



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Administrative Code Text Change

HEARING DATE: NOVEMBER 7, 2012

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

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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.

The Way It Is Now Summary:

The California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body if a non-elected decision-making body approves the CEQA document. In San Francisco, this means when the Planning Department or the Planning Commission acts on an environmental impact report (EIR), a negative declaration (neg dec) or a determination of exemption appeals must be granted before the elected Board of Supervisors.

Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR¹, but does not provide procedures for an appeal of a neg dec or an exemption. To fill this void, the Clerk of the Board has provided procedures for an appeal of a neg dec and an exemption. Not only does Chapter 31 currently not provide for a process for an appeal of such determinations, but also Chapter 31 does not provide any time limits for filing appeals. On February 22, 2008, the City Attorney drafted a memorandum² explaining how the Amended CEQA

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".

Guidelines that became effective on July 27, 2007 should be used to establish if appeals were 1) "ripe" or ready for appeal and 2) "timely" meaning not too late.

The Way It Would Be Summary:

The proposed Ordinance would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors. The Ordinance would amend Section 31.08 so as to apply to all Exemptions instead of just Categorical Exemptions. 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 exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. 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 formal 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 amend the public notice requirements for neg decs and draft EIRs in Sections 31.12-31-15, including that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more.

Detailed Description of Appeal Procedures:

This report provides summaries of the procedures that currently exist, followed by the new procedures proposed in the draft Ordinance.

Current Chapter 31 Procedures:

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

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

1. Any person who has submitted written or oral comments on a draft EIR may appeal the Planning Commission's certification of the EIR to the Board.
2. A letter of appeal must be submitted to the Board within twenty calendar days after the Planning Commission's certification of the EIR. The letter must state the specific grounds for appeal, which are limited to the adequacy, accuracy and objectiveness of the final EIR, and the correctness of its conclusions. A fee must accompany the appeal letter, and may be waived or refunded under certain circumstances as set forth in Administrative Code Section 31.22.
3. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
4. While the appeal is pending, the City may not carry out or consider approval of the project.
5. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project.
6. The Board must act on an appeal within 30 days of the appeal of the Planning Commission's certification of the EIR, provided that if the full Board is not present on the last day on which the

appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.

7. The Board conducts its own independent review of the EIR, and may consider anew the facts and evidence and may consider new evidence.
8. The Board must affirm the Planning Commission's certification of the EIR if it finds that the Planning Commission's findings are correct. If the Board reverses the Planning Commission's certification, it shall make specific findings and remand the final EIR to the Planning Commission for further action as directed by the Board. The Board may affirm or reverse the EIR but may not amend the EIR. The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal. The Board acts by a vote of a majority of all members of the Board.
9. If the Board remands an EIR to the Planning Commission, the Planning Commission must take such action as may be required by the Board's specific findings.
10. The date of certification of the EIR shall be the Planning Commission's date of certification if no appeal is filed or if the Board upholds the Planning Commission's certification.

Proposed Amendments to Chapter 31

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.
- 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 31.06. Deletes references to "categorical" exemptions and instead references all types of exemptions. See Section 31.08.
- Section 31.08. Clarifies the procedures for handling exemptions from CEQA, including:
 - Defines four types of exemptions to better reflect CEQA and CEQA Guidelines - 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 so that the ordinance is consistent with the definition in CEQA, CEQA Guidelines and case law; and (2) defining demolition projects to be consistent with Planning Code Section 317.
 - Updates the ordinance language to be consistent with existing practice of the Planning Department to produce a written determination for any project for which a notice is required and by posting the address and type of determination on the department web page.
 - Provides in Section 31.08(f) that projects that rely on an exemption determination and are first approved at a public hearing are required to provide notice of the exemption, right to appeal to the Board and consequences of failing to timely raise objections to the exemption.

- Provides in Section 31.08(g) that a department approving a project may request the Planning Department to post a notice on Planning's web page advising the public of the department's first administrative approval and informing the public that the exemption determination may be appealed to the Board of Supervisors.
- 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. Revises the language as to when a negative declaration is required to make the ordinance language consistent with CEQA Guidelines.
- Section 31.11. Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices. Provides that projects covering large areas do not require a notice of intent to adopt a negative declaration to be distributed to each property owner within 300 feet of the exterior boundaries of the project area but requires Planning to post all negative declarations on its web page.
- Sections 31.12 – 31.15. Updates and clarifies the noticing, posting and distribution requirements of CEQA and the practices of the Planning Department with respect to EIRs. Provides that projects covering large areas do not require a notice of completion of an EIR to be distributed to each property owner within 300 feet of the exterior boundaries of the project area but provides that Planning shall post all draft EIRs on its web page. Requires a phonographic reporter to record all public hearings on draft EIRs.
- 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:
 - 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. The Board is defined as 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. Where the Board is the CEQA decision-making body, any person may raise CEQA issues before the Board through the Board's regular public hearing process. The Board must affirm or reject the preliminary CEQA decision rendered by the Planning Department or Planning Commission, prior to, or, as part of, its consideration of the project.
 - Appeals must be filed (1) for an EIR, within 20 days of an EIR certification and approval of the project; (2) for a negative declaration, within 20 days of the adoption of the negative declaration approving the project; and (3) for exemption determinations, within one of these periods as applicable: (i) for a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process, the time for appeal of the CEQA determination is within the time for appeal of the first entitlement or 20 days of the granting of the first entitlement, whichever is shorter; (ii) for projects not covered by (i), if the Planning Department posts a notice as provided in Section 31.08(g) informing the public of the first approval action for a project, within 20 days of the posting; or (iii) for projects not covered by (i) for which Planning is not asked to post a notice as provided in Section 31.08(g), within 30 days of the first approval.
 - 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.
- While the appeal is pending, the City 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.
 - 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 20 or more than 45 days following the expiration of the time for filing the appeal and provide at least a 10 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.
 - 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.
 - 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.

ISSUES AND CONSIDERATIONS

In addition to the summary above, the Department would like to address certain topics that may be of interest to the public and the commissioners.

- **Review and Comment on CEQA documents by the Historic Preservation Commission (HPC).** Section 31.04(d) specifically states that the HPC has review and comment authority on CEQA consistent with the City Charter. Section 31.08(e)(2) requires that notice be given for any historical resources defined as: (A) any buildings and sites listed individually or located within districts listed in Planning Code Articles 10 or 11, (B) on the California Register or determined eligible for listing or on the California Register by the State Historical Resources Commission, including, without limitation, any location, or on the National Register of Historic Places, or (C) a resource that the Environmental Review Officer determines, based on substantial evidence, to be a historical resource under Public Resources Code Section 5024.1. These changes clarify the Administrative Code and make it consistent with the state CEQA language.

- **Interactions between Discretionary Review hearings by the Planning Commission (PC) and CEQA appeals.** For exemptions and neg decs, the proposed Ordinance general establishes that no CEQA appeal clock starts running until after an entitlement action has occurred. This ensures that only projects headed for implementation would be subject to CEQA appeal. While this concept is simple enough, there may be confusion about how this would be implemented when projects are subject to Discretionary Reviews hearings by the Planning Commission. A Discretionary Review (DR) is the authority of the Planning Commission to review projects that comply with the Planning Code and take action to disapprove or modify the project if an exceptional and extraordinary circumstance is found. In practice the current DR procedures establish that once the Department has determined the project to be Code compliant, public notice is provided and the project is held for 30 days to allow the public to request DR. To implement this Ordinance the Department could use the DR notice to also notice the public of the right to appeal as required by Section 31.08(f) the CEQA determination. The CEQA appeal period would then begin running with issuance of the building permit and would be coterminous with the appeal period for the building permit.
- **What happens to the Commission and Board's review process once an appeal is pending?** Previously once an appeal was filed no approval action could be taken. The proposed Ordinance would establish that once an appeal is filed, the City "the City shall not undertake activities to implement the project that physically change the environment except activities that are essential to abate hazards to the public health and safety". (Section 31.16(c)(3)) Under this proposal, projects that require multiple approvals could continue to secure approvals while an appeal is pending. This would allow, for example, the HPC to continue to consider a landmark decision while an appeal is pending.
- **Appeals where the Board is the CEQA decision-making body.** Section 31.16(b) seeks to streamline the Board process for considering project approvals subject to CEQA. It is important to note that 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)). 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 committee hearing process. To understand how this would function, below are three clarifications about the process.
 - First, when is the Board established as the CEQA decision-making body? 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? This subsection 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". Under the Board Rules 1.4 and 1.5, public comment typically is allowed only during a hearing of a Board committee so this would be the most frequent venue for raising CEQA-related concerns to the Board. After hearing staff presentations and public comment, the Committee would forward a recommendation for approval or disapproval on the underlying action to the full Board. The action before the full Board would include an affirmation of the CEQA document. With the Committee's

recommendation, full Board would then consider the whole item, inclusive of CEQA. The Board could 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. Or, the Board could affirm the CEQA decision within the ordinance or resolution that also approves the project.

- Third, should there be more specificity about related procedures for this process at the Board? Because the Board has a well-defined process for Board proceedings, there is no need for further procedures at the Board when the Board is the CEQA decision-making body. As there is no specific CEQA appeal for these matters, the underlying resolutions and/or ordinances would proceed under standard Board procedures. For this reason, the proposed Ordinance does not establish a briefing schedule for when materials shall be submitted or instructions for filing appeals. The underlying Board actions would proceed through the Board's normal procedures, and CEQA-related concerns may be raised without the filing of an appeal. That said, the Department does have concerns that a party may introduce substantial new information at the Board Committee hearing, thereby hindering the ability of the City to provide a meaningful response.

POTENTIAL COMMISSION ACTION

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

RECOMMENDATION

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

Recommended Modifications

While the Department recommends support of the proposed Ordinance, there are certain modifications that may increase the clarity. The proposed modifications include:

- **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 occasionally needed.
- **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.

BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with minor 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.

Overall, the Department recommends support of the proposed Ordinance because it would increase notification procedures and create a consistent 20-day window for the filing of appeals. For appeal procedures specific to EIRs there are no major changes. EIRs currently have rigorous notice and defined appeal procedures. Appeals of Neg Decs currently have no procedures in Chapter 31. Under the proposal, appeal of Neg Decs to the Planning Commission would be required within 20-days of the decision in order to maintain the right to appeal to the Board. Both Exemptions and Neg Decs would have enhanced notice procedures whereby existing notices would also be used to inform the public of CEQA appeal rights. For exemptions, if there is a public hearing before the project is approved, the City would provide a CEQA-specific notice to inform the public of CEQA appeal rights. Part of the increased notification process would provide for posting notices of Cat Exs and Neg Decs on the website. For exemptions issued for projects involving private entitlements, the appeal period runs with the appeal period for the first entitlement. For other projects, which would likely be public projects, the appeal period runs either 20 days from the posing of the notice on the web site or 30 days from project approval. By codifying the notice requirements and appeal windows, certainty is increased for both potential appellants and project sponsors. The proposed Ordinance would maintain the public's right to appeal where the Board is not otherwise required to approve the project and consider CEQA issues. It encourages timely transitions between CEQA action and approval action. Lastly, the proposal would reduce duplicative hearings before the Board by requiring consolidation of other required Board hearings with the raising of CEQA issues to the Board.

The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies

where the CEQA decision is rendered by a non-elected decision-making body. Furthermore, the proposed Ordinance, 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.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

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

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

- Exhibit A: Draft Historic Preservation Commission Resolution
- Exhibit B: Board of Supervisors File No. 12-1019
- Exhibit C: Planning Commission Resolutions Numbers 17335 and 18116
 Historic Preservation Commission Motion Numbers 647 and 649



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Draft Motion No. _____ Administrative Code Text Change HEARING DATE: NOVEMBER 7, 2012

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

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE 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

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

FINDINGS

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

1. 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

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

OBJECTIVE 1

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

OBJECTIVE 7

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

II. URBAN DESIGN ELEMENT

OBJECTIVE 1

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

OBJECTIVE 2

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

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

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

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

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

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

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

The proposed Ordinance not affect affordable housing supply.

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

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

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

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

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

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

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

The proposed Ordinance will not affect landmark and historic buildings.

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

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

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

Recommended Modifications

- 1) **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.

- 2) **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.

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

Jonas P. Ionin

Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

M E M O R A N D U M

TO: John Rahaim, Director, Planning Department

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: October 29, 2012

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Wiener on October 16, 2012:

File No. 121019

Ordinance amending the San Francisco Administrative Code Chapter 31 to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31.

The proposed ordinance is being transmitted pursuant to Board Rule 5.41 for review and recommendation.

If you wish to submit any reports or documentation to be included as part of the file, please send those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Scott Sanchez, Zoning Administrator, Planning Department
AnMarie Rodgers, Legislative Affairs Manager, Planning Department
Linda Avery, Secretary, Planning Commission

FILE NO. 121019

ORDINANCE NO.

1 [Administrative Code - California Environmental Quality Act Procedures]

2
3 **Ordinance amending the San Francisco Administrative Code Chapter 31 to reflect**
4 **revisions in the California Environmental Quality Act and to update and clarify certain**
5 **procedures provided for in Chapter 31.**

6 NOTE: Additions are single-underline italics Times New Roman;
7 deletions are ~~strike-through italics Times New Roman~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough-normal~~.

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

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

15 Section 2. The San Francisco Administrative Code Chapter 31 is hereby amended by
16 amending Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, and
17 31.15, to read as follows:

18 **SEC. 31.04. RESPONSIBILITY.**

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

24 (b) The administrative actions required by CEQA with respect to the preparation of
25 environmental documents, giving of notice and other activities, as specified in this Chapter,

1 shall be performed by the San Francisco Planning Department as provided herein, acting for
2 the City. When CEQA requires posting of a notice by the county clerk of the county in which the
3 project will be located, the Planning Department shall transmit the required notice to the applicable
4 county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the
5 posting shall commence.

6 (c) For appeals to the Board of Supervisors, the Clerk of the Board of Supervisors shall
7 perform any administrative functions necessary for resolution of the appeal.

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

12 (e)(e) Where adoption of administrative regulations by resolution of the Planning
13 Commission after public hearing is specified herein, there shall be notice by publication in a
14 newspaper of general circulation in the City at least ~~twenty~~ (20) days prior to the hearing and
15 by posting in the offices of the Planning Department, with copies of the proposed regulations
16 sent to the Board of Supervisors and any other affected boards, commissions and
17 departments of the City and to all organizations and individuals who have previously
18 requested such notice in writing. The decision of the Commission in adopting administrative
19 regulations shall be final.

20 (d)(f) The City shall be responsible for conducting environmental review for projects
21 undertaken by the City within the City's territorial limits and for projects undertaken by the City
22 outside the territorial limits of the City.

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

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

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

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 ~~categoryically~~ exempt from CEQA. If not excluded or ~~categoryically~~
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~~kinds of projects are exempt from CEQA either
12 because the project is exempt by statute ("statutory exemption"); the project is in a class of projects
13 that generally do not have a significant effect on the environment and therefore are categoryically
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 ~~(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 listed ~~(A)~~ in Planning Code Articles 10 or 11, ~~(ii)(B) in City-recognized~~
19 ~~historical surveys, (iii)~~ on the California Register or determined eligible for listing on the California
20 Register by the State Historical Resources Commission, including, without limitation, any location, or
21 ~~(iv)~~ on the National Register of Historic Places, or (C) a resource that the Environmental Review
22 Officer determines, based on substantial evidence, to be a historical resource under Public Resources
23 Code Section 5024.1(g); (2)(ii) any Class 31 categorical exemption; (3)(iii) any demolition as
24 defined in Planning Code Section 317 of an existing structure; or, (4)(iv) any Class 32 categorical
25 exemption. ~~Written determinations of categorical exemptions~~ All exemption determinations for these

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

4 (g)(f) When the Planning Department or other City department provides notice of a public
5 hearing on a proposed approval action for a project that it has determined to be exempt from CEQA
6 and the proposed approval is the first approval action for the project, which will be appealable to the
7 Board of Supervisors under Section 31.16 after the action, the notice shall (1) inform the public of the
8 exemption determination and how the public may obtain a copy of the exemption determination, (2)
9 inform the public that it may appeal the CEQA exemption determination to the Board of Supervisors
10 within the timeframe specified in Section 31.16, and (3) inform the public that under CEQA, in a later
11 court challenge a litigant may be limited to raising only those issues previously raised at a hearing on
12 the project or at an appeal hearing on the CEQA determination or in written correspondence delivered
13 to the Planning Department or other City department at, or prior to, such hearing.

14 (g) A City board, commission, department or official that first approves a project may
15 thereafter arrange for the Planning Department to post on the Planning Department's website a written
16 decision or written notice of the first approval action that informs the public of the first date of posting
17 on the website and advises the public that the exemption determination may be appealed to the Board
18 of Supervisors as provided in Section 31.16. When the Environmental Review Officer, or any other
19 department to which the Environmental Review Officer has delegated responsibility pursuant to Section
20 31.08(e) above, has determined that a project is excluded or categorically exempt from CEQA, the
21 Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by
22 posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the
23 applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and
24 to any individuals or organizations who have previously requested such notice in writing.
25

1 (h) After the City has decided to carry out or approve the project, the Environmental Review
2 Officer may file a notice of exemption with the county clerk in the county or counties in which the
3 project is to be located. The Planning Commission may take testimony on any categorical exemption at
4 the public hearing, if any, in connection with the Planning Commission's consideration of the project
5 that is the subject of the categorical exemption.

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

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

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

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

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

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

22 (c) The applicant or the board, commission or department that is to carry out or
23 approve the project shall submit to the Environmental Review Officer such data and
24 information as may be necessary for the initial study. If such data and information are not
25 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

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

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

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

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

14 (2) Prepare a mitigated negative declaration if the initial study identified potentially
15 significant effects, but (i) revisions in the project plans or proposals made by, or agreed to by the
16 applicant before a proposed mitigated negative declaration and initial study are released for public
17 review would avoid the effects or mitigate the effects to a point where clearly no significant effects
18 would occur, and (ii) there is no substantial evidence, in light of the whole record before the Planning
19 Department, that the project as revised may have a significant effect on the environment. ~~determine,~~
20 based on the requirements of CEQA, whether there is a "fair argument" that the project could have a
21 significant effect on the environment, and whether a negative declaration or environmental impact
22 report shall be prepared.

23 ~~(f) Based on the analysis and conclusions in the initial study, the Environmental Review~~
24 ~~Officer shall determine, based on the requirements of CEQA, whether the project could have a~~

1 ~~significant effect on the environment, and whether a negative declaration or environmental impact~~
2 ~~report shall be prepared.~~

3 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**
4 **DECLARATIONS.**

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

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

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

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

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

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

3 (4) ~~by mail~~ Mail to the owners of all real property within the area that is the
4 subject of the negative declaration and within 300 feet of all exterior boundaries of such area,
5 and by mail to all organizations and individuals who have previously requested such notice in
6 writing, sufficiently prior to adoption of the negative declaration to allow the public and
7 agencies a review period of not less than ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day
8 circulation period is required by CEQA. In the case of City-sponsored projects that involve rezonings,
9 Area Plans or General Plan amendments and are either citywide in scope or the total area of land that
10 is part of the project, excluding the area of public streets and alleys, is 5 acres or more, the
11 Environmental Review Officer shall not be required to mail the notice of intent to the owners within
12 300 feet of all exterior boundaries of the project area.

13 (d) The notice of intent shall specify the period during which comments are to be
14 received, the date, time and place of any public hearings on the project when known to the
15 Planning Department at the time of the notice, a brief description of the project and its location,
16 and the address where copies of the negative declaration and all documents referenced in the
17 negative declaration are available for review, and any other information as required by CEQA.

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

22 (f) The Planning Commission shall ~~hold~~ schedule a public hearing on any such
23 appeal within not less than fourteen (14) nor more than thirty (30) days after the close of the
24 appeal period. Notice of such hearing shall be posted in the offices of the Planning
25 Department, and shall be mailed to the appellant, to the applicant, to the board(s),

1 commission(s) or department(s) that will carry out or approve the project, to any individual or
2 organization that has submitted comments on the proposed negative declaration, and to any
3 other individual_s or organization_s that previously ~~has~~ have requested such notice in writing.

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

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

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

22 (j) After the City has decided to carry out or approve the project in accordance with
23 CEQA procedures, the Environmental Review Officer may shall endeavor to file a notice of
24 determination with the county clerk in the county or counties in which the project is to be
25

1 located. If required by CEQA, the notice of determination shall also be filed with the California
2 Office of Planning and Research.

3 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**
4 **REQUIRED.**

5 If it is determined that a project may have a significant effect on the environment *that*
6 *cannot be avoided or mitigated to a less than significant level and, therefore, that* an environmental
7 impact report is required, the Environmental Review Officer shall *distribute a notice of*
8 *preparation in the manner and containing the information required by CEQA and provide such other*
9 *notice as required by CEQA. In addition, the Environmental Review Officer shall prepare a notice*
10 *advising the public of the notice of preparation and of any scheduled scoping meetings and* publish the
11 notice of preparation in a newspaper of general circulation in the City, *shall* post the notice of
12 preparation in the offices of the Planning Department *and on the Planning Department website,*
13 and *shall* mail the notice of preparation to the applicant, the board(s), commission(s) or
14 department(s) that will carry out or approve the project and to all organizations and individuals
15 who have previously requested such notice in writing. The Environmental Review Officer shall
16 provide such other notice as required by CEQA.

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

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

21 (b) The applicant or the board, commission or department that is to carry out or
22 approve the project shall submit to the Environmental Review Officer such data and
23 information as may be necessary to prepare the draft EIR. If such data and information are
24 not submitted, the Environmental Review Officer may suspend work on the draft EIR. The
25 data and information submitted shall, if the Environmental Review Officer so requests, be in

1 the form of all or a designated part or parts of the proposed draft EIR itself, although the
2 Environmental Review Officer shall in any event make his or her own evaluation and analysis
3 and exercise his or her independent judgment in preparation of the draft EIR for public review.

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

9 (d) When the draft EIR has been prepared, the Environmental Review Officer shall
10 file a notice of completion of such draft with the California Office of Planning and Research as
11 required by CEQA and make the draft EIR available through the State Clearinghouse if and as
12 required by the California Office of Planning and Research. ~~A copy of such notice, or a separate~~
13 ~~notice containing the same information, shall thereupon be posted in the offices of the Planning~~
14 ~~Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or~~
15 ~~department(s) that will carry out or approve the project, and to any individual or organization that has~~
16 ~~requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real~~
17 ~~property within the area that is the subject of the environmental impact report and within 300 feet of all~~
18 ~~exterior boundaries of such area. A copy of the draft EIR shall be provided to the applicant and to such~~
19 ~~board(s), commission(s) or department(s) and to any individual or organization that has so requested.~~

20 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

21 (a) The Environmental Review Officer shall provide public notice of the availability of the
22 draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The
23 Environmental Review Officer shall provide the notice of availability at the same time that the notice of
24 completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days
25

1 prior to the scheduled public hearing on the draft EIR. The notice of availability shall be distributed in
2 the manner required by CEQA and in any event. Notice shall be:

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

10 (b) ~~In sending such copies, the Environmental Review Officer shall request comments on the~~
11 draft EIR from such agencies and persons, with particular focus upon the sufficiency of the draft EIR in
12 discussing possible effects on the environment, ways in which adverse effects may be minimized, and
13 alternatives to the project.

14 (2) ~~Posted in the offices of the Planning Department, on the Planning Department~~
15 website, and on the subject site.

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

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

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

1 **(b) The notice of availability shall contain the information required by CEQA and in any**
2 **event shall:**

3 **(1) State the starting and ending dates for the draft EIR review period during which**
4 **the Environmental Review Officer will receive comments and if comments are not returned within that**
5 **time it shall be assumed that the agency or person has no comment to make. The public review period**
6 **shall not be less than 30 days nor more than 60 days except under unusual circumstances. When a draft**
7 **EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall**
8 **not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State**
9 **Clearinghouse. The Planning Commission or the Environmental Review Officer may, upon the request**
10 **of an agency or person with special expertise from whom comments are sought, grant an extension of**
11 **time beyond the original period for comments, but such extension shall not interfere with the holding of**
12 **any hearing on the draft EIR for which notice has already been given.**

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

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

22 ~~**(c) Each notice and request for comments shall state that any comments must be returned**~~
23 ~~**within a certain time after the sending of the draft EIR, and if comments are not returned within that**~~
24 ~~**time it shall be assumed that the agency or person has no comment to make. The time limit shall**~~
25 ~~**normally be thirty (30) days, or forty five (45) days if required by CEQA. The Environmental Review**~~

1 ~~Officer may allow a longer period for comments on projects of exceptional size or complexity. The~~
2 ~~Planning Commission or the Environmental Review Officer may, upon the request of an agency or~~
3 ~~person from whom comments are sought, grant an extension of time beyond the original period for~~
4 ~~comments, but such extension shall not interfere with the holding of any hearing on the draft EIR for~~
5 ~~which notice has already been given.~~

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

7 (1) ~~(d)~~ Public participation, both formal and informal, shall be encouraged at all
8 stages of review, and written comments shall be accepted at any time up to the conclusion of
9 the public comment period. The Environmental Review Officer may give public notice at any
10 formal stage of the review process, beyond the notices required by this Chapter 31 and CEQA,
11 in any manner it may deem appropriate, ~~and may maintain a public log as the status of all projects~~
12 ~~under formal review. Members of the general public shall be encouraged to submit their comments in~~
13 ~~writing as early as possible.~~

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

16 (3) ~~(e)~~ The Planning Commission shall hold a public hearing on every draft EIR during
17 the public comment period, with such hearing combined as much as possible with other
18 activities of the Planning Commission. The Environmental Review Officer may, upon
19 delegation by the Planning Commission, take testimony at supplemental public hearing(s) on
20 draft EIRs, in addition to, and not in lieu of, the hearing conducted by the Planning
21 Commission, and shall report to and make all testimony received by the Environmental
22 Review Officer available to the Planning Commission at a public hearing. ~~Notice of the Planning~~
23 ~~Commission hearings and all hearings at which the Environmental Review Officer takes testimony shall~~
24 ~~be given by publication in a newspaper of general circulation in the City at least 30 days prior to the~~
25 ~~hearing, by posting in the offices of the Planning Department, by posting on or near the site proposed~~

1 ~~for the project; and by mail sent not less than 30 days prior to the hearing to the applicant, to the~~
2 ~~board, commission or department that is to carry out or approve the project, and to any other~~
3 ~~individual or organization requesting such notice.~~

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

7 **SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.**

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

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

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

21 (d) When the final EIR has been prepared and in the judgment of the Planning
22 Commission it is adequate, accurate and objective, reflecting the independent judgment and
23 analysis of the Planning Commission, the Planning Commission shall certify its completion in
24 compliance with CEQA. The certification of completion shall contain a finding as to whether
25 the project as proposed will, or will not, have a significant effect on the environment.

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

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

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

8 (a) **Decisions Subject to Appeal.** In accordance with the provisions set forth in this Section
9 31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the "Board")
10 where the Board is not otherwise the CEQA decision-making body for the project as provided in
11 Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption of a
12 negative declaration by the first decision-making body; and (3) determination by the Planning
13 Department or any other authorized City department that a project is exempt from CEQA.

14 (b) **Board as CEQA Decision-Making Body.** CEQA decisions are not appealable to the
15 Board if the Board is the CEQA decision-making body for the project. For purposes of this Chapter 31,
16 the Board is the CEQA decision-making body for the project if any of the following circumstances
17 apply: (1) at the time an appeal is filed the Board has affirmed the CEQA decision rendered by a non-
18 elected body of the City and approved the project, (2) one or more proposed approval actions for the
19 project is pending before the Board of Supervisors prior to the expiration of the time frames set forth in
20 Subsections 31.16 (d), (e), or (f), as applicable, for filing the appeal, or (3) the Planning Department
21 prepared the CEQA decision in support of a proposed ordinance. For any project for which the Board
22 is the CEQA decision-making body as defined by this Section 31.16, any person may raise objections to
23 the CEQA decision at a public hearing on the project held by the Board or a committee of the Board.
24 For any project subject to CEQA that the Board is asked to approve in whole or part, prior to or as
25 part of its consideration of the project, the Board shall affirm or reject the CEQA decision for the

1 project rendered by the Planning Department, the Planning Commission or any other City department
2 delegated CEQA decision authority by the Planning Department.

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

7 (1) The appellant shall submit a letter of appeal along with all written materials in
8 support of the appeal to the Clerk of the Board within the time frames set forth in Subsections 31.16
9 (d), (e), or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and shall
10 be accompanied by a fee, as set forth in Administrative Code Section 31.22, payable to the San
11 Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,
12 authorized in writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a
13 copy of the CEQA EIR certification or the negative declaration approval by the Planning Commission,
14 or a copy of the exemption determination by the Planning Department that is being appealed and a
15 copy of the approval action taken for the project by a City board, commission, department or official.
16 The appellant shall submit a copy of the letter of appeal and all written materials in support of the
17 appeal to the Environmental Review Officer at the time appellant submits the letter of appeal to the
18 Clerk of the Board. The Clerk of the Board may reject an appeal if appellant fails to comply with this
19 subsection 31.16(c)(1).

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

23 (3) While the appeal is pending, the City shall not undertake activities to implement
24 the project that physically change the environment except activities that are essential to abate hazards
25 to the public health and safety, including abatement of hazards on a structure or site determined by the

1 appropriate City official, including but not limited to the Director of Building Inspection, the Director
2 of Public Works, the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an
3 emergency presenting an imminent hazard to the public and requiring immediate action.

4 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
5 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the
6 hearing no less than 20 and no more than 45 days following expiration of the time frames set forth in
7 Subsections 31.16 (d),(e), or (f), as applicable, for filing an appeal. The Clerk shall provide notice of
8 the appeal by mail to the appellant or appellants and to all organizations and individuals who have
9 previously requested such notice in writing, no less than ten days prior to the date the appeal is
10 scheduled to be heard by the Board. The Planning Department shall provide to the Clerk of the Board
11 the list of individuals and organizations that have commented on the decision or determination in a
12 timely manner, or requested notice of an appeal, no less than 15 days prior to the scheduled hearing.

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

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

21 (7) The Board shall act on an appeal within 30 days of the date scheduled for the
22 hearing, provided that if the full membership of the Board is not present on the last day on which the
23 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but
24 not later than, the full membership of the Board is present; and provided further, if the Board of
25 Supervisors does not conduct at least three regular Board meetings during such 30 day period, the

1 Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon;
2 and provided further that the latest date to which said decision may be so postponed shall be not more
3 than 90 days from the expiration of the time frames set forth in Subsections 31.16 (d), (e), or (f), as
4 applicable, for filing an appeal.

5 (8) The Board may affirm or reverse the CEQA decision of the Planning
6 Commission, Planning Department or other authorized City agency by a vote of a majority of all
7 members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board
8 shall act by motion. The Board shall adopt findings in support of its decision, which may include
9 adoption or incorporation of findings made by the Planning Commission, Environmental Review
10 Officer or other City department authorized to act on the CEQA decision below. If the Board reverses
11 the CEQA decision, the Board shall adopt specific findings setting forth the reasons for its decision.

12 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final
13 negative declaration, or final exemption determination shall be the date upon which the Planning
14 Commission, Planning Department or other authorized City department, as applicable, first approved
15 the EIR or negative declaration or issued the exemption determination and any approval actions for the
16 project made prior to the appeal decision shall be deemed valid.

17 (10) If the Board reverses the CEQA decision, the prior CEQA decision and approval
18 actions for the project, shall be deemed void.

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

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

1 (2) The appellant of a final EIR shall submit a letter of appeal and written materials
2 in support of the appeal to the Clerk of the Board within 20 days after the Planning Commission's
3 certification of the EIR and approval of the project by the first decision-making body.

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

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

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

20 (e) **Appeal of Negative Declarations.** In addition to those requirements set forth in Section
21 31.16(c) above, the following requirements shall apply only to appeals of negative declarations.

22 (1) In order to appeal the adoption of a negative declaration to the Board, the
23 appellant or another party must have filed an appeal of the preliminary negative declaration with the
24 Planning Commission during the public comment period provided by this Chapter 31 for filing
25 comments on the preliminary negative declaration.

1 (2) The appellant of a negative declaration shall submit a letter of appeal to the
2 Clerk of the Board within 20 days after the adoption of the negative declaration.

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

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

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

18 (A) In the event the Board remands the negative declaration to the Planning
19 Department for revision, the Environmental Review Officer shall finalize the revised negative
20 declaration and send notice to the public, as set forth in Section 31.11, of the availability of the revised
21 negative declaration. No appeal to the Planning Commission of the revised negative declaration shall
22 be required. In the event an organization or individual wishes to appeal the revised negative
23 declaration, such appeal shall be made directly to the Board of Supervisors within 20 days of
24 publication of the revised negative declaration and shall comply with the procedures set forth in this
25

1 Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the negative
2 declaration that the Planning Department has revised.

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

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

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

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

15 (A) For a private project seeking a lease, permit, license or other entitlement
16 for use for which the City otherwise provides an appeal process, the appeal of an exemption
17 determination shall be filed within the period allowed for filing an appeal of the first entitlement
18 granted (e.g. within the period for filing an appeal of a lease, permit, license or other entitlement for
19 use) or within 20 days of the granting of the first entitlement, whichever is shorter.

20 (B) For all projects not covered by subsection (A), if the Planning
21 Department posts on the Planning Department's website as provided in Section 31.08(g) a written
22 decision or written notice of the first approval of the project that informs the public of the first date of
23 posting of the notice on the website and informs the public that the exemption determination may be
24 appealed to the Board of Supervisors as provided in this Section 31.16, the appeal shall be filed within
25 20 days of the first date of the notice.

1 (C) For all projects not covered by subsection (A), if no notice is posted of
2 the first approval action as provided in subsection (B), the appeal shall be filed within 30 days of the
3 first approval action.

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

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

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

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

18 Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to
19 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
20 punctuation, charts, diagrams, or any other constituent part of the San Francisco
21 Administrative Code that are explicitly shown in this legislation as additions, deletions, Board
22 amendment additions, and Board amendment deletions in accordance with the "Note" that
23 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

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

SAN FRANCISCO
PLANNING COMMISSION
RESOLUTION NO. 17335

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

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

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

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

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

The proposed ordinance would codify procedures for appeal of Neg Decs and exemptions to the Board of Supervisors, pursuant to CEQA. The ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, Neg Decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, Neg Decs, and exemptions. In addition, the legislation would amend the public notice requirements for Neg Decs and draft EIRs in Sections 31.11 and

PLANNING COMMISSION
Hearing on November 2, 2006

Case No. 2006.1221E
Administrative Code Chapter 31
Environmental Appeal Amendments
Resolution 17335
Page 2

31.13, such that noticing would be more limited for projects meeting certain requirements. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.

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

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

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

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

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

Linda Avery
Commission Secretary

AYES: Alexander, Antonini, Lee, Sugaya

NOES: Moore, Olague

ABSENT: None

ADOPTED: November 2, 2006



SAN FRANCISCO PLANNING DEPARTMENT

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

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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

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

Initiated by: Supervisor Alioto-Pier

Introduced: April 20, 2010

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

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

Recommendation: **Requesting Additional Information**

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

PREAMBLE

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

Historic Preservation Commission Resolution
Hearing: June 16, 2010

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

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

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

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

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

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

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

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

Whereas, the HPC has reviewed the proposed Ordinance; and

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

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

and adopts the Resolution to that effect.

Historic Preservation Commission Resolution
Hearing: June 16, 2010

CASE NO. 2010.0336U
Board File No. 100495
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FINDINGS

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

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

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

Linda Avery

Commission Secretary

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

NAYS:

ABSENT:

ADOPTED: June 16, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Resolution No. 649 Administrative Code Text Change HEARING DATE: JULY 7, 2010

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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

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

Initiated by: Supervisor Alioto-Pier

Introduced: April 20, 2010

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

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

Recommendation: **Recommend Approval with Modifications**

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

PREAMBLE

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

Exhibit B: DRAFT Historic Preservation Commission Resolution **CASE NO. 2010.0336U**
Planning Commission Hearing: May 27, 2010 **Board File No. 100495**
Historic Preservation Commission Hearing: June 2, 2010 **CEQA Appeals and Noticing**

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

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

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

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

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

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

Whereas, the HPC has reviewed the proposed Ordinance; and

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

FINDINGS

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

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

Exhibit B: DRAFT Historic Preservation Commission Resolution **CASE NO. 2010.0336U**
Planning Commission Hearing: May 27, 2010 **Board File No. 100495**
Historic Preservation Commission Hearing: June 2, 2010 **CEQA Appeals and Noticing**

I. ENVIRONMENTAL PROTECTION ELEMENT

OBJECTIVE 1

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

OBJECTIVE 1

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

OBJECTIVE 7

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

II. URBAN DESIGN ELEMENT

OBJECTIVE 1

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

OBJECTIVE 2

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

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

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

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

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

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

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

The proposed Ordinance not affect affordable housing supply..

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

Exhibit B: DRAFT Historic Preservation Commission Resolution **CASE NO. 2010.0336U**
Planning Commission Hearing: May 27, 2010 **Board File No. 100495**
Historic Preservation Commission Hearing: June 2, 2010 **CEQA Appeals and Noticing**

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

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

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

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

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

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

The proposed Ordinance will not affect landmark and historic buildings.

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

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

7. The Historic Preservation Commission therefore recommends *approval with the modifications recommended by the Planning Commission and described below:*

Recommended Modifications

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

Exhibit B: DRAFT Historic Preservation Commission Resolution **CASE NO. 2010.0336U**
Planning Commission Hearing: May 27, 2010 **Board File No. 100495**
Historic Preservation Commission Hearing: June 2, 2010 **CEQA Appeals and Noticing**

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

Exhibit B: DRAFT Historic Preservation Commission Resolution **CASE NO. 2010.0336U**
Planning Commission Hearing: May 27, 2010 **Board File No. 100495**
Historic Preservation Commission Hearing: June 2, 2010 **CEQA Appeals and Noticing**

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

10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.
 11. **Change “Approval” to “Adoption” as suggested by the City Attorney.** References to NegDec “approvals” by the Planning Commission should be changed to “adoption” throughout the proposed Ordinance to more accurately represent the action taken by the Commission.
8. In addition, the Historic Preservation Commission further recommends **that the draft Ordinance be modified to address the following points of concern:**
- 1) ensure fairness in any potential limiting of appellants to those who have been involved or commented at previous hearings and strike requirement for prior participation in categorical exemptions;
 - 2) add specificity about the role of the Historic Preservation Commission within the proposed process;
 - 3) increase notice of categorical exemptions and therefore increase capacity to secure early public involvement; and
 - 4) address the potential to limit future actions of the Historic Preservation Commission in the event of simultaneous approvals (especially potential district designation) where a CEQA appeal has been filed.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on July 7, 2010.


Linda Avery
Commission Secretary

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

NAYS: --

ABSENT: Chase and Damkroger

ADOPTED: July 7, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18116 Administrative Code Text Change HEARING DATE: JUNE 24, 2010

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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

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

Initiated by: Supervisor Alioto-Pier

Introduced: April 20, 2010

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

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

Recommendation: **Recommend Approval with Modifications**

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

PREAMBLE

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

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

Panning Commission Resolution No. 18116
Planning Commission Hearing: June 24, 2010
Historic Preservation Commission Hearing: July 7, 2010

CASE NO. 2010.0336U
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Whereas, the proposed Administrative Code amendment has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

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

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

Whereas, the Commission has reviewed the proposed Ordinance; and

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

FINDINGS

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

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

I. ENVIRONMENTAL PROTECTION ELEMENT

OBJECTIVE 1

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

OBJECTIVE 1

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

OBJECTIVE 7

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

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

II. URBAN DESIGN ELEMENT

OBJECTIVE 1

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

OBJECTIVE 2

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

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

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

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

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

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

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

The proposed Ordinance not affect affordable housing supply..

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

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

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

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

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

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

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

The proposed Ordinance will not affect landmark and historic buildings.

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

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

7. The proposed Ordinance is exempt from CEQA per CEQA Guidelines Section 15060(c)(2).
8. The Commission therefore recommends *approval with modifications described below*:

Recommended Modifications

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

Panning Commission Resolution No. 18116
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5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.
7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project.” The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

Panning Commission Resolution No. 18116
Planning Commission Hearing: June 24, 2010
Historic Preservation Commission Hearing: July 7, 2010

CASE NO. 2010.0336U
Board File No. 100495
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11. Change "Approval" to "Adoption" as suggested by the City Attorney. References to NegDec "approvals" by the Planning Commission should be changed to "adoption" throughout the proposed Ordinance to more accurately represent the action taken by the Commission.

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



Linda Avery
Commission Secretary

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

NAYS: Sugaya

ABSENT:

ADOPTED: June 24, 2010