemptions, none of which are required by CEQA. The Ordinance would delete Section 31.16 in its entirety, which now provides a process for EIR appeals only, and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and all exemptions. This section would establish that when the Board of Supervisors (Board) must approve a project, it is the CEQA decision making body and there would not be a separate appeal process. Instead, the public could raise CEQA issues through the normal Board hearing process and the Board would need to affirm the CEQA documents approved by Planning as part of its approval of the project. In addition, the legislation would clarify the public notice requirements for neg decs and draft EIRs in Sections 31.12-31-15, and remove the current Chapter 31 requirement that Planning provide mailed notices of draft CEQA EIRs and neg decs to properties within and near project areas that are citywide in scope or that affect 20 acres or more.

In addition to the summary above, the Department published an informational memorandum that described the differences between Version Two of the proposed Ordinance and the current version, Version Three. This comparison is available upon request and on the Department website at: <http://commissions.sfplanning.org/cpcpackets/2012.1329Uv4.pdf>.

ISSUES AND CONSIDERATIONS

CEQA seeks to achieve five crucial objectives prior to project approval: 1) disclose environmental impacts; 2) prevent or reduce environmental damage; 3) disclose agency decisions; 4) promote interagency coordination; and 5) encourage public participation. While state law establishes the framework for CEQA, it provides for lead agencies to establish their own local procedures for carrying out the CEQA process within their jurisdictions. Currently, our local law establishes rules for appeal of EIRs but not negative declarations or exemptions, to our elected Board of Supervisors. This lack of rules for appeals of other CEQA documents harms both potential appellants and project sponsors.

Where the Administrative Code establishes a process for appeals, for EIR documents, the appeal process is administered both more quickly and more effectively. From 2010-2013, EIRs typically have been brought to public hearing for appeals within 48 days of certification by the Planning Commission. This compares to the lengthy average of 208 days that transpired between issuance of an exemption and its appeal before the Board. While this delay is inefficient and costly for the project sponsor, the process appears to not benefit the appellant either – in this time period, all of the filed EIR appeals where procedures are codified were found to be timely appeals whereas, 23% (nearly 1/4) of all exemption appeals were determined to be not timely.

<i>types of CEQA documents*³</i>	<i>no. of appeals filed 2010-2013</i>	<i>No. of appeals that went to hearing</i>	<i>average length of time btw CEQA document issuance and CEQA appeal</i>	<i>no. of untimely appeals</i>	<i>% of appeals that were not ripe/timely</i>
<i>Exemptions</i>	30	20	208	7	23%
<i>Neg Dec</i>	1	1	82	0	0%
<i>EIR</i>	19	17	48	0	0%
TOTALS	50	38	143	7	14%

The current process seems to disadvantage both appellants and project sponsors. Where rules are established for appeals, the hearing happens significantly faster. Where rules are not established, about a quarter of appellants are frustrated to find their appeal does not qualify for hearing.

The proposed Ordinance seeks to correct both issues by codifying rules and by increasing public notification.

After two HPC hearings, one hearing at the PC and several informal meetings and discussions, much of the proposal has been discussed at length. It seems all parties can agree that increased notice and added clarity would improve our local CEQA appeal process. Attachment C summarizes the breadth of the topics discussed and responds to each generalized comment with an assessment as to whether this topic has been addressed in the current proposed Ordinance.

The current version of the proposal addressed a key concern from last fall by increasing certainty and defining all “first approval actions” that would open the window for appeals. See Exhibit F for a flow chart of the proposed appeal process for Exemptions. At this time, the Department believes the following issues are the most debated:

1. 20-Day window of appeal;
2. Board as the CEQA decision-making body; and
3. For area plans involving rezoning of 20 acres or more, removal of a local mailed notice requirement that is largely duplicative of the mailed notice otherwise already required for rezoning actions.

Looking at these issues in more detail:

- **20-Day Appeal Window.** The current proposal seeks to create a uniform appeal window for all CEQA documents by applying the existing 20-day window for appeal of EIRs to Neg Decs and

³ There also were 4 appeals filed for items for which CEQA does not provide an appeal process: letters in which Planning advised a City department that an action was not a project as defined by CEQA (2), an EIR addendum (1) and a NEPA document (1).

Exemptions. While a consistent time frame is laudable, there has been concern that circumstances of an EIR (more notification, longer process) are different from that of the other documents, and therefore the 20 days adequate for an EIR might not be adequate for these other documents, and therefore, the 20 days adequate for an EIR might not be adequate for these other documents that have less ongoing notice and process.. Further, there are current discrepancies between other related appeal deadlines; the deadline for appeal of a building permit is 15-days and the appeal deadline of a conditional use authorization is 30-days. In addition to the length of the appeal window, there is some public concern around the question of the first approval action rather than the final approval action as the “trigger” for the appeal period.

- **Appeals where the Board is the CEQA decision-making body.** As described earlier, CEQA provides a right of appeal only where a non-elected decision-making body, such as the Planning Commission, renders the final decision about the adequacy of a CEQA document. (CEQA Section 21151(c)). Proposed Section 31.16(b) clarifies that when the Board is required to approve a project before it can be implemented, the Board must affirm the CEQA decision rendered by the Department or Planning Commission and no separate appeal process is required. The public would have the ability to raise CEQA questions before the Board through the Board’s existing public hearing process, which usually is carried out at a committee, but can involve a hearing before the full Board. To understand how this would function, below are three questions are frequently raised about the process and answers.
 - First, when is the Board established as the CEQA decision-making body?
 - Answer: The potential CEQA projects for which the Board would be the decision-making body include all projects that require the Board to approve an ordinance or resolution, including establishing a SUD or approving a zoning change, appropriating funds, or entering into contracts where Board approval of the contract is required.
 - Second, how are the CEQA-related concerns raised before the Board?
 - Answer: The simplest answer to this question is that the proposed ordinance leaves this decision to the Board as the Board sets out its procedures in the Board’s Rules of Order. The proposal states, “any person may raise objections to the CEQA decision at a public hearing on the project held by the Board or a committee of the Board”. To try to anticipate how the Board may resolve CEQA concerns that arise at the Board, consider these two scenarios.
 - 1) **Public comment at a Board committee: Under the Board of Supervisors Rules of Order 3.3 and 4.22, the Board generally considers public comment regarding particular legislative matters only at Board committee meetings, not at meetings of the full Board. After a Board committee considers a matter—and after the committee hears public comment on that matter—the committee generally forwards a recommendation for approval or disapproval on the underlying action to the full Board. The full Board then considers the whole item, including any CEQA affirmation in the legislation. In these circumstances, the Board does not invite additional public comment on the matter after it has been heard in committee. The Board’s committee hearing process would satisfy the hearing requirement in the proposal here. The Board also would retain the ability to affirm or deny the CEQA decision by a separate resolution prior to considering the project. Of course, denial of the CEQA decision would prevent further approvals.**
 - 2) **Public comment before the Board seated as a Committee of the Whole. Instead of, or in addition to, allowing public comment in committee, the Board could allow public comment on CEQA-related concerns at meetings of the full Board. Either**

the Board could allow public comment on a case-by-case basis by deciding to sit as a Committee of the Whole for particular matters, or the Board could amend its Rules of Order to provide a process for public comment at the full Board on such matters. As noted above, the proposal leaves the Board discretion as to how it would handle these matters.

- Third, how would related procedures for this process work?
- Answer: As there is no specific CEQA appeal for these matters, the underlying resolutions and/or ordinances would proceed under standard Board procedures. While this may benefit the concerned public in that CEQA issues may be raised without the need to file an appeal, it does create uncertainty for the Department and the project sponsor. For instance, the proposed Ordinance does not establish a schedule for when materials shall be submitted to the Board. The underlying Board actions would proceed through the Board's normal procedures, without a separate opportunity to assess and respond to CEQA-related issues as provided through the regular appeal procedures. The Department does have concerns as to its ability to respond to any CEQA issues raised.
- **Removal of individual mailed notice for rezonings affecting areas of 20 acres or more.** Under the current proposal City-sponsored projects that both involve rezonings, area plans, or other General Plan amendments *and* that are either citywide in scope or where the total area of land that is part of the project (excluding public streets) is twenty (20) acres or more would not need to provide mailed notice of availability of an EIR and an intent to adopt a Neg Dec. These mailed notices currently required by the Administrative Code may be deleted as the notices are largely duplicative with the mailed notice required in Planning Code Section 306 et. Seq. which also requires mail notice to owners within 300 feet of all exterior boundaries of an area to be rezoned and to those owners within the potential rezoning. Other forms of notice, such as newspaper advertisements, mailing to those requesting such notice, and mailing to responsible and trustee agencies, would continue. The current version of the proposal increases the requirement that the land be at least 20 acres over the previous proposal for just land over 5 acres. The intent of this provision was to address area plans and citywide plans, and not individual projects on large sites (which might exceed 5 acres in size); most of the Department's area plans are, in fact, over 20 acres.

POTENTIAL COMMISSION ACTION

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

RECOMMENDATION

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

Recommended Modifications

While the Department recommends support of the proposed Ordinance, there are two modifications that may improve the proposal. The proposed modifications include:

- Increase the window of appeal for all CEQA documents to 30 days and
- Provide increased clarity for the process where the Board acts as the CEQA decision-making body.

BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with two additional modifications. The Planning Commission considered similar proposed Ordinances in 2006 and 2010. In both instances, the Planning Commission recommended approval with modifications via Resolution Numbers 17335 and 18116. While the Historic Preservation Commission (HPC) was not in existence to review the 2006 proposal, in 2010 the HPC passed Motion 649 approving the proposed Ordinance with modifications. (See prior PC and HPC Resolutions and Motions in Exhibit C) Both the 2006 and 2010 CEQA Reform Ordinances were heard and amended by the Land Use Committee of the Board, however, neither was forwarded to the Full Board. Although the Administrative Code has not been substantively amended concerning CEQA appeals 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. The current proposal incorporates many of the earlier changes recommended by the Commissions.

Further, when the Commissions both considered earlier versions of the current proposal in Fall of 2012. This fall the Commissions requested the following:

- 1) define the "first discretionary action";
- 2) consider extending appeal period;
- 3) default to a longer appeal period for actions that are not noticed;
- 4) conduct further outreach; and
- 5) revise the proposal based upon that outreach.

With regard to each of these requests, the Department finds the following:

- 1) **define the "first discretionary action"**. The current proposal defines each potential "approval action⁴" that would open the window for CEQA appeal.

⁴ Section 31.01(h) establishes that "Approval Action" means:

- (1) For a private project that is determined to be exempt from CEQA:
 - (A) The first approval of the project by the Planning Commission or the Zoning Administrator following a noticed public hearing, including, a discretionary review hearing; or
 - (B) The first approval of the project by another City commission, board or official following a noticed public hearing granting an entitlement; or
 - (C) If a Building Permit or other Entitlement of Use for the Whole of the Project is issued in reliance on the exemption without being preceded by a publicly notice approval hearing, the issuance of the Building Permit or other Entitlement of Use for the Whole of the Project.
- (2) For public projects determined to be exempt from CEQA:
 - (A) The first approval of the project in reliance on the exemption by a City decision-making body at a noticed public hearing, or
 - (B) If approved without a noticed public hearing, the decision by a City department or official in reliance on the exemption that commits the City to a definite course of action in regard to a project intended to be carried out by any person.
- (3) For all projects determined to require a Neg Dec, the approval of the project by the first City decision-making body that adopts the Neg Dec or mitigated Neg Dec as provided in Section 31.11(h).

- 1) **consider extending appeal period.** The current proposal does not extend the appeal period. As proposed, there would be a 20-day window for all CEQA document types.
- 2) **default to a longer appeal period for actions that are not noticed.** For City projects that do not have an associated public hearing, the “clock” to end the appeal period *does not begin until* a notification of the exemption is posted on the Department’s website as provided in Section 31.08(g). This is a change from the previous version which asked for but did not require posting on the website—in these cases the appeal period was 30-days regardless of whether the notice occurred. Under the revised proposal, if there is no notice of these City projects then there is no appeal window cutoff. Further, under the current proposal private projects subject to notification under *Planning Code* Sections 311 and 312 will also require notice about the underlying CEQA determination and about how to appeal both the building permit and the CEQA determination. The cumulative effect of the current proposal would be that the vast majority of projects that are currently the subject of CEQA appeals (those which are either City projects or those that are required to provide 311/312 notification) will now have a requirement to notice the CEQA determination and related appeal process.
- 3) **conduct further outreach.** Pages three through four of this report detail the additional outreach that has been conducted since this Commission request in Fall 2012.
- 4) **revise the proposal based upon that outreach.** While not all of the public or the Commission’s requests have been accommodated, the vast majority of these requests have been responded to with clarifications made in either the second version (11/20/12) or third and current version (1/29/13). See Exhibit C for a summary listing of requests and responses.

The proposed modifications include:

- **Increase the window of appeal for all CEQA documents to 30 days.** While the current 20-day appeal window for EIRs appears to be effective and functional for all parties, there is typically a much greater public process for EIRs than for other CEQA document types, and therefore public knowledge of the project and the process might be more extensive than for a project receiving an exemption. That said, in keeping with the overall goal of the legislation to increase consistency and clarity in the appeal process, the Department recommends extending the period of appeal for EIRs so that under the proposal all CEQA document types would have the same 30-day window of appeal.
- **Provide increased clarity for the process around CEQA concerns where the Board acts as the CEQA decision-making body.** As noted earlier in this report under “Issues and Considerations” there is some uncertainty about how the Board will chose to respond to CEQA issues that are raised where the Board is the decision-making body. For this reason, the Department recommends codifying procedures for submitting CEQA-related concerns when the Board is the decision-making body that are consistent with the Clerk’s rules for preparing the packet for Committee hearings. This would ensure that Board Committee Members, City agencies, and the public would be aware of potential CEQA issues prior to the hearing Committee hearing. This would ensure that City agencies come to the hearing prepared to discuss the potential CEQA concerns and could enable the Board to schedule the matter before the Full Board if it desires.

(4) For all projects determined to require an EIR, the approval of the project by the first City decision-making body following the certification of completion of the EIR by the Planning Commission as provided in Section 31.15(d).

The Department finds that the proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification. Through the establishment of the proposed rules (and with our two recommended modifications), the Department believes that the process will improve for appellants resulting in more timely appeals and reducing the number of attempted appeals that are found to be untimely. Similarly, 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

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.

The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine timelines 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.

In summary, the Planning Department believes that 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.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

Since the fall hearings, the Planning Department received one letter, which is attached.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Board of Supervisors File No. 12-1019 V.3
- Exhibit B: Board of Supervisors File No. 12-1019 V.3 Legislative Digest
- Exhibit C: Abbreviated Requests and Updated Listing Whether the Issues Have Been Addressed
- Exhibit D: Table of Appeals filed from 2010-2013
- Exhibit E: New Comments Received Since Fall Hearings
- Exhibit F: Flow Chart of Proposed Appeal Process
- Exhibit G: Draft PC/HPC Resolution
- Exhibit H: Sign-in sheet for March 1, 2013 Meeting

1 [Administrative Code - California Environmental Quality Act Procedures]

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

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

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

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

22 Section 2. The San Francisco Administrative Code Chapter 31 is hereby amended by
23 amending Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, and
24 31.15, to read as follows:

1 **SEC. 31.04. RESPONSIBILITY AND DEFINITIONS.**

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

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

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

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

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

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

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

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

9 (h) Definitions.

10 "Approval Action" means:

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

13 (A) The first approval of the project in reliance on the exemption by the City
14 Planning Commission or the Zoning Administrator following a noticed public hearing, including,
15 without limitation, a discretionary review hearing as provided for by Planning Code Section 311 or
16 Section 312, or

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

20 (C) If a Building Permit or other Entitlement of Use for the Whole of the
21 Project is issued in reliance on the exemption without being preceded by an approval at a noticed
22 public hearing, the issuance of the Building Permit or other Entitlement of Use for the Whole of the
23 Project.

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

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

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

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

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

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

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

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

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

1 (a) An Office of Environmental Review is hereby created in the Planning
2 Department, which shall be responsible, acting through the Director of Planning, for the
3 administration of this Chapter 31 of those actions assigned to the Planning Department by Section
4 31.04.

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

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

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

20 (e) All projects ~~that are not excluded or categorically exempt from CEQA~~ shall be
21 referred to the Environmental Review Officer except those exempt projects covered by a delegation
22 agreement with the Environmental Review Officer as provided in Section 31.08(d). All other officials,
23 boards, commissions, departments, bureaus and offices of the City shall cooperate with the
24 Environmental Review Officer in the exercise of his/her responsibilities, and shall supply
25 necessary information, consultations and comments.

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

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

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

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

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

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

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

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

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

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

24 (b) For categorical exemptions:
25

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

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

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

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

22 (e)(d)___ The Environmental Review Officer shall advise other departments of ~~the~~
23 ~~categorical~~ exemptions. The Environmental Review Officer may delegate the determination
24 whether a project is ~~categorically~~ exempt from CEQA to other departments, provided that other
25 departments shall consult with the Environmental Review Officer regarding the application of

1 ~~the categorical~~ exemptions, and provided further that the Environmental Review Officer shall
2 be responsible for all determinations so delegated to other departments. When the Planning
3 Department or other City department determines that a project is exempt from CEQA, the issuance of
4 the exemption determination shall be considered an exemption determination by the Planning
5 Department.

6 ~~(f)(e)~~ When the Environmental Review Officer, or any other department to which the
7 Environmental Review Officer has delegated responsibility pursuant to Section 31.08~~(e)~~(d)
8 above, has determined that a project is ~~excluded or categorically~~ exempt from CEQA, the
9 Environmental Review Officer:

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

15 (2) Shall provide notice to the public ~~shall be provided~~ for all such
16 determinations involving the following types of projects: ~~(1)(i)~~ any historical resources, ~~as~~
17 defined ~~in CEQA, including without limitation, as~~ any buildings and sites listed individually or
18 located within districts (A) listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-recognized~~
19 ~~historical surveys, (iii) on an historic resource survey that has been adopted by the City, on the~~
20 California Register or determined eligible for listing on the California Register by the State Historical
21 Resources Commission, including, without limitation, any location, ~~or (iv) on the National Register~~
22 of Historic Places, or (B) a resource that the Environmental Review Officer determines, based on
23 substantial evidence, to be a historical resource under Public Resources Code Section 5024.1; (2)(ii)
24 any Class 31 categorical exemption; ~~(3)(iii)~~ any demolition as defined in Planning Code Section
25 317 of an existing structure; or, ~~(4)(iv)~~ any Class 32 categorical exemption. ~~Written~~

1 ~~determinations of categorical exemptions~~All exemption determinations for these types of projects
2 shall be in writing, posted in the offices of the Planning Department and on the Planning
3 Department's website, and ~~shall be~~ mailed to any individuals or organizations that have
4 previously requested such notice in writing.

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

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

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

12 (B) Inform the public that it may be able to appeal the CEQA exemption
13 determination to the Board of Supervisors following the Approval Action within the timeframe specified
14 in Section 31.16; and

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

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

22 (A) Conform to the requirements of this Section 31.08(f) in addition to any
23 notice requirements in the Planning Code;

24 (B) Inform the notification group that if a discretionary review hearing is
25 requested before the Planning Commission, the Approval Action for the project under this Chapter 31

1 will occur upon the Planning Commission's approval of the Building Permit application, if such
2 approval is granted; and

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

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

21 (h) After the City has decided to carry out or approve the project, in accordance with CEQA
22 procedures, the Environmental Review Officer may file a notice of exemption with the county clerk in
23 the county or counties in which the project is to be located.

24 (i) The Environmental Review Officer has the authority to re-evaluate the application of an
25 exemption to a project in the event that a project changes after the Approval Action for the project. If

1 the Planning Commission or Planning Department renders a new CEQA exemption determination for a
2 project after the Approval Action, and the City takes a new Approval Action for the project in reliance
3 on the new CEQA determination, the new CEQA determination may be appealed in accordance with
4 the provisions of Section 31.16, as to those issues associated with the project changes since the original
5 exemption determination. The Planning Commission may take testimony on any categorical exemption
6 at the public hearing, if any, in connection with the Planning Commission's consideration of the project
7 that is the subject of the categorical exemption.

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

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

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

21 (a) Upon receiving an environmental evaluation application for a project, or upon referral
22 of a project by the board, commission or department that is to carry out or approve the project, the
23 Environmental Review Officer shall determine whether such project is exempt from environmental
24 review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the
25 level of environmental analysis required. In the event it is clear at the outset that an environmental

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

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

24 (c) The applicant or the board, commission or department that is to carry out or
25 approve the project shall submit to the Environmental Review Officer such data and

1 information as may be necessary for the initial study. If such data and information are not
2 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

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

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

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

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

16 (2) Prepare a mitigated negative declaration if the initial study identified potentially
17 significant effects, but (i) revisions in the project plans or proposals made by, or agreed to by the
18 applicant before a proposed mitigated negative declaration and initial study are released for public
19 review would avoid the effects or mitigate the effects to a point where clearly no significant effects
20 would occur, and (ii) there is no substantial evidence, in light of the whole record before the Planning
21 Department, that the project as revised may have a significant effect on the environment.

22 (3) Prepare an environmental impact report if the Planning Department determines
23 based on substantial evidence in the record that the project may have a significant effect on the
24 environment. Said another way, if the Planning Department is presented with a fair argument that a
25 project may have a significant effect on the environment, the Planning Department shall prepare an

1 environmental impact report even though it may also be presented with other substantial evidence that
2 the project will not have a significant effect.

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

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

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

12 (a) When the Environmental Review Officer determines that a ~~any~~ negative declaration
13 or a mitigated negative declaration is the appropriate level of environmental review required by
14 CEQA, it shall be prepared by or at the direction of the Environmental Review Officer. Unless
15 otherwise specifically stated, reference in this Chapter 31 to "negative declaration" shall collectively
16 refer to a negative declaration and a mitigated negative declaration. The negative declaration shall
17 include the information required by CEQA and in any event shall describe the project proposed,
18 include the location of the property, preferably shown on a map, and the name of the project
19 proponent, state the proposed finding that the project could not have a significant effect on the
20 environment, and have attached to it a copy of the initial study documenting reasons to
21 support that finding. The negative declaration shall also indicate mitigation measures, if any,
22 included in the project to avoid potentially significant effects.

23 (b) The Environmental Review Officer shall first prepare a negative declaration on a
24 preliminary basis, and shall post a copy of the proposed negative declaration in the offices of
25

1 the Planning Department and on the Planning Department website. and mail notice thereof to the
2 applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.

3 (c) The Environmental Review Officer shall provide a notice of intent to adopt a
4 negative declaration ~~or mitigated negative declaration~~ ("notice of intent") to those persons required
5 by CEQA and in any event by:

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

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

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

11 (4) ~~by mail~~ Mail to the owners of all real property within the area that is the
12 subject of the negative declaration and within 300 feet of all exterior boundaries of such area,
13 and by mail to all organizations and individuals who have previously requested such notice in
14 writing, sufficiently prior to adoption of the negative declaration to allow the public and
15 agencies a review period of not less than ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day
16 circulation period is required by CEQA. In the case of City-sponsored projects that involve rezonings,
17 Area Plans or General Plan amendments and are either citywide in scope or the total area of land that
18 is part of the project, excluding the area of public streets and alleys, is 20 acres or more, the
19 Environmental Review Officer shall not be required to mail the notice of intent to the owners of all real
20 property within the project area or within 300 feet of all exterior boundaries of the project area.

21 (d) The notice of intent shall specify the period during which comments are to be
22 received, the date, time and place of any public hearings on the project when known to the
23 Planning Department at the time of the notice, a brief description of the project and its location,
24 ~~and~~ the address where copies of the negative declaration and all documents referenced in the
25 negative declaration are available for review, that no appeal of the negative declaration to the

1 Board of Supervisors under Section 31.16 will be permitted unless the appellant first files an appeal of
2 the preliminary negative declaration to the Planning Commission, and any other information as
3 required by CEQA.

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

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

15 (g) After such hearing the Planning Commission shall affirm the proposed negative
16 declaration if it finds that the project could not have a significant effect on the environment,
17 may refer the proposed negative declaration back to the Planning Department for specified
18 revisions, or shall overrule the proposed negative declaration and order preparation of an
19 environmental impact report if it finds based on substantial evidence that the project may have a
20 significant effect on the environment.

21 (h) If the proposed negative declaration is not appealed as provided herein, or if it is
22 affirmed on appeal, the negative declaration shall be considered final, subject to any
23 necessary modifications. Thereafter, the first City decision-making body to act on approval of
24 the project shall review and consider the information contained in the final negative
25 declaration, together with any comments received during the public review process, and, upon

1 making the findings as provided in CEQA, shall adopt the negative declaration, prior to
2 approving the project. A public notice of the proposed action to adopt the negative declaration and
3 take the Approval Action for the project shall advise the public that following the Approval Action in
4 reliance on the negative declaration, it may be able to appeal the negative declaration to the Board of
5 Supervisors within the timeframe specified in Section 31.16. All decision-making bodies shall
6 review and consider the negative declaration and make findings as required by CEQA prior to
7 approving the project.

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

12 (j) After the City has decided to carry out or approve the project, in accordance with
13 CEQA procedures, the Environmental Review Officer ~~may~~ shall endeavor to file a notice of
14 determination with the county clerk in the county or counties in which the project is to be
15 located. If required by CEQA, the notice of determination shall also be filed with the California
16 Office of Planning and Research.

17 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**
18 **REQUIRED.**

19 When the Environmental Review Officer determines ~~If it is determined that a project may have a~~
20 ~~significant effect on the environment and~~ that an environmental impact report is required by CEQA,
21 the Environmental Review Officer shall distribute a notice of preparation in the manner and
22 containing the information required by CEQA and provide such other notice as required by CEQA. In
23 addition, the Environmental Review Officer shall prepare a notice advising the public of the notice of
24 preparation and of any scheduled scoping meetings and publish the notice of preparation in a
25 newspaper of general circulation in the City, ~~shall~~ post the notice of preparation in the offices

1 of the Planning Department and on the Planning Department website, and ~~shall~~ mail the notice of
2 preparation to the applicant, the board(s), commission(s) or department(s) that will carry out
3 or approve the project and to all organizations and individuals who have previously requested
4 such notice in writing. The Environmental Review Officer shall provide such other notice as
5 required by CEQA.

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

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

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

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

23 (d) When the draft EIR has been prepared, the Environmental Review Officer shall
24 file a notice of completion of such draft with the California Office of Planning and Research as
25 required by CEQA and make the draft EIR available through the State Clearinghouse if and as

1 ~~required by the California Office of Planning and Research. A copy of such notice, or a separate~~
2 ~~notice containing the same information, shall thereupon be posted in the offices of the Planning~~
3 ~~Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or~~
4 ~~department(s) that will carry out or approve the project, and to any individual or organization that has~~
5 ~~requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real~~
6 ~~property within the area that is the subject of the environmental impact report and within 300 feet of all~~
7 ~~exterior boundaries of such area. A copy of the draft EIR shall be provided to the applicant and to such~~
8 ~~board(s), commission(s) or department(s) and to any individual or organization that has so requested.~~

9 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

10 (a) ~~The Environmental Review Officer shall provide public notice of the availability of the~~
11 ~~draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The~~
12 ~~Environmental Review Officer shall provide the notice of availability at the same time that the notice of~~
13 ~~completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days~~
14 ~~prior to the scheduled public hearing on the draft EIR. The notice of availability shall be distributed in~~
15 ~~the manner required by CEQA and in any event. Notice shall be:~~

16 (1) ~~sent~~ Sent to any public agencies with jurisdiction by law that CEQA requires
17 the lead agency to consult with and request comments from on the draft EIR, and, in the discretion of
18 the Environmental Review Officer, other persons with special expertise with respect to any
19 environmental impact involved. as follows: after filing a notice of completion as required by CEQA, the
20 Environmental Review Officer shall send a copy of the draft EIR to any public agencies as required by
21 CEQA, and may send copies to and consult with persons who have special expertise with respect to any
22 environmental impact involved.

23 (b) ~~In sending such copies, the Environmental Review Officer shall request comments on the~~
24 ~~draft EIR from such agencies and persons, with particular focus upon the sufficiency of the draft EIR in~~

1 ~~discussing possible effects on the environment, ways in which adverse effects may be minimized, and~~
2 ~~alternatives to the project.~~

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

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

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

9 (5) Mailed to the owners of all real property within the area that is the subject of the
10 environmental impact report and within 300 feet of all exterior boundaries of such area. In the case of
11 City-sponsored projects that involve rezonings, area plans or General Plan amendments and are either
12 citywide in scope or the total area of land that is part of the project, excluding the area of public streets
13 and alleys, is 20 acres or more, the Environmental Review Officer shall not be required to mail the
14 notice of availability to the owners of all real property within the project area or within 300 feet of all
15 exterior boundaries of the project area.

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

18 (1) State the starting and ending dates for the draft EIR review period during which
19 the Environmental Review Officer will receive comments and if comments are not returned within that
20 time it shall be assumed that the agency or person has no comment to make. The public review period
21 shall not be less than 30 days nor more than 60 days except under unusual circumstances. When a draft
22 EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall
23 not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State
24 Clearinghouse. The Planning Commission or the Environmental Review Officer may, upon the request
25 of an agency or person with special expertise from whom comments are sought, grant an extension of

1 time beyond the original period for comments, but such extension shall not interfere with the holding of
2 any hearing on the draft EIR for which notice has already been given.

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

5 (3) State that only commenters on the Draft EIR will be permitted to file an appeal
6 the certification of the Final EIR to the Board of Supervisors under Section 31.16.

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

14 (e) Each notice and request for comments shall state that any comments must be returned
15 within a certain time after the sending of the draft EIR, and if comments are not returned within that
16 time it shall be assumed that the agency or person has no comment to make. The time limit shall
17 normally be thirty (30) days, or forty-five (45) days if required by CEQA. The Environmental Review
18 Officer may allow a longer period for comments on projects of exceptional size or complexity. The
19 Planning Commission or the Environmental Review Officer may, upon the request of an agency or
20 person from whom comments are sought, grant an extension of time beyond the original period for
21 comments, but such extension shall not interfere with the holding of any hearing on the draft EIR for
22 which notice has already been given.

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

24 (1) (d) Public participation, both formal and informal, shall be encouraged at all
25 stages of review, and written comments shall be accepted at any time up to the conclusion of

1 the public comment period. The Environmental Review Officer may give public notice at any
2 formal stage of the review process, beyond the notices required by this Chapter 31 and CEQA,
3 in any manner it may deem appropriate, ~~and may maintain a public log as the status of all projects~~
4 ~~under formal review. Members of the general public shall be encouraged to submit their comments in~~
5 ~~writing as early as possible.~~

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

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

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

24 SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.

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

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

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

14 (d) When the final EIR has been prepared and in the judgment of the Planning
15 Commission it is adequate, accurate and objective, reflecting the independent judgment and
16 analysis of the Planning Commission, the Planning Commission shall certify its completion in
17 compliance with CEQA. The notice of the Planning Commission hearing on the certification of the
18 final EIR shall inform the public of the expected Date of the Approval Action on the project and that
19 after such date it may be able to file an appeal of the final EIR to the Board of Supervisors within the
20 timeframe specified in Section 31.16. The certification of completion shall contain a finding as to
21 whether the project as proposed will, or will not, have a significant effect on the environment.

22 (e) After the City has decided to carry out or approve the project, in accordance with CEQA
23 procedures, the Environmental Review Officer shall endeavor to file a notice of determination with the
24 county clerk in the county or counties in which the project is to be located. If required by CEQA, the
25 notice of determination shall also be filed with the California Office of Planning and Research.

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

3 ~~SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS.~~

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

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

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

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

23 ~~(b) — The Clerk of the Board shall promptly schedule a hearing on the appeal before the full~~
24 ~~Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more~~
25 ~~than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so~~

1 ~~that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal~~
2 ~~with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and~~
3 ~~to all organizations and individuals who have previously requested such notice, not less than ten (10)~~
4 ~~days prior to the date of the hearing.~~

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

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

19 (e) ~~—The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~
20 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~
21 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~
22 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~
23 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~
24 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~
25 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~

1 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~
2 ~~certification of the final EIR is affirmed by action of the Board.~~

3 ~~(f) — In the event the Board remands an EIR to the Planning Commission, the Planning~~
4 ~~Commission shall take such action as may be required by the specific findings made by the Board and~~
5 ~~consider re-certification of the EIR. In the event the EIR is re-certified by the Planning Commission,~~
6 ~~only the portions of the EIR which have been revised, or the new issues which have been addressed, by~~
7 ~~the Planning Commission may be appealed again to the Board pursuant to the procedures set forth~~
8 ~~herein.~~

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

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

12 **(a) Decisions Subject to Appeal.** In accordance with the provisions set forth in this Section
13 31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the "Board")
14 where the Board is not otherwise the CEQA decision-making body for the project as provided in
15 Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption of a
16 negative declaration by the first decision-making body; and (3) determination by the Planning
17 Department or any other authorized City department that a project is exempt from CEQA.

18 **(b) Board as CEQA Decision-Making Body.**

19 (1) CEQA decisions are not appealable to the Board if the Board is the CEQA
20 decision-making body for the project because the Board of Supervisors must affirm the CEQA decision
21 of the Planning Commission or the Planning Department, prior to or as part of its approval of the
22 project.

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

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

3 (B) One or more proposed approval actions for the project is pending before
4 the Board of Supervisors prior to the expiration of the time frames set forth in Subsections 31.16
5 (d),(e), or (f), as applicable, for filing the appeal; or

6 (C) The Planning Department prepared the CEQA decision in support of a
7 proposed ordinance.

8 (3) For any project for which the Board is the CEQA decision-making body as
9 defined by this Section 31.16, any person may raise objections to the CEQA decision in writing prior to
10 or at a public hearing on the project held by the Board or a committee of the Board. The Board shall
11 consider any written or oral objections raised prior to the close of the public hearing on the project.
12 Procedures for the submittal of materials to the Board by the public or the preparation of a response by
13 the Planning Department to any objections raised shall be as set forth by the Board in its Rules of
14 Order.

15 (4) For any project for which the Board is the CEQA decision-making body as
16 defined by this Section 31.16, prior to or as part of its consideration of the project, the Board shall
17 affirm or reject the CEQA decision for the project rendered by the Planning Commission or the
18 Planning Department.

19 (c) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16 (d)
20 pertaining to EIRs, Section 31.16(e) pertaining to negative declarations or Section 31.16 (f) pertaining
21 to exemption determinations, the following requirements shall apply to an appeal of any of the
22 decisions listed in Section 31.16(a).

23 (1) The appellant shall submit a letter of appeal along with all written materials in
24 support of the appeal to the Clerk of the Board within the time frames set forth in Subsections 31.16
25 (d),(e), or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and shall

1 be accompanied by a fee, as set forth in Administrative Code Section 31.22, payable to the San
2 Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,
3 authorized in writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a
4 copy of the CEQA EIR certification or the negative declaration approval by the Planning Commission,
5 or a copy of the exemption determination by the Planning Department that is being appealed and a
6 copy of the Approval Action taken for the project by a City board, commission, department or official.
7 The appellant shall submit a copy of the letter of appeal and all written materials in support of the
8 appeal to the Environmental Review Officer at the time appellant submits the letter of appeal to the
9 Clerk of the Board. The Clerk of the Board may reject an appeal if appellant fails to comply with this
10 subsection 31.16(c)(1).

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

14 (3) For projects that require multiple City approvals, while the appeal is pending,
15 and until the CEQA determination is affirmed by the Board, other City boards, commissions,
16 departments and officials may consider the approval of the project that is the subject of the CEQA
17 determination on appeal but shall not undertake activities to implement the project that physically
18 change the environment except activities that are essential to abate hazards to the public health and
19 safety, including abatement of hazards on a structure or site determined by the appropriate City
20 official, including but not limited to the Director of Building Inspection, the Director of Public Works,
21 the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency
22 presenting an imminent hazard to the public and requiring immediate action.

23 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
24 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the
25 hearing no less than 30 and no more than 45 days following expiration of the time frames set forth in

1 Subsections 31.16 (d),(e), or (f), as applicable, for filing an appeal. The Clerk shall provide notice of
2 the appeal by mail to the appellant or appellants and to all organizations and individuals who have
3 previously requested such notice in writing, no less than 14 days prior to the date the appeal is
4 scheduled to be heard by the Board. The Planning Department shall provide to the Clerk of the Board
5 the list of individuals and organizations that have commented on the decision or determination in a
6 timely manner, or requested notice of an appeal, no less than 20 days prior to the scheduled hearing.

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

13 (6) The Board shall conduct its own independent review of the CEQA decision as to
14 its adequacy in complying with the requirements of CEQA.

15 (7) The Board shall act on an appeal within 30 days of the date scheduled for the
16 hearing, provided that if the full membership of the Board is not present on the last day on which the
17 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but
18 not later than, the full membership of the Board is present; and provided further, if the Board of
19 Supervisors does not conduct at least three regular Board meetings during such 30 day period, the
20 Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon;
21 and provided further that the latest date to which said decision may be so postponed shall be not more
22 than 90 days from the expiration of the time frames set forth in Subsections 31.16 (d),(e), or (f), as
23 applicable, for filing an appeal.

24 (8) The Board may affirm or reverse the CEQA decision of the Planning
25 Commission, Planning Department or other authorized City agency by a vote of a majority of all

1 members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board
2 shall act by motion. The Board shall adopt findings in support of its decision, which may include
3 adoption or incorporation of findings made by the Planning Commission, Environmental Review
4 Officer or other City department authorized to act on the CEQA decision below. If the Board reverses
5 the CEQA decision, the Board shall adopt specific findings setting forth the reasons for its decision.

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

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

14 (11) The date the project shall be considered finally approved shall occur no earlier
15 than either the expiration date of the appeal period, if no appeal is filed, or the date the Board affirms
16 the CEQA determination, if the CEQA determination is appealed.

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

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

23 (2) The appellant of a final EIR shall submit a letter of appeal and written materials
24 in support of the appeal to the Clerk of the Board within 20 days after the Date of the Approval Action
25 for the project following the Planning Commission's certification of the EIR.

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

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

7 (5) The Board shall reverse the Planning Commission's certification of the EIR if the
8 Board finds that the EIR does not comply with CEQA or is not adequate, accurate and objective or
9 does not reflect the independent judgment and analysis of the City. If the Board reverses the Planning
10 Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission
11 for further action consistent with the Board's findings. Any further appeals of the EIR shall be limited
12 only to the portions of the EIR that the Planning Commission has revised and any appellant shall have
13 commented on the revised EIR at or before a public hearing held on the revised EIR or the project, if
14 any. The Board's subsequent review, if any, also shall be limited to the portions of the EIR that the
15 Planning Commission has revised. Any additional appeals to the Board shall comply with the
16 procedures set forth in this Section 31.16.

17 (e) Appeal of Negative Declarations. In addition to those requirements set forth in Section
18 31.16(c) above, the following requirements shall apply only to appeals of negative declarations.

19 (1) Any person or entity that has filed an appeal of the preliminary negative
20 declaration with the Planning Commission during the public comment period provided by this Chapter
21 31 for filing comments on the preliminary negative declaration may appeal the Planning Commission's
22 approval of the final negative declaration.

23 (2) The appellant of a negative declaration shall submit a letter of appeal to the
24 Clerk of the Board within 20 days after the Date of the Approval Action for the project taken in reliance
25 on the negative declaration.

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

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

9 (5) The Board shall reverse the Planning Commission approval of the negative
10 declaration if it finds that the negative declaration does not conform to the requirements of CEQA or
11 that the project may have a significant effect on the environment that has not been avoided or mitigated
12 to a less than significant level by mitigation measures or project modifications agreed to by the project
13 sponsor or incorporated into the project. If the Board reverses the decision of the Planning
14 Commission, it shall remand the negative declaration to the Planning Department for further action
15 consistent with the Board's findings.

16 (A) In the event the Board remands the negative declaration to the Planning
17 Department for revision, the Environmental Review Officer shall finalize the revised negative
18 declaration and send notice to the public, as set forth in Section 31.11, of the availability of the revised
19 negative declaration. No appeal to the Planning Commission of the revised negative declaration shall
20 be required. In the event an organization or individual wishes to appeal the revised negative
21 declaration, such appeal shall be made directly to the Board of Supervisors within 20 days of
22 publication of the revised negative declaration and shall comply with the procedures set forth in this
23 Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the negative
24 declaration that the Planning Department has revised.

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

6 (f) **Appeal of Exemption Determinations.** In addition to those requirements set forth in
7 Section 31.16(c) above, the following requirements shall apply to appeals of exemption determinations.

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

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

13 (A) For a private project seeking a permit, license or other entitlement for
14 use for which the City otherwise provides an appeal process for the entitlement, the appeal of an
15 exemption determination shall be filed within 20 days after the Date of the Approval Action.

16 (B) For all projects not covered by Subsection (A):

17 (i) If the Approval Action is taken following a noticed public hearing
18 as provided for in Section 31.08(f), the appeal of an exemption determination shall be filed within 20
19 days after the Date of the Approval Action.

20 (ii) If the Approval Action is taken without a noticed public hearing
21 as provided for in Section 31.08(f), the appeal of an exemption determination shall be filed within 20
22 days after the first date the Planning Department posts on the Planning Department's website a notice
23 as provided in Section 31.08(g).

24 (3) The grounds for appeal of an exemption determination shall be limited to
25 whether the project conforms to the requirement of CEQA for an exemption.

1 (4) The Board shall affirm the exemption determination if it finds, as applicable, that
2 the project conforms to the requirements set forth in CEQA for an exemption.

3 (5) The Board shall reverse the exemption determination if it finds that the project
4 does not conform to the requirements set forth in CEQA for an exemption. If the Board finds that the
5 project does not conform to the requirements set forth in CEQA for an exemption, the Board shall
6 remand the exemption determination to the Planning Department for further action consistent with the
7 Board's findings. In the event the Board reverses the exemption determination of any City department
8 other than the Planning Department, the exemption determination shall be remanded to the Planning
9 Department, and not the City department making the original exemption determination, for
10 consideration of the exemption determination in accordance with the Board's directions.

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

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

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

By: _____
ELAINE C. WARREN
Deputy City Attorney

FILE NO. 121019

REVISED LEGISLATIVE DIGEST

(1/29/2013, Substituted)

[Administrative Code - California Environmental Quality Act Procedures]

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

Existing Law

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

Amendments to Current Law

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

- Section 31.04.
 - Deletes a no longer relevant reference to the San Francisco Redevelopment Agency.
 - Clarifies certain administrative functions of entities within the City and County to reflect actual practice and changes in local law, including activities of the Clerk of the Board, the Historic Preservation Commission and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk.
 - Provides for notices electronically unless otherwise specified by CEQA.

- In new section 31.04(h) defines “Approval Action,” “Building Permit,” “Date of the Approval Action,” and “Entitlement of Use for the Whole of the Project,” all of which relate to describing the approval action for a project that triggers the ability to file an appeal of a CEQA determination to the Board of Supervisors.
- “Approval Action” for an exempt project is defined as:
 - (1) for private projects:
 - (A) the first approval of the project in reliance on the exemption at a noticed public hearing either at the Planning Commission or Zoning Administrator
 - (B) the first approval in reliance on the exemption before another commission, board or official if the approval is of the whole project,
 - (C) the approval in reliance on the exemption of a building permit or other entitlement of use for the whole of the project.
 - (2) for City’s own projects (e.g. not private projects):
 - (A) the first approval in reliance on the exemption of the project at a noticed public hearing,
 - (B) if approved without a public hearing, the decision in reliance on the exemption that commits the City to a definite course of action in regard to the project.
- “Approval Action” for projects covered by a negative declaration means the approval of the project by the first City decision-making body that adopts the negative declaration.
- “Approval Action” for projects covered by an EIR means the approval of the project by the first City decision-making body following the certification of the completion of the EIR by the Planning Commission as provided in Section 31.15(d).
- Section 31.05. Clarifies existing practice, which is that all projects subject to CEQA are referred to the ERO unless the ERO has delegated specified exemption determinations to another city entity.
- Section 31.08. Clarifies the procedures for handling exemptions from CEQA, including:

- Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for projects covered by statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
- Updates existing ordinance language as to when public notice of an exemption determination is required by (1) clarifying the definition of projects involving historic resources for which notice is required and (2) defining demolition projects for which notice is required to be consistent with Planning Code Section 317.
- Updates the ordinance language to be consistent with existing Planning Department practice to produce a written determination for any project for which a notice is required and by posting the determinations on its web page.
- Requires in Section 31.08(f)(1) that public hearing notices inform the public if the City will take an Approval Action that triggers the ability to file an appeal of a CEQA exemption determination to the Board of Supervisors. Such notices must advise the public of the exemption determination, how to obtain a copy, and the consequences of failing to timely raise objections to the exemption.
- Requires in Section 31.08(f)(2) that the Planning Department notices under Planning Code Sections 311 and 312 (advising of the right to request a discretionary review hearing) contain the information in Section 31.08(f)(1) and advise those noticed that if a discretionary review hearing is requested and the project is approved by the Planning Commission, such approval will be the Approval Action that triggers the ability to file an appeal of the CEQA exemption determination. If a discretionary review hearing is not requested, the issuance of the Building Permit will trigger the Approval Action.
- Requires in Section 31.08(g) that when City entities take an Approval Action on a City project (e.g. a project not involving private entitlements) without a noticed public hearing, the City entity shall arrange for Planning to post a notice on Planning's website informing the public that the CEQA exemption may be appealed to the Board of Supervisors within 20 days after the first date of posting of the notice.
- Provides in Section 31.08(i) that the ERO has the authority to re-evaluate the application of an exemption to a project in the event the project changes after the Approval Action. In such a case, following a new Approval Action for the project, the new exemption determination may be appealed to the Board under Section 31.16 as to those issues associated with the project changes.

- Sections 31.09 and 31.10.
 - Makes minor clarifying revisions to these sections to reflect actual practice of the Planning Department in its initial evaluation of projects.
 - Clarifies in Section 31.10(f) the language as to when a negative declaration, a mitigated negative declaration, and an environmental impact report are required. The language used is drawn from CEQA Guidelines Sections 15064(f) and 15070. Language now in Section 31.12 regarding when to prepare an EIR is deleted.
- Section 31.11.
 - Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.
 - Provides in Section 31.11(c)(4) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to adopt a negative declaration to each property owner within the project area or within 300 feet of the exterior boundaries of the project area, but, requires Planning to post all negative declarations on its web page.
 - Provides in Section 31.11(d) that the notice of intent shall inform the public that only persons appealing the preliminary negative declaration to the Planning Commission will be permitted to appeal the final negative declaration to the Board of Supervisors.
 - Provides in Section 31.11(h) that a notice proposing to adopt the negative declaration and take the Approval Action for the project shall advise the public that following the Approval Action in reliance on the negative declaration, it may be able to appeal the negative declaration to the Board of Supervisors.
- Sections 31.12 – 31.15.
 - In addition to deleting language at the beginning of Section 31.12 concerning when to prepare an EIR as explained previously, updates and clarifies the noticing, posting and distribution requirements of CEQA and the practices of the Planning Department with respect to environmental impact reports (EIRs).
 - Provides in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of the Draft EIR to each property owner within the project area or within 300 feet of the exterior boundaries of the project area, but provides that Planning shall post all draft EIRs on its web page.

- Provides in Section 31.14(b)(3) that the notice of availability shall inform the public that only commenters on the Draft EIR will be permitted to file an appeal of the certified EIR to the Board of Supervisors.
- Provides in Section 31.15(c) that a phonographic reporter record all public hearings on draft EIRs.
- Provides in Section 31.15(d) that the notice of the certification hearing shall inform the public of the expected Date of the Approval Action on the project and that after such date it may be able to file an appeal of the final EIR to the Board of Supervisors.
- Section 31.16. Deletes existing Section 31.16 pertaining to appeals of final EIRs and proposes a new Section 31.16 to address appeals of exemption determinations, negative declarations and environmental impact reports. The key provisions of the new section include:
 - Section 31.16(a) provides that exemption determinations, negative declarations and environmental impact reports may be appealed to the Board of Supervisors unless the Board is the CEQA decision-making body for the project.
 - Section 31.16(b) provides that the Board is the CEQA decision-making body for the project if the project involves a CEQA document prepared specifically in support of a Board ordinance or any project for which Board approval actions are pending before the Board or have already been taken on a project at the time a CEQA appeal is filed. In such cases the Board is required to affirm the CEQA decision rendered by the Planning Commission or the Planning Department before or as part of its approval of the project. When the Board is the CEQA decision-making body, any person may raise objections to the CEQA decision in writing prior to or at a public hearing on the project held by the Board or a committee of the Board. The Board may address any procedures for submitting any objections to the Board in its Board's Rules of Order.
 - Appeals must be filed within specified periods:
 - (1) For an EIR, within 20 days after the Date of the Approval Action following the EIR certification.
 - (2) For a negative declaration, within 20 after the Date of the Approval Action taken in reliance on the negative declaration.
 - (3) For exemptions, within one of these periods as applicable:

(A) For a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process for the entitlement, within 20 days after the Date of the Approval Action.

(B) For the City's own projects not involving a private entitlement, if the Approval Action is taken at a public hearing, within 20 days after the Date of the Approval Action; if the Approval Action is taken without a public hearing, within 20 days after a notice as provided in Section 31.08(g) is posted on Planning's web page.

- To file an appeal, one must pay a fee, and the person filing the appeal must have submitted comments during the public comment period on the draft EIR if the appeal is of an EIR; if the appeal pertains to a negative declaration, the negative declaration must have been appealed to the Planning Commission first. The grounds for the appeal and all written materials in support of the appeal must be filed with the appeal.
- For projects that require multiple approvals, while the appeal is pending at the Board, other City agencies and officials may approve the project but shall not take actions to implement the project that will physically change the environment except essential actions to abate hazards to public health and safety. If the Board reverses the CEQA determination of Planning, all approvals, including those taken during the pendency of the appeal, are void.
- The ordinance specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with lists of interested parties.
- The Clerk is directed to schedule the appeal hearing before the full Board or as otherwise provided by the Board Rules of Order. The Clerk shall schedule the CEQA appeal hearing no less than 30 or more than 45 days following the expiration of the time for filing the appeal and provide at least a 14 day notice of the appeal hearing.
- For materials to be submitted to Board members prior to the hearing, members of the public may submit written materials to the Board up to 11 days and Planning may submit written materials up to 8 days before the hearing. The Board shall act within 30 days of the scheduled hearing date but may extend this to not more than 90 days from the deadline for filing the appeal under specified circumstances.
- The ordinance specifies the actions that the Board may take for each kind of appeal and the process for then completing the CEQA document in the event the Board reverses the decision of the Planning Commission or Planning Department. If the

Board upholds the CEQA decision, prior approval actions are valid. If the Board reverses the CEQA decision, prior approval actions are void.

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

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

Background Information

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

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

Since the appeal requirement to the Board under CEQA only applies where Planning renders the final CEQA decision, the ordinance provides that where the Board must approve a project, the Board will become the final decision-maker for CEQA purposes, thereby negating the need under CEQA for a formal appeal process. Instead of requiring the public to file an

appeal, the public may raise objections to the preliminary CEQA determination rendered by the Planning Commission or the Planning Department as part of Board hearings on the project and the Board must affirm the earlier CEQA determination of Planning as part of its approval of the project.

Abbreviated Comments on Proposed CEQA Procedures Ordinance and Updates to issues have been addressed by V3 indicated with underlined text. Further requests for modifications indicated by double underlined text.

The following is a summary of select written comments submitted on the Proposed CEQA Procedures Ordinance. This table is updated to identify if amendments to the ordinance have been made to address the following comments. New changes in conjunction with Version 3 of the proposed Ordinance as substituted on January 1, 2013 (hereinafter V3) are indicated with underlined text. The Department is recommending two further changes. These new recommended modifications are indicated with double underlined text.

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
1	Provide adequate opportunity for all parties to provide written materials.	While the time is limited it is acceptable to the Department as a trade-off to well-defined procedures.	No	SF Planning Department, HPC
2	Increase consistency/specificity of "Date of Decision."	<u>V3 added definitions to clarify which approval action for a project will start the period for filing appeals of CEQA determinations to the Board for each circumstance.</u>	Yes; in 11/20 version. <u>And yes; in V3, see new definitions added in Section 31.04.</u>	SF Planning Department, HPC, UC Hastings, SF Architectural Heritage
3	Lengthen the appeal window	<u>The department recommends lengheing the standard 20-day appeal window for all CEQA document types to 30 days.</u>	No	HPC, PC, Key Coalition Demands
4	Amend the definition of "historic resource" that would require notice such that any HR found in any adopted survey would require notice.	We believe that the draft proposal does provide such notice. The reference to "Public Resources Code" does not change this. Clarifications have been made.	Yes; in 11/20 version	HPC, SF Architectural Heritage, Coalition for Adequate Review
5	Eliminating a separate appeal hearing could constrain the Board's ability to act.	<u>V3 clarified that the Board must take an action on the CEQA document prior to any approvals and must consider public comments provided at the hearing of the Board. The Board has descretion in how to take public comment when CEQA matters are raised at public hearing.</u>	Yes; in V3. See Section 31.16(b).	Center for Biological Diversity
6	Narrow definition of historical resources may conflict with state law.	Ordinance defines resource only for purpose of local noticing provision, not for purpose of CEQA analysis. Notice for exemptions are not required under state law so there is no conflict with CEQA.	No	Center for Biological Diversity

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
7	Timeline for submittals would require that written materials be provided before notice is given-- impossible for public involvement.	Modifications were made to address this point by providing notice 14 days before hearing.	Yes; in 11/20 version	Center for Biological Diversity
8	The proposed Ordinance would "deem valid" prior CEQA approval actions because if the Board affirms the CEQA document the following actions would start the clock for law suits: filing of notices for exemptions or notices of decisions.	Changed to clarify that a project is not finally approved by the City until the appeal period expires or an appealed document is upheld.	Yes; in 11/20 version	Center for Biological Diversity, Lippe Gaffney Wagner, Sierra Club
9	The proposed Ordinance would require appellants to file two appeals for review of a Neg Dec	Yes, but no appeal to BOS would be needed if PC rejects the Neg Dec.	No	Center for Biological Diversity, S. Flashman, Coalition for Adequate Review
10	Notice should be provided for all exemptions, both on the web and to interested parties.	Can't ensure notice of all exemptions. <u>However, the Ordinance was revised in Section 31.08(g) to specify that all City projects approved without a public hearing, will be required to post a notice on Planning's website.</u>	<u>Yes; in V3.</u>	Center for Biological Diversity, Key Coalition Demands
11	How does ERO determine if a HR is significant based upon "preponderance of the evidence" per Public Resources Code or lower, "substantial evidence" per proposed ordinance.	Ordinance defines resource only for purpose of local noticing provision, not for purpose of CEQA analysis. Change historic resource definition to provide further clarity as to scope intended.	Yes; in 11/20 version.	Center for Biological Diversity
12	Allows email notification to substitute for mailed notice whenever the City official has an email address for the party.	Ordinance expressly states that email may be used only if CEQA doesn't require mailed notice.	No	Center for Biological Diversity

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
13	Does the "community plan exemption" reference to "streamlining procedures" refer to SB 226 (partial exemption) <u>or to department</u>	Ordinance just clarifies that local procedures for exemptions apply to all types of exemptions. Department does not engage in tiering via CPE.	No	Center for Biological Diversity
14	Removing "fair argument" standard creases confusion about the City's standard for nag Dec or EIR. UC Hastings believes that this change is possible an unlawful attempt to change the legal standards for when an EIR or Nag Dec should be completed. Concern	The proposal is not trying to change legal standard in state law. Under state law there needs to be substantial evidence to support the fair argument. <u>Revised Section 31.10(f) to model after the state CEQA requirements, to clarify that an EIR must be prepared if a "fair argument" is presented that there will be a significant effect on the environment.</u>	<u>Yes; in V3.</u>	Center for Biological Diversity & UC Hastings; Lippe Gaffney Wagner, Sierra Club, Coalition for Adequate Review
15	Public comment period on a draft EIR could be extended only under "usual circumstances" instead of the current threshold of projects with "exceptional size or	"Unusual circumstances" is the language from CEQA Guidelines. Ordinance language revision is for consistency with CEQA.	No	UC Hastings, Coalition for Adequate Review
16	Exemptions which are not noticed are only available for appeal for 20-30 days.	Revised to <u>require additional noticing for exemptions in Section 31.08(f) and Section 31.08(g). Revise 31.16(f) to provide that appeal window for all public projects begins only after either notice given at public hearing or approval action posted on Planning web site.</u>	<u>Yes; in V3.</u>	UC Hastings
17	State law requires NOD to be filed within 5 days of approval. The proposed Ordinance is not specific on when NOD is required.	Ordinance clarifies when project approvals become final in Section 31.16(d)(11). Further language not needed.	Yes, in 11/20.	UC Hastings
18	New appeal requirements too onerous: 1) signed statement, 2) substantive appeal, 3) approval action, 4) fee. Also, from SF Tomorrow, written authorization,	The requirements are fundamental and should be provided by appellants.	No	UC Hastings; SF Tomorrow

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19	Pending appeals should halt "approval actions" not just "activities that would physically change the environment". Otherwise as the approvals stack up, the BOS may not seriously consider the CEQA appeal.	Clarified that approvals can continue during pendency of the appeal for projects that require multiple approvals, but, project sponsors do so at risk, because all approvals, including those taken during pendency of an appeal are voided if the Board does not affirm the CEQA document.	Yes; in 11/20 version	UC Hastings, Coalition for Adequate Review
20	Shifts burden for BOS findings from reasons why EIR should be affirmed to reasons why EIR should be reversed.	Ordinance requires findings in both cases. See Section 31.16(c)(8).	No	UC Hastings
21	Currently, the BOS should reject the EIR if it does not comply with CEQA or is not adequate, accurate and correct. The proposal would change this to if adequate, accurate, and objective or reflects <u>independent analysis</u>	Language consistent with state law	No	UC Hastings
22	Remanded decisions are limited in scope. Currently only remanded issues can be considered. Under the proposal only the portions of the EIR which have been revised	Not a substantive change in existing Section 31.16 language, which refers to "new information" and "revisions" as being subject to appeals; change deletes "new information" because it is encompassed within a revision.	No	UC Hastings, Lippe Gaffney Wagner, S. Flashman, Coalition for Adequate Review
23	The BOS as the "decision making body" would result in only appeals before the Board Committee this is not sufficient.	The BOS committee only "refers" an item to the BOS. The whole BOS would still need to act on the issue. <u>Clarified that the Board must consider any public comment on the CEQA document at public hearing following procedures per the Board's Rules of Order.</u>	<u>Yes; in V3</u>	UC Hastings, Key Coalition Demands

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
24	Planning Commission should not certify EIRs for projects where it doesn't have decision authority. Amend Sec 31.15 to address this	City process fulfills all CEQA requirements related to certification and project approval when Planning Commission certifies EIRs and decision-maker in City approves the project and adopts required CEQA findings associated with such approval.	No	Lippe Gaffney Wagner
25	Notice of appeal is provided 10 days before hearing, but written materials have to be submitted 11 days before hearing	Adjusted. See Item 7.	Yes; in 11/20 version	Lippe Gaffney Wagner
26	Materials submitted after deadline not distributed but they can be considered later in court.	Language is consistent with the Clerk's current procedures.	No	Lippe Gaffney Wagner
27	Filing of appeal on EIR limited to those who commented on Draft EIR. All comments through close of final hearing are relevant under statute.	Same language already in 31.16(a). But V3 amended proposal to provide notice of requirement in <u>Section 31.14(b)(3) and 31.15(d).</u>	<u>Yes; in V3.</u>	Lippe Gaffney Wagner, Coalition for Adequate Review
28	Limiting appeal only to portions of ND/EIR that have been revised problematic because 1) All comments through close of final hearing are relevant under statute and 2) project itself could be revised.	Consistent with current Section 31.16. As with Item 22, "new issues" falls within the umbrella of "revisions".	No	Lippe Gaffney Wagner

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29	CEQA requires EIRs to be appealable to the elected body. Therefore a separate appeal hearing is required even when the BOS is the deciding body.	<p>CEQA does not require an appeal process if the Board is the final CEQA decision-maker. Also, per Board procedures, all Board actions are subject to a public hearing. But, <u>V3 clarified that when the Board is the final CEQA decision-maker, it must act on the CEQA document, including EIRs, prior to any Board approvals and the Board must consider any public comments on the CEQA document at public hearing following procedures in the Board's Rules of Order. If the Board is not required to take an approval action on a project with an EIR, the EIR would still be subject to a separate appeal hearing before the Board.</u></p> <p><u>On this matter, the Department recommends that a submittal deadline that is in advance of this Board hearing and consistent with Clerk procedures for providing written materials in a Committee packet be established for the public, project sponsor, and City to provide new evidence about a CEQA determination.</u></p>	<u>Yes; in V3.</u>	Lippe Gaffney Wagner, Coalition for Adequate Review
30	Appellants should not be required to submit a copy of the CEQA document in order to appeal.	This is consistent with current Clerk of the Board requirements.	No	Lippe Gaffney Wagner, Coalition for Adequate Review
31	<u>Nothing specifies that the HPC should review CEQA and NEPA documents that may impact historic resources</u>	The City Charter already requires that the HPC have the opportunity to comment on environmental documents for projects that may impact historic resources. <u>See also V3 language added in Section 31.04(d).</u>	<u>Yes; in V3</u>	SF Architectural Heritage, Sierra Club

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
32	The proposal removes the public's right to appeal CEQA determinations if the BOS is the CEQA decision-making body.	State CEQA law does not require an appeal process if the CEQA decision-making body is an elected body such as the BOS. Board can choose not to affirm CEQA determination/document which would be same consideration as appeal and have same outcome. But, V3 <u>clarified that in such cases the Board must act on the CQA document, including EIRs, prior to any Board approvals and at the hearing on the matter, the Board must consider any public comment on the CEQA document following procedures per the Board's Rules of Order.</u>	<u>Yes; in V3</u>	SF Architectural Heritage, Sierra Club
33	Public notification for exemptions and "first approval actions" are at time discretionary, therefore there is no certainty as to when time limits for appeals are triggered.	The proposal increases notification processes. <u>V3 added clarifications to notification requirements for exemptions and 311/312 notices (31.08(f)); public projects (31.08(g); negative declarations (31.11(d) and 31.11(h)); and EIRs (31.14(b)(3) and 31.15(d)) and adding definitions as to what would be considered "approval actions" (Section 31.04).</u>	<u>Yes; in V3.</u>	SF Architectural Heritage
34	The ability to appeal should be preserved until the final project-related approval.	If the project is fully described, there is no reason why the information underlying the CEQA document would change through later permits. If the project is altered through later permits, a new CEQA document would be required and this new document would reopen the project to CEQA appeals. <u>V3 clarified that appeal windows are still linked to the first approval action. In Section 31.08(i) provide that the ERO has authority to re-evaluate exemptions after the Approval Action if the project changes and new approvals are needed. Any new approval/project would again be subject to appeals.</u>	<u>Yes; in V3.</u>	Sierra Club, Key Coalition Demands

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
35	Appeals cannot be limited to those who have submitted comments during the comment period or at public hearing.	This is consistent with State law regarding exhaustion of administrative remedies. <u>Existing Section 31.16 already requires this for EIRs. V3 clarified that notices in Section 31.14(b)(3) and 31.15(d) to advise the public that appeals are limited to those who comment on the draft EIR and of the expected Date of the Approval Action and that after such date, it may be able to appeal the Final EIR to the Board.</u>	<u>Yes; in V3</u>	Sierra Club, S. Flashman
36	Low-income residents will be affected as they may not be on department lists for notification and may need additional time to review the documents.	The proposal adds CEQA notification to existing notification processes and does not curtail existing notification for tenants. For the Planning Department, most of those notices are provided to those who live or own property within a certain distance from the proposed project. <u>V3 added notification requirements for exemptions and 311/312 notices (31.08(f)); public projects (31.08(g)); negative declarations (31.11(d) and 31.11(h)); and EIRs (31.14(b)(3) and 31.15(d)) and adds definitions as to what would be considered "approval actions" (Section 31.04). Included in the notifications would be information about how and when to appeal that is not currently provided.</u>	<u>Yes; in V3</u>	A. Goodman
37	Notification of a Discretionary Review Hearing before the PC should include notice of CEQA action and PC action on the DR should begin the clock for the CEQA appeal.	<u>V3 revised Section 31.08(f) that 311 or 312 notices (which provide an opportunity to request discretionary review) must include the information about appeal rights and inform the recipients that if a discretionary review hearing is requested and the Planning Commission approves the project, that approval becomes the Approval Action. The notice should also advise that if no discretionary review hearing is requested, then the issuance of the Building Permit becomes the Approval Action.</u>	<u>Yes; in V3</u>	SFHAC

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Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
38	Community plan exemptions to allow reliance on prior environmental documents is not consistent with CEQA and may be subject to legal challenge. Any agency determination of exemption is subject to legal challenge.	Ordinance does not address when CPE can be used. Ordinance only clarifies that local procedures addressing exemptions apply to all types of exemptions.	No	Coalition for Adequate Review
39	31.08(a), (b), and (c) omit the existing requirement to post a list of "categorically exempt" projects.	Ordinance does not change requirement to prepare list and it is available to the public upon request. Further, any changes require public hearing.	No	Coalition for Adequate Review
40	31.08 (d) excuses the ERO from providing a list of categorical exemptions to other agencies and inappropriately delegates authority.	The ERO may delegate authority to the Planning Department and other agencies. This delegation is current practice.	No	Coalition for Adequate Review
41	Limiting CEQA appeals to "first approval" would allow later approvals without CEQA review.	<u>V3 clarified in Section 31.08(i) that ERO has authority to re-evaluate exemptions after the Approval Action if the project changes and new approvals are needed. Any new approval/project would again be subject to appeals.</u>	<u>Yes; in V3</u>	Coalition for Adequate Review
42	31.10(a) eliminates shadow study analysis from the initial study.	Comment is not accurate; no change to existing requirements is proposed.	No	Coalition for Adequate Review
43	Removes public notice for "Intent to Adopt a Negative Declaration"	No change to existing requirements is proposed.	No	Coalition for Adequate Review
44	Eliminates existing requirements for a public hearing when there is a notice of intent to adopt a neg dec and eliminates notice on neg decs (31.11(d) and (e)).	No change to existing requirements is proposed. <u>In addition, V3 added in Section 31.11(d) that the notice of intent to adopt a negative declaration must advise that only persons appealing the preliminary negative declaration to the Planning Commission will be permitted to appeal the negative declaration to the Board of Supervisors. Section 31.11(h) is revised to provide that a public notice of the intent to adopt a negative declaration and take an Approval Action shall advise the public that following the Approval Action, the negative declaration may be appealable to the Board.</u>	<u>Yes; V3.</u>	Coalition for Adequate Review

Abbreviated Comments on Proposed CEQA Procedures Ordinance and Updates to issues have been addressed by V3 indicated with underlined text. Further requests for modifications indicated by double underlined text.

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
45	Sec 31.12 misstates legal standard for when an EIR is required.	<u>To reduce confusion, V3 added "fair argument" language in 31.10(f) and deleting language in 31.12. New language is modeled after the state CEQA Guidelines Section 15064(f) specifying that an EIR must be prepared if a "fair argument" is presented that there will be a significant effect on the environment.</u>	<u>Yes; in V3.</u>	Coalition for Adequate Review, Key Coalition Demands
46	Eliminates provisions for Notice of Availability of a draft EIR.	No change to existing requirements is proposed.	No.	Coalition for Adequate Review
47	Eliminates notice for "city-sponsored projects" of 5 acres or greater.	<u>V3 revised Section 31.11(c)(4) and Section 31.14(a)(5) to only exempt plan areas and rezonings of 20 acres or greater, consistent with the typical size of area plans. The Planning Code would still require mailed notice to all owners of properties to be rezoned and to those within 300' of all rezoned properties under Planning Code Section 306 et. seq.</u>	<u>Yes; in V3.</u>	Coalition for Adequate Review, Key Coalition Demands
48	Removes the requirement for providing the public with copies of draft EIRs	Requirements are clarified but accessibility of EIRs to the public is unchanged; electronic availability is encouraged.	No	Coalition for Adequate Review
49	Sec. 31.16(c) over-burdens appellants.	This Section is consistent with the existing requirements for submitting valid appeals as established by the Clerk of the Board.	No.	Coalition for Adequate Review
50	Sec 31.16(d), 31.16(c), and 31.16(f) impose unlawful requirements on appeals of EIRS and neg decs	Ordinance codifies existing practice and makes requirements clearer.	No	Coalition for Adequate Review
51	All exemptions with potential substantial impacts should be on the Planning Commission's consent calendar.	The department does not issue exemptions when significant impacts are possible.	No.	Key Coalition Demands
52	Eliminate current practice of tiering review of new projects off of previous CEQA review.	State CEQA law enables community plan exemptions and addenda to EIRs. Local use of these practices is envisioned by CEQA.	No.	Key Coalition Demands

Abbreviated Comments on Proposed CEQA Procedures Ordinance and Updates to issues have been addressed by V3 indicated with underlined text. Further requests for modifications indicated by double underlined text.

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
53	Don't combine the appeal processes for neg decs and mitigated neg decs in this ordinance. Provide notice for preliminary Neg Decs. Require a hearing for mitigated neg decs that might have a significant impact.	The process and notice for appeal of these documents should be consistent. The Department provides the following notice for preliminary neg decs (SARAH?). Mitigated Neg Decs can be brought to hearing at the Planning Commission by filing an appeal.	No	Key Coalition Demands
54	Legislate that the failure to follow noticing requirements in this proposed Ordinance would result in an automatic extension of comment and appeal deadlines. For EIRs and large projects, the public should be able to easily request deadlines.	Currently, when required notice is not provided, it is the Department's practice to stop the process until the required notice is provided and to reopen the ability for comment and appeal. The Department would continue this practice if the proposed ordinance is adopted. The public can request longer comment deadlines for large projects undering going EIR review. The ERO will issue an extension when warranted.	No.	Key Coalition Demands

Exhibit D

Year	Address	Ripe and Timely	Appeal Type	Result	CEQA Document Issue Date	CEQA Appeal Hearing Date	No. of days between CEQA determination & Appeal Hearing
2010	10 Bernal Heights	Yes	CEQA-Exemption	Affirm Exemption	7/1/2010	11/16/2010	138
2010	136 Ord Street	Yes	CEQA-Exemption	Affirm Exemption	4/8/2010	1/5/2011	272
2010	1269 Lombard Ave	Yes	CEQA-Exemption	Affirm Exemption	3/11/2010	2/1/2011	327
2010	2462 27th Avenue	Yes	CEQA-Exemption	Affirm Exemption	11/19/2009	4/27/2010	159
2010	10 Lundy's Lane	Yes	CEQA-Exemption	Affirm Exemption	3/22/2010	1/11/2011	295
2010	100 32nd Ave	Yes	CEQA-Exemption	Rescind Exemption	4/17/2009	7/13/2010	452
2010	1111 California Street	Yes	CEQA-Exemption	Affirm Exemption	2/18/2010	5/4/2010	75
2010	424 Francisco Street	Yes	CEQA-Exemption	Reverse Exemption	3/10/2010	5/12/2010	63
2010	MTA Transit Service Reductions for Fiscal Emergency	Yes	CEQA-Exemption	Affirm Exemption	2/4/2010	4/13/2010	68
2010	70 Goldmine Dr	Yes	CEQA-Exemption	permit withdrawn	6/32/2011	n/a	
2010	2514 23rd Avenue	Yes	CEQA-Exemption	Rescind Exemption	5/18/2010	9/21/2010	126
2010	1338 Filbert	Not timely	CEQA-Exemption	n/a	3/30/2010		
2011	795 Forester Street	Yes	CEQA-Exemption	Affirm Exemption	6/8/2009	3/22/2011	652
2011	1635 Grant Ave	Yes	CEQA-Exemption	Affirm Exemption		4/12/2011	
2011	AT&T Lightspeed	Yes	CEQA-Exemption	Affirm Exemption	2/22/2011	4/26/2011	63
2011	1787 Union Street	Yes	CEQA-Exemption	Affirm Exemption	1/20/2011	5/24/2011	124
2011	1945 Hyde Street	Yes	CEQA-Exemption	Affirm Exemption	1/27/2011	8/2/2011	187
2011	660-670 4th Street	Yes	CEQA-Exemption	Affirm Exemption	7/7/2011	9/6/2011	61
2011	1338 Filbert	Not timely	CEQA-Exemption	n/a			
2011	Mobile Food Facilities Ordinance	Not appealable	CEQA-Exemption	n/a			

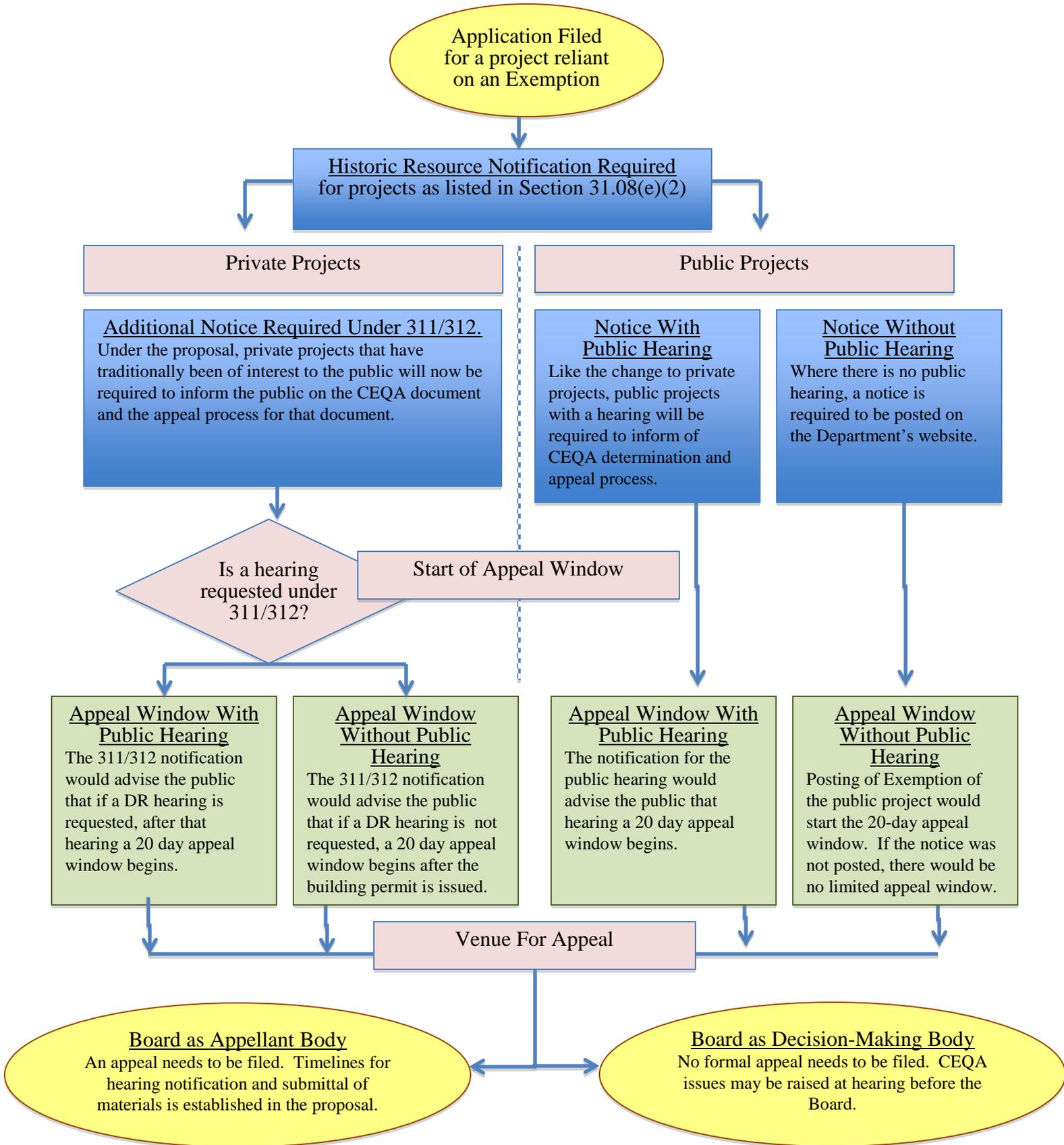
Exhibit D

Year	Address	Ripe and Timely	Appeal Type	Result	CEQA Document Issue Date	CEQA Appeal Hearing Date	No. of days between CEQA determination & Appeal Hearing
2011	Laguna Honda Reservoir	Not timely	CEQA-Exemption	n/a	10/5/2010		
2011	1653 Grant Avenue	Yes	CEQA-Exemption	Affirm Exemption	3/10/2010	4/12/2011	398
2012	601 Dolores	Not ripe	CEQA-Exemption	n/a	4/9/2012		
2012	601 Dolores	Yes	CEQA-Exemption	appeal withdrawn	4/9/2012	7/24/2012	106
2012	2853-2857 Broderick St	Yes	CEQA-Exemption	appeal withdrawn	7/3/2011	9/4/2012	429
2012	Oak & Fell	Yes	CEQA-Exemption	Affirm Exemption	10/4/2012	12/11/2012	68
2012	1100 Lombard	Yes	CEQA-Exemption	appeal withdrawn			
2012	SFMTA Order No. 4005	Approval withdrawn	CEQA-Exemption	underlying approval withdrawn	1/13/2012		
2012	1111 California Street	Not appealable	CEQA-Exemption	n/a	1/19/2012		
2012	401 Van Ness Avenue	Not appealable	CEQA-Exemption	n/a	6/10/2011	n/a	
2012	125 Crown Terrace	Yes	CEQA-Exemption	Exemption	10/18/2012	1/15/2013	89
2012	Glen Canyon Park Renovation	Not timely	CEQA-Exemption	n/a	6/4/2012	n/a	

Key Coalition Demands Of Any CEQA Process Legislation

- 1) There must be no 'First Approval' trigger of the appeals clock. This is far too early in the process. While a more clear trigger is reasonable, that trigger should be the *final* approval which a project, as a whole, receives from the Planning Commission or the Board of Supervisors (whichever body takes that final action). Where the final approval *is also* a first approval, we must ensure more robust noticing so that no environmental review falls under the radar.
- 2) There must be no codifying of the practice of the Environmental Review Officer (ERO) of the Planning Department, and individual city agencies, simply deciding together autonomously, behind close doors (in many cases with no notice whatsoever) that a project is exempt from environmental review. All such determinations must be noticed to both the Planning Commission and the public, and where substantial community/environmental impacts are possible, should be scheduled for at least a consent calendar vote of the Commission (unless CEQA demands a more thorough process). This would ensure that the public finds out about, and can pull for consideration, any debatable exemption determination.
- 3) All sections which would allow the Board of Supervisors to avoid a formal legal appeal hearing before the full Board are unacceptable. All appeals must be heard at a full, formal, Board appeal hearing. Period.
- 4) There must be no elimination of the "Fair Argument" standard. State law codifies that an Environmental Impact Report (EIR) is warranted if there is "substantial evidence which supports a fair argument" that a project may significantly negatively impact the environment. Supervisor Wiener's legislation cuts out the words "which supports a fair argument" setting a much tougher test for triggering Environmental Impact Reports. The coalition insists on retaining the current local wording, which simply states "fair argument" on its own.
- 5) Almost all of the deadlines in Supervisor Wiener's legislation for filing an appeal, and for noticing, hearings, etc. are far too brief. Its 20 day limits for appeals are particularly egregious. The coalition demands a 60 day noticing in cases where more robust noticing is needed, and 30 days in all other cases (rather than 20).
- 6) We do not agree with reduced noticing for area plans, general plans, and plans covering '20 acres or more'. Notice in writing of new projects and changes in such project areas would no longer be required to residents within those area plans and within 300 feet of their boundaries. Such large area plans should get more public notice and scrutiny, not less.
- 7) Current practice of allowing new projects to duck environmental review, when they are within a larger project that has already received environmental review, should be much more restricted in any new CEQA procedures law. Such 'bootstrapping' of new projects into old approvals should be greatly curtailed.
- 8) Combining of mitigated negative declarations and simple negative declarations into one category is unacceptable. All preliminary mitigated negative declarations which the ERO negotiates with developers, must be fully noticed in writing to the public with all mitigations indicated. And where significant environmental impacts may exist, a Planning Commission hearing on a mitigated negative declaration must be required.
- 9) All CEQA noticing to the public must be *very* proactive. MOST IMPORTANTLY: Any proposed CEQA legislation should require that any failure in noticing to the public result in an automatic extension of comment and appeal deadlines by the number of days the noticing error delayed public awareness; and where this is unclear or the noticing failure was egregious, the deadline clock for comments and appeals should simply be reset to the beginning of the full required deadline period. In cases where an environmental review or EIR document and/or the underlying project are very large, voluminous and/or complex, the public should be able to easily request extensions in comment and noticing deadlines.

Exhibit F: Flow Chart of Proposed Appeal Process For Exemptions





SAN FRANCISCO PLANNING DEPARTMENT

Planning & Historic Preservation Commission Draft Resolution No. _____ Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: MARCH 14, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: MARCH 20, 2013

Project Name: California Environmental Quality Act Procedures
Case Number: 2012.1329U [Board File No. 12-1019]
Initiated by: Supervisor Wiener
Introduced: October 16, 2012
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: Sarah Jones, Acting Environmental Review Officer
sarah.jones@sfgov.org, 415-575-9034

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO REFLECT REVISIONS IN THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND TO UPDATE AND CLARIFY CERTAIN PROCEDURES PROVIDED FOR IN CHAPTER 31, INCLUDING WITHOUT LIMITATION: CODIFYING PROCEDURES FOR APPEALS OF EXEMPTIONS AND NEGATIVE DECLARATIONS; PROVIDING FOR THE BOARD TO MAKE THE FINAL CEQA DECISION ON PROJECTS REQUIRING BOARD LEGISLATIVE ACTION, NEGATING THE NEED TO FILE FORMAL CEQA APPEALS; REVISING NOTICING PROCEDURES FOR ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS FOR PLAN AREA PROJECTS EXCEEDING 20 ACRES; EXPANDING NOTICING REQUIREMENTS FOR CERTAIN EXEMPT PROJECTS; AND CLARIFYING EXISTING NOTICING REQUIREMENTS FOR EXEMPT PROJECTS AND THAT THE PROPOSED ORDINANCE BE AMENDED WITH TWO MODIFICATIONS: 1) INCREASE THE WINDOW OF APPEAL FOR ALL CEQA DOCUMENTS TO 30 DAYS AND 2) PROVIDE INCREASED CLARITY FOR THE PROCESS WHERE THE BOARD ACTS AS THE CEQA DECISION-MAKING BODY THROUGH ESTABLISHMENT OF TIME FRAMES FOR SUBMITTAL OF ISSUES AND DEPARTMENT RESPONSES.

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 "Historic Preservation Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code.

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

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

Whereas, the HPC/PC has reviewed the proposed Ordinance; and **MOVED, that the Commission hereby recommends that the Board adopted the proposed Ordinance with the following two modifications:**

- 1) Increase the window of appeal for all CEQA documents to 30 days; and**
- 2) Provide increased clarity for the process where the Board acts as the CEQA decision-making body.**

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.

I hereby certify that the Planning/Historic Preservation Commission ADOPTED the foregoing Resolution on March____, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

CEQA Meeting 3/1/13

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SF TOMORROW

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Coalition of S.F. Neighborhoods
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Bernie Choden

SFT, Japan Town Org
etc.

Rose Hillson

CSFN

Malana Moberg

Aquatic Park Neighbors

Roland Salvato

SF Preservation Consortium

Jeanne Quock

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Eddy Mata

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Comm Econ Dev Clinic
Animal Control + Welfare
Commission

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DHIC

George Wooding

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