



# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Resolution No. 694 Administrative Code Text Change HEARING DATE: NOVEMBER 7, 2012

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

*Recommendation:* **Request Additional Time. If no additional time is provided, recommend approval with modifications.**

SEEKING ADDITIONAL TIME OR IF NO ADDITIONAL TIME IS PROVIDED, 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.

### 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 15, 2012, the San Francisco Planning Commission (hereinafter "PC") has tentatively scheduled a public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

Whereas, on November 7, 2012, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

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

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

Whereas, the HPC has reviewed the proposed Ordinance; and

**MOVED**, that the Historic Preservation Commission *first requests additional time for review and comment* on the proposal. However, if the Board decides to act on the proposed Ordinance before the HPC can hold another hearing, the Historic Preservation Commission would recommend *approval with the modifications described on page 5* and adopts the Resolution to that effect.

## **FINDINGS**

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

1. 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 2012 proposed Ordinance builds upon consensus ideas from these earlier efforts;
4. The new proposed Ordinance with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies;

5. The proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, would update notification processes consistent with existing Department practices and CEQA requirements to establish more limited notification requirements for projects of a larger scale and to post the address and type of issued determinations on the website for any project where a notice is required, and would increase and would greatly increase clarity for all parties;
6. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. ENVIRONMENTAL PROTECTION ELEMENT

**OBJECTIVE 1: General**

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

**OBJECTIVE 1: City Pattern**

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

**OBJECTIVE 7: Land**

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

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**

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

**OBJECTIVE 2**

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

7. The proposed legislation is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
  - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*
  - B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

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

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

*The proposed Ordinance not affect affordable housing supply.*

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

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

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

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

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

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

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

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

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

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

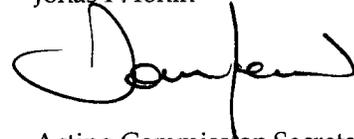
8. The Historic Preservation Commission *first requests additional time for review and comment* on the proposal. However, if the Board decides to act on the proposed Ordinance before the HPC can hold another hearing, the Historic Preservation Commission would recommend *approval with the modifications described below:*

#### Recommended Modifications

- 1) **The Historic Preservation Commission agrees with the two recommendations from the Department:**
  - a. **Provide the adequate opportunity for all parties to provide written materials to the Board.** Section 31.16(c) establishes review procedures including that under Subsection 31.16(c)(1) the appellant must state the specific grounds for the appeal; under 31.16(c)(5) members of the public, real parties in interest or City agencies sponsoring the project must submit materials for the Board packet no later than 11 days before the hearing and the Planning Department shall respond to the appeal materials no later than 8 days prior to the hearing; and under 31.16(c)(4) the Clerk shall schedule the hearing no less than 20 days and no more than 45 days after the appeal has been filed. Under this proposal the appellant would have a minimum of 9 days after filing their appeal to submit written materials while project sponsor and the Planning Department may only have 3 days to respond in writing to large, complex appeals. The HPC recommends extending the number of days for the Planning Department to respond.
  - b. **All Sections- Increase consistency concerning "Date of Decision".** Throughout the draft ordinance the timeline for filing appeals is triggered by actions that are termed either "granting of the first entitlement" (31.16(f)(2)(A)); "first approval of the project" (31.16(f)(2)(B)); "first approval action" (31.16(f)(2)(C)) or "approval of the project by the first decision making body" (31.16(d)(2)). The variety of terms used could create confusion. The Department recommends using consistent language where possible, understanding some difference in terminology may be necessary for purposes of clarity. For example, the timing of appeal of an exempt private project is tied to the granting of the first appealable entitlement, whereas a public project relying on an exemption is not typically receiving an entitlement, thus different terminology is needed. In addition to these recommendations from the Department, the Commission further recommends that the concept of first entitlement be clarified and made consistent with State CEQA language.
- 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.**

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on November 7, 2012.

Jonas P. Ionin



Acting Commission Secretary

AYES: Chase, Damkroger, Hasz, Johns, Martinez, and Wolfram

NAYS: None

ABSENT: Matsuda

ADOPTED: 11/7/12