



SAN FRANCISCO PLANNING DEPARTMENT

Resolution No. 706 Historic Preservation Commission Administrative Code Text Change HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013

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Project Name: California Environmental Quality Act Procedures, Appeals, and Public Notice

Case Number: 2013.0463U [Board File No. 13-0248]

Initiated by: Supervisor Kim

Introduced: April 9, 2013

Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
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Reviewed by: Sarah Jones, Acting Environmental Review Officer
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Recommendation: Approval of certain portions, disapproval of certain portions, supporting the Planning Commission recommendations; and

1. planning staff shall provide the HPC with an analysis that clarifies the differences between Supervisor Kim and Supervisor Wiener's Legislation regarding when an exemption appeal period ends, i.e. the difference between first approval and last approval;
2. the Legislation should allow Landmark designation to move forward while the appeal is pending; and
3. the Legislation should clarify the role of the HPC in the appeals process.

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE OF CERTAIN PORTIONS, DISAPPROVE OF CERTAIN PORTIONS OF THE PROPOSED ORDINANCE, NOTING THAT THIS COMMISSION SUPPORTS THE PLANNING COMMISSION RECOMMENDATION AND RECOMMENDING THAT 1. PLANNING STAFF SHALL PROVIDE THE HPC WITH AN ANALYSIS THAT CLARIFIES THE DIFFERENCES BETWEEN SUPERVISOR KIM AND SUPERVISOR WIENER'S LEGISLATION REGARDING WHEN AN EXEMPTION APPEAL PERIOD ENDS, I.E. THE DIFFERENCE BETWEEN FIRST APPROVAL AND LAST APPROVAL; 2. THE LEGISLATION SHOULD ALLOW LANDMARK DESIGNATION TO MOVE FORWARD WHILE THE APPEAL IS PENDING; AND 3. THE LEGISLATION SHOULD CLARIFY THE ROLE OF THE HPC IN THE APPEALS PROCESS. THE PROPOSED ORDINANCE WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEALS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL IMPACT REPORTS, NEGATIVE DECLARATIONS, EXEMPTION DETERMINATIONS, AND DETERMINATIONS ON MODIFIED PROJECTS; TO CLARIFY AND UPDATE EXISTING CHAPTER 31 PROCEDURES, INCLUDING WITHOUT LIMITATION: TO PROVIDE FOR THE PLANNING DEPARTMENT OR PLANNING COMMISSION TO APPROVE ALL EXEMPTION

DETERMINATIONS; TO REQUIRE THE PLANNING DEPARTMENT TO ESTABLISH AN ELECTRONIC NOTIFICATION SYSTEM; TO EXPAND NOTICING OF EXEMPT PROJECTS; TO REQUIRE NEW NOTICING WHEN FILING NOTICES OF EXEMPTION AND NOTICES OF DETERMINATION; TO REVISE NOTICING OF NEGATIVE DECLARATIONS AND ENVIRONMENTAL IMPACT REPORTS FOR PLANS OF 20 ACRES OR MORE; TO PROVIDE AN EXPANDED ROLE FOR THE HISTORIC PRESERVATION COMMISSION; AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Be it further resolved that in March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826) and **MOVED, in light of that recommendation, the Historic Preservation Commission recommends that the Board approve of certain portions, disapprove of certain portions of the proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission’s earlier recommendation, noting that this commission supports the Planning Commission recommendation and recommending that** and 1. Planning staff shall provide the HPC with an analysis that clarifies the differences between Supervisor Kim and Supervisor Wiener’s Legislation regarding when an exemption appeal period ends, i.e. the difference between first approval and last approval; 2. the Legislation should allow Landmark designation to move forward while the appeal is pending; and 3. the Legislation should clarify the role of the HPC in the appeals process.

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

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding “Upon submittal of required fees by the project sponsor” to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the

ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.

- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a “written determination” for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

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

FINDINGS

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

1. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals. In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.
3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor’s risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.

7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.
9. The Commission reaffirms their earlier decision to approve Board File Number 121019 CEQA Procedures and recommends forwarding certain portions of this proposal with a positive recommendation to the Board.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on May 15, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Hasz, Wolfram, Hyland, Johnck, Johns, Matsuda, and Pearlman
NAYS: none
ABSENT: none
ADOPTED: May 15, 2013

Attachment: Executive Summary (While the Executive Summary is cited in this resolution and is therefore attached here. The attachments to the original Executive Summary are not cited nor attached. These additional documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco.



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: APRIL 25, 2013
HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013
PUBLISH DATE OF THIS REPORT: APRIL 18, 2013

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NOTE: ATTACHED TO THIS DOCUMENT IS A SUPPLEMENTAL MEMO WHICH WAS PUBLISHED ON APRIL 29, 2013.

Project Name: **California Environmental Quality Act Procedures, Appeals, and Public Notice**

Case Number: 2013.0463U [Board File No. 13-0248]

Initiated by: Supervisor Kim

Introduced: April 9, 2013

Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
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Reviewed by: **Sarah Jones, Acting Environmental Review Officer**
sarah.b.jones@sfgov.org, 415-575-9034

Recommendation: **Approval of Certain Portions, Disapproval of Certain Portions**

ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Kim would amend the Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Background:

On November 7, 2012; December 5, 2012; and March 20, 2013, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019. On November 29, 2012 and March 14, 2013, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted duly noticed public hearings to consider the same proposed Ordinance. At each of the hearings, each Commission passed a resolution with advisory recommendations. At the most recent hearings, in March of this year, both Commissions recommended approval of the Ordinance with two modifications. Supervisor Wiener has subsequently modified the proposal in response to these resolutions (HPC Resolution No. 704 and PC

Resolution No. 18826). Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks.

On March 12, 2013 Supervisor Kim introduced an alternative proposal that would also amend Administrative Code Chapter 31 to address San Francisco's local administration of CEQA and appeal procedures. As this proposed ordinance was introduced shortly before the Commissions' hearings on Supervisor Wiener's proposal and as it was not yet signed to form, the Commissions briefly discussed this proposal but did not consider the content. On April 9, 2013, Supervisor Kim introduced the version described in this case report.

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.

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 Way It Would Be Summary:

The proposed Ordinance would establish new controls in the following categories:

1. procedural requirements for the Planning Commission, Historic Resource Commission, and the Environmental Review Officer (ERO),
2. substantial increases in notification requirements,
3. specific controls for projects with multiple approvals,
4. regulations concerning modifications of projects previously determined to be exempt from CEQA,
5. delegation of ERO's authority to the SFPUC and SFMTA,
6. procedures specific to appeal of CEQA documents to the Board of Supervisors.

The Way It Would Be: Details and Analysis

Below is an examination of the six types of changes contained in the proposed Ordinance and the Department's analysis of these changes.

1. **THE LEGISLATION CONTAINS MULTIPLE AMENDMENTS ESTABLISHING NEW PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW. SPECIFICALLY, THE CHANGES WOULD AFFECT THE PLANNING COMMISSION, HISTORIC RESOURCE COMMISSION, AND THE ENVIRONMENTAL REVIEW OFFICER (ERO).**

Sec 31.04(d): "The Historic Preservation Commission shall have the authority to review and comment on all environmental documents and determinations for projects that may have an impact on historic or cultural resources."

Analysis: This language is in the Planning Code and Charter, and does not appear to have any further implications.

Recommendation: The Department has no recommendation on this language.

Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)).

Analysis: This would transfer responsibility for the administrative action of determining if a project qualifies for exemption from the ERO to the Planning Commission approval. For an exemption, the question at hand is whether there are unusual circumstances that disqualify a project that otherwise fits into the exemption category. If a project is exempt from CEQA, it means it is not subject to CEQA review and therefore there is no CEQA finding for the Commission to approve. The Commission's role in the exemption process is the adoption of policies and procedures (e.g. the list of project types that qualify for exemptions), rather than individual determinations regarding exempt projects.

There are staff time impacts of both this section, and Section 31.08(i)(3), in that Environmental Planning (hereinafter "EP") staff would be required to attend every project approval hearing before the Planning Commission or other boards and commissions in case of public testimony or questions on the environmental

determination. The estimated staff time impact could be up to 3 Full-Time Employees given the uncertainty of Commission hearing length.

Recommendation: The Department recommends opposing the changes contained in Sec 31.08(h)(1) and Sec 31.08(i)(3).

Sec 31.11(j) and 31.15(f): The legislation proposes amending the statement that the ERO “may” file a Notice of Determination (NOD) to state that the ERO “shall” file the NOD.

Analysis: In practice, since this notice requires payment of fees to the County Clerk by the project sponsor, it is subject to the sponsor’s discretion to pay the fee and file this notice. The fee can exceed \$3,000. The incentive to the sponsor to file a NOD is a shortening of the time in which a lawsuit may be filed. As it now stands, the sponsor may choose whether or not to assume the risk of not filing an NOD, and if it is not filed there is more opportunity for the public to challenge a project.

Recommendation: There is no apparent reason to make the proposed change. Compliance is uncertain since it would be in the project sponsor’s control. Therefore, the language should be modified to state that the ERO shall file an NOD upon payment of required fees by the project sponsor. With this modification, the Department could recommend support this provision.

Sec 31.12: The legislation requires public scoping meetings for every EIR.

Analysis: These meetings are required during the scoping process for certain types of projects as specified in CEQA, including some General Plan amendments, residential development exceeding 500 units, office development exceeding 250,000 square feet, and projects located in the California Coastal Zone/Bay Conservation and Development Commission jurisdiction (CEQA Guidelines Sec 15206 and 15082(c)). Requiring scoping meetings for every EIR would require expenditure of cost and time associated with venue fees, materials, court reporter, and meeting attendance.

Recommendation: The Department recommends that the Commissions oppose this proposed amendment.

Sec 31.14(a)(1)(c): This provision would require that any Draft EIR addressing alterations to a structure more than 50 years old be referred to the HPC for comment at a noticed public meeting, scheduled at least 10 days before the Planning Commission hearing on the DEIR.

Analysis: There are two aspects of this provision that are problematic. First, not every structure more than 50 years old is a historic resource under CEQA. If the structure has been determined not to be a historic resource, then there is no basis for review of the EIR by the HPC. Requiring this additional hearing for buildings that are not historic resources is unduly burdensome for staff, the HPC, the project sponsor, and the public, and is beyond the responsibilities of the HPC.

Second, given the biweekly schedule of the HPC, the requirement that hearings occur 10 days prior to the Planning Commission could serve to delay the Planning Commission hearing and lengthen the comment period. Planning and/or HPC resolution would be an appropriate mechanism for defining a preferred time lapse between hearings.

Recommendation: The Department recommends opposing the inclusion of all buildings over 50 years old in the list of projects that would require a hearing before the HPC. The Department recommends opposing any codified requirement regarding the amount of time between hearings.

Sec 31.14(c): This provision allows for distribution of EIRs in electronic form unless hard copy is requested.

Analysis: Any reduction in the number of EIRs that must be printed would reduce cost and resource use.

Recommendation: The Department recommends strongly supporting this provision.

Sec 31.15(a): The legislation states that Response to Comments documents shall be distributed no less than 14 days prior to the Planning Commission's consideration of certification.

Analysis: The requirement under CEQA is 10 days. While Response to Comments documents are usually distributed 14 days ahead of the hearing, anything longer than what CEQA requires should not be defined by ordinance.

Recommendation. The Department should oppose codification of this provision.

2. THE PROPOSED ORDINANCE CONTAINS SUBSTANTIAL INCREASES IN NOTIFICATION REQUIREMENTS.

General Analysis of Increased Notification: The ordinance requires a substantial increase in mailed and electronic notification. The result of these requirements would be substantial additional staff time devoted to notification, and possible delays in otherwise over-the-counter permits. Conversely, adding notification of CEQA actions for permits that are not issued over the counter would involve minor additional time and cost. There is already extensive notification and review associated with these permits, and the review process provides adequate time for notification. The Department could combine CEQA notification with other notification that already occurs (e.g. Section 311/213, See Exhibit D).

The increased notification would be unduly burdensome for both staff and project sponsors when it comes to over-the-counter permits. These permits are only issued for the very smallest of projects, those that result in no increase in intensity of use, dwelling units, or building envelope. In short, **they are permits that have no potential to result in significant environmental impacts.** The Department is committed to developing a web-based map of exemptions issued, on which these minor exemptions would be visible and

searchable, a substantial improvement over our existing system. Beyond web posting, notification of these exemptions, which number in the hundreds per month, would not have sufficient benefit to justify the substantial time and cost.

The various aspects of the increased notification requirements are described below.

Sec 31.04(h): A subscription-based electronic notification system is required. As defined it would have to allow subscribers to receive notifications tailored to their subscription, e.g. notification about a specific property, neighborhood, or type of CEQA determination.

Analysis: As proposed, this system would be extremely cumbersome. It means that for every CEQA determination there would need to be a decision made as to which list of subscribers should be notified. It would add staff time to every determination and it would create a lot of potential for error. Also, it would be impossible to offer a choice of mailing list that is tailor-made for every possible preference; it is not equitable notification to meet some people's requests and not others.

A distinction has to be made here for electronic notification lists based on document type, in contrast to electronic notification list based on project attribute. For types of determinations that are already notified, it would be a simple addition to add an email notification for anyone who had indicated a desire to receive that kind of document – that is to say, if someone wants a notification every time a Neg Dec is issued, or a catex is issued for a permit that is not issued over the counter, that would be a simple additional step. Even for catexes issued over the counter, we could consider design of a system that could summarize the week's catexes and notify the interested list. The salient point is that document type-based mailing list distinctions do not require individual, project-by-project consideration for inclusion on different mailing lists, and therefore can be administered automatically. Administration of such a system would potentially require up to 1 FTE.

Recommendation: Mailing list subscriptions based on project attributes (such as location, size, site ownership, historic status, etc.) would be extremely problematic to administer. For each CEQA determination, staff would need to analyze and consider which list should be included in the notification; this means that the process could not be completed automatically. The additional time and potential for error would be substantial, potentially requiring up to an estimated five (5) Full-Time Employees. It is questionable whether the benefit of an attribute-based notification service would exceed these costs. The Department recommends opposing this aspect of the ordinance.

Sec 31.08(d): As it currently exists in Chapter 31, this section requires the mailed notification of Class 31 and Class 32 exemptions, exemptions for projects that are historic resources as defined by CEQA, and any demolition of a structure. The exemption

determinations for projects in these categories are mailed to a list of individuals and organizations who have requested such notice.

The amendments add the following categories of projects to the notice requirement: alteration of a building 50 years or older, "demolition" of a residential building under Planning Code Section 317 (which includes major alterations), "demolition" of an existing structure as defined in Section 1005(f) of the Planning Code (it is unclear if this is intended to include any structure or only structures subject to Article 10 of the Code), projects within or affecting any park or open space under the jurisdiction of the Recreation and Park Commission or any other City board or commission, and any community plan exemption.

Analysis: These changes would substantially increase the number of catexes requiring mailed notice. Most notably, the requirement for mailed notice of a catex determination for any alteration to a building 50 years or older could apply to a very large number of projects and permits. This would involve mailed notice of an estimated 15 determinations per day beyond those already noticed. Up to three (3) Full-Time Employees might be necessary to meet this requirement, in addition to materials and postage costs. The ordinance would also require posting on the Department website of all exemption determinations associated with these projects.

Mailed notice is already provided for exemptions associated with historical resources under CEQA and for other types of projects that have potential impacts (such as demolition of a structure). A further category of projects are subject to 311/312 notification. The remaining projects that have no notification of exemption determinations at this stage constitute those very minor projects that have no potential to significantly impact the environment. Moreover, the Department completes a CEQA Categorical Exemption Determination checklist for each catex, which identifies projects that may have unusual circumstances (such as steep slopes or historical resources) and requires further environmental review prior to permit issuance (see Exhibit C). The costs of mailed notice for the projects that do not already qualify for notice and/or further environmental review would far exceed any benefits.

That said, while there is no added benefit to a CEQA-specific notification it should be noted that most of the projects described above would benefit from mailed public notification of the project *and* that the Commissions' and the Department have proposed such project notification also include public notification of the CEQA determination. Mailed project notification is currently required for demolitions and defacto demolitions as defined under Planning Code Section 317. The Building Department also provides notification of demolition as defined in the Building Code. Mailed public notice is required for major permit to alter in relation to Conservation Districts as described in Planning Code Section 1110.

Mailed public notification is required for Certificate of Appropriateness as described in Planning Code Section 1006.

Recommendation: While the Department recommends opposing the expanded requirements for mailed notice, the proposed requirements for web posting would provide great public benefit and should be supported. Independent of any requirement to provide additional online notice, the Department is already pursuing vastly improved posting of all exemptions, in a system searchable by location with filtering by date of issuance.

Sec 31.11(c)(5), 31.13(d)(4): This section calls for mailed notice to residential occupants within 300 feet, to the extent practical.

Analysis: Since mailing labels are generated through property tax and ownership records, it is substantially more complex to provide mailed notice to occupants (i.e. renters).

Recommendation: The mailed notices to which these sections refer are replicated on the Department's website, in a newspaper of general circulation, and through posting at the project site. The notice is adequate, and the Department recommends opposing the addition of residential occupants to the notice requirements even with the caveat regarding practicality.

3. **THE PROPOSED ORDINANCE SPECIFIES CONTROLS FOR PROJECTS WITH MULTIPLE APPROVALS.** Sec 31.08(f) requires "written determinations" for projects with multiple permits or other approvals that describe and evaluate the whole of the project and list all approval actions necessary.

Analysis: Any project reviewed by Planning, whether over-the-counter or otherwise, could involve multiple permits or approvals.

It is unclear what constitutes a "written determination", since the next section (31.08(g)) discusses Certificates of Exemption. Depending on the intent and interpretation, this requirement could be onerous if it would constitute a greater effort than our current catex checklist. (See Exhibit C which is the four-page thorough checklist.) Currently, approximately 300 exemptions per year that are taken in by Planning staff for review and receive an exemption without a certificate of determination. Literally thousands more exemptions per year are issued over-the-counter. Requiring some additional written determination beyond the checklist for these would represent an estimated 50% increase in the time required to grant each and every exemption.

The ordinance would require that the written determination identify all discretionary approvals needed to implement the project. Since most of these approvals are granted by other agencies, further staff time would be required to coordinate with the agencies, and there is no guarantee that such a list would be accurate over time. Furthermore, it should be noted that CEQA always requires

analysis of the whole of the action for which approval is sought in its very definition of the term “project”, and specifically states that the project may be subject to several discretionary approvals (CEQA Guidelines Sec 15378).

Recommendation: The concept of an “approval” as it is defined in CEQA and in the existing provision of Chapter 31 is discussed below under Appeals. The Department recommends supporting the concept of identifying the “approval” in the CEQA determination, and recommends opposing the other aspects of this provision.

4. THE PROPOSED ORDINANCE INCREASES REGULATIONS CONCERNING MODIFICATIONS OF PROJECTS PREVIOUSLY DETERMINED TO BE EXEMPT FROM CEQA.

Analysis: The legislation defines “modifications” as follows: “a modification requiring re-evaluation under Section 31.19 shall mean a change in the scope of a project as described in the original application upon which Planning based the exemption determination.” (Sec 31.08(k)) Under CEQA, a change to the scope of the project as described will necessarily require issuance of a new exemption, as there is no mechanism for amending a catex. There is no description or definition in the ordinance to guide the determination of whether there has been a “change to the scope of the project.”

Recommendation: Re-evaluation of changed projects is an appropriate and necessary component of CEQA, and is one that is done now by the ERO. The concept of codified assurance that modified projects will be referred to the ERO is one that the Commissions should support. However, the language as proposed does not provide sufficient clarity around the salient determination that a project has changed. The issue addressed in this Section 31.08(k) should be that, when a project is referred to Planning regarding a modification in an aspect of the project regulated under the Planning Code (such as height, setbacks, or uses) the application shall be referred to the ERO for consideration of its consistency with the project as described in the original exemption. If the ERO determines that the project description no longer fits within the previous project description, a new determination shall be issued. The Department recommends supporting language to this effect.

While a new exemption associated with an altered project should always be appealable, the Commissions should oppose legislation that makes appealable the determination of a modified project’s consistency with the original project description. This is a ministerial decision involving use of fixed measurements that requires little to no application of judgment on the part of the ERO. Ministerial decisions are not subject to CEQA.

5. THE PROPOSED ORDINANCE AMENDS THE ERO’S DELEGATION OF ERO’S AUTHORITY TO OTHER CITY DEPARTMENTS.

ANALYSIS: The ERO currently has delegation agreements with SFPUC and SFMTA for issuance of exemptions, as provided for under Chapter 31. These agencies may prepare exemptions that are affirmed by the ERO and posted by the Planning Department along with other exemptions. The Department's analysis shows that together these agencies issue approximately 100 exemptions per year; in some cases an exemption will cover multiple exempt activities such as no parking zones, stop signs, sewer repair affecting less than one mile of linear feet, etc.

Recommendation: There has been no indication or evidence that these delegation agreements have resulted in problematic circumstances for the public. However, the ordinance amendments would eliminate these agreements (Sec 31.08(d)). Elimination of the agreements would require additional staff time at the Planning Department for completion of these exemptions (estimated increase of one to two Full-Time Employees), and would likely be highly burdensome to the agencies' efforts to complete minor projects that are clearly exempt from CEQA. The Department recommends opposing this aspect of the ordinance.

6. PROCEDURES SPECIFIC TO APPEAL OF CEQA DOCUMENTS TO THE BOARD OF SUPERVISORS.

ANALYSIS: The aspect of the legislation concerning the timing of appeal of exemption determinations is a critical issue for the Department. The legislation proposes an appeal window extending from the time that the exemption determination is noticed (which could occur many months prior to project approval) until 30 days following the issuance of any discretionary permit or any other approval action for the project (Sec 31.16(e)(1)(A)) – therefore, 30 days beyond the last permit issued. This lengthens the appeal window on the front end of a project; on the back end, it is substantially identical to our current system. For an exemption that was not noticed, the appeal window would extend to 60 days beyond the discretionary action.

Recommendation: The Department recommends **strongly opposing** codification of the appeal window in this manner. Both CEQA and Chapter 31 are very clear on the question of the relationship of CEQA to multiple discretionary approvals. Section 15352 of the CEQA Guidelines defines "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person," and makes it clear that a single "project" may be subject to multiple discretionary approvals. Section 31.20 of Chapter 31 applies this definition in the context of multiple approvals, specifying that "For purposes of determining the appropriate time for evaluation of projects and preparation of EIRs pursuant to this Chapter, there shall be only one relevant decision by the City to carry out or approve, or not to carry out or approve, a project. However for other purposes there may be more than one determination by the same or separate boards, commissions and departments of the

City, either discretionary or ministerial, affecting the carrying out or approval of the project.”[emphasis added] (Sec 31.20(d)).

Appeals of exemptions are allowed under Section 15061(e) of the CEQA Guidelines, which states that “when a nonelected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt from CEQA may be appealed...” Since both “project” and “approval” are defined in CEQA, the apparent intent of this section of the Guidelines is that the exemption determination be appealable after the approval, that is, after that single “decision by a public agency to which commits the agency to a definite course of action in regard to a project.”

The Department believes that just as CEQA review for any project must consider the entirety of the project regardless of the number of discretionary approvals involved, so too should the CEQA determination only be appealable in association with that single approval defined in the CEQA Guidelines and in Administrative Code Section 31.20.

In the interest of maximum clarity, the Department should clearly identify the “approval” as defined by CEQA associated with each project on that project’s environmental determination. The Department recommends supporting a requirement that the approval be identified on each CEQA determination.

Other Appeals-Related Issues

Sec 31.16(b)(4): This provision would allow consideration of landmarking to continue while an appeal to the Board of Supervisors is pending, but other actions could not be considered.

Analysis: Why should this action be able to proceed, but not others? Furthermore, one issue in the appeal could be the historic status of the building, so landmarking might constitute action on an issue under dispute. There are other approvals that are just as important and time-sensitive as landmarking, so calling this one out does not seem equitable.

Recommendation: The Department recommends opposing the singling out of landmarking as the only approval that could occur during the appeal period.

31.16(b)(5): This section provides that if multiple appellants file an appeal, each individual appellant shall be granted the full amount of time that would be granted to a single appellant.

Analysis: The granting of equal time for testimony to up to 3 appellants could create an incentive for multiple appeals to be filed in order for appellants to gain more presentation time. Currently, both the lead appellant and the project sponsor are each granted 10 minutes to present with an allowance for individual speakers to present a lesser amount (typically 2-3 minutes apiece) in either support or opposition to the appeal. If there were three appellants and if all

parties were granted the 10 minutes that are currently allocated for presentations, there could be up to 90 minutes for the primary presentations in addition to any public comment.

Recommendation: The Department recommends opposing this provision.

31.16(b)(6): This provision establishes timeframes for submittal of material to the Board and would guard against “data dumping” in the appeals process.

Analysis: The Department recommends supporting this provision with a modification.

Recommendation: The recommended modification would be to revise as follows: "Written materials submitted later than noon, eight days prior to the scheduled hearing, other than Planning Department responses to the appeal, will not be considered part of the record unless the Board affirmatively votes to include such written materials in the record."

31.16(d)(1): This provision allows appeals of Negative Declarations to the Board without an appeal to the Planning Commission.

Analysis: The public comment and appeal opportunity on Negative Declarations to the Planning Commission is widely noticed and is an integral part of the Neg Dec process under CEQA. It is consistent with the purpose and spirit of CEQA, which is to encourage public participation in the assessment of environmental impacts so as to allow for improvements to projects as proposed for approval. Further, per City Attorney advice, appellants may unwittingly weaken their own prospects in litigation before the courts if they do not partake in the appeal opportunity at the Planning Commission. It is also unfair to project sponsors who have fully submitted to the CEQA process to allow later appeal of the environmental review if this critical opportunity for input was ignored.

Recommendation: Because application of this provision may impact both appellants and project sponsors, the Department recommends opposing this provision.

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 of some portions* of the proposed Ordinance and disapproval of other portions and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

In March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826). In light of that recommendation, the Department recommends that the Commission approve some portions of this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation.

While the detailed recommendations were reviewed section by section in the earlier portion of this report, overall the Department recommends that the Commissions' position on the major aspects of the Chapter 31 amendments proposed by Supervisor Kim should be as follows:

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

The Planning Department has not received communication specific to Supervisor Kim's proposal since the March 2013 hearings on Supervisor Wiener's proposal. In March 2013, the Department received multiple letters that have previously been submitted to the Commissions.

RECOMMENDATION:	Approval of Certain Portions and Disapproval of Certain Portions
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[REDACTED]

NOTE: This document is the Executive Summary as presented to the HPC on May 15, 2013 as it provides guidance as to which portions the HPC would support and which portions the HPC would recommend for disapproval. While the Executive Summary is cited in the Commission's Resolution No. 706, the attachments to the original Executive Summary are not cited nor attached. These additional documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco.