



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** November 29, 2012  
**To:** SF Planning Commission and Historic Preservation Commission  
**From:** Bill Wycko, Environmental Review Officer  
**RE:** Commissioner requests for information on proposed CEQA legislation [BF 12-1019]

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

This memorandum is intended to respond to the information requested by members of both the Historic Preservation Commission and the Planning Commission. The contents address the number and time frame of CEQA appeals, a compilation of comments on the proposal and responses from the Department, case studies on how the proposal would affect specific projects, and a timeline of important dates during the appeal process.

This memorandum is organized as follows:

- **Text of Memorandum:** contains a discussion of the expected time frame for CEQA Appeals and a short description of each attachment.
- **Attachment A:** A Case Study of two appeals and how the process for these appeals would change if the proposal had enacted at the time of the project.
- **Attachment B:** Listing of appeal types and hearing results for CEQA Appeals filed before the Board during 2010, 2011, and 2012.
- **Attachment C:** Time frames for the appeal process under Version Two of the proposed Ordinance, introduced on 11/20/12.
- **Attachment D:** A compilation of the comments received on the proposal to date with Department responses.

## SUMMARY OF THE EXPECTED TIME FRAMES FOR CEQA APPEALS

Timelines for environmental review vary widely from project to project, even for identical types of documents. This variation is due to multiple factors, such as Department workload, individual planner workload, number and type of technical studies needed, and issues beyond the control of Environmental Planning. Therefore, consideration of general time frames for each type of environmental document and comparing those with appeal time frames both now and under the current proposal would provide more useful information than consideration of the time frames for the individual projects that were appealed over the past several years.

### *Environmental Impact Reports*

Environmental Impact Reports (EIRs) often involve the lengthiest environmental review, because of the complexity of the projects and because of the nature of the process as required under CEQA. It is unusual for an EIR process to take less than two years, and it can take substantially longer depending on the factors identified above.

An appeal adds a relatively small amount of time to an EIR process. Under Chapter 31, EIRs must be appealed within 20 days of certification by the Planning Commission and then heard by the Board of Supervisors within 30 days of the filing. It is possible and not uncommon for an appeal to be included in the overall EIR schedule when staff is estimating project time frames.

The proposed legislation does not include any changes in the time frames for EIR appeals, which are well defined under the current rules.

### ***Mitigated Negative Declarations***

Preparation time for Mitigated Negative Declarations (MNDs) can vary widely based on the factors identified above, but it typically takes the Department 9-12 months to prepare a Preliminary MND (PMND), with an additional 20-30 days required for circulation, during which an appeal of the PMND to the Planning Commission can be filed. If no appeal is filed, the MND is finalized by the Department and the environmental review is complete for the purpose of approval consideration.

If a PMND is appealed to the Planning Commission a hearing is scheduled on a date 14-30 days after the filing. However, the Department has the ability to request that the item be continued in order to have adequate time to respond, and amend the PMND if warranted. Depending on the nature and content of the appeal, preparing a response often takes three or more months. If the appeal is denied and the MND is affirmed by the Planning Commission, the decision-making body may then adopt the MND and approve the proposed project.

Once an MND is adopted at the time of the first approval action on a project, it is then “ripe” for appeal to the Board of Supervisors. A substantial amount of time may elapse between completion of the MND and its adoption, depending on the nature of the project approvals and the timing of entitlement applications. An appeal to the Board of Supervisors must be filed within 30 days if a Notice of Determination is posted, but may be filed at any time up to six months after the final approval action if no Notice of Determination is filed. An appeal of a MND at the Board of Supervisors may be filed even if the PMND was not appealed to the Planning Commission.

To summarize, under the current rules, appeals of MNDs typically add at least 6 months to the project review process, and can also occur many months or years after the remainder of the environmental review process has been completed. For MNDs, the appeal process often results in an increase of 50% or more in the amount of time necessary to complete environmental review. Furthermore, the timelines during which an appeal may be filed are unclear, and without substantial research on the part of the appellant it is difficult to understand how and when to file an appeal to the Board of Supervisors for a MND.

Under the proposed legislation, appeals of MNDs would change as follows: an appeal of a MND would only be heard at the Board of Supervisors if the PMND had been appealed to the Planning Commission; and for projects that did not file a Notice of Determination, appeals would be required to occur following the first approval action. The proposed changes in Chapter 31 would

ensure a more robust appeal process for MNDs in which all administrative remedies would be pursued, and more clarity for appellants on the appropriate time for filing an appeal to the Board. The amount of time that the appeal process could occupy would not change, except for those projects that do not file a Notice of Determination, in which case the new provisions requiring appeal filings following the first approval action would alter the timing of appeal opportunities. During the time in which an appeal is pending, City approvals could occur but no physical modifications to the project site would be permitted.

#### **Neg Dec Case Study: 3151-3155 Scott Street King Edward II**

The attached case study of the 3151-3155 Scott Street affordable housing project illustrates the timing of a MND appeal relative to the environmental review process. The Board of Supervisors process would have been shortened by approximately one to two months for this project under the proposal. However, the project sponsor would have been able to pursue other approval actions during the time the appeal was pending, and might have been better to take advantage of state funding cycles for affordable housing.

### **CATEGORICAL EXEMPTIONS**

The Department prepares many types of environmental exemptions for many types of projects, ranging from simple reviews performed for projects approved at the Planning Information Center (PIC) to complicated Class 32 infill exemptions, and community plan exemptions (CPEs) for projects within adopted plan areas. There is no limit on the size of a project that qualifies for a Class 32 exemption or a CPE, so in many cases technical studies are necessary to determine eligibility for the exemption, driving the time frame for issuance of the exemption and resulting in typical preparation times of six months or more.

Projects below the size thresholds stated in CEQA are eligible for the Class 1 (existing facilities, including small additions and demolition of small structures) and/or Class 3 (new construction or conversion of small structures) exemptions. The Department documents the basis for issuance of an exemption through either a checklist form or a written certificate, depending on the size and nature of the proposed project. A Class 1 or Class 3 exemption issued at the PIC does not add any time to the overall project review process. If submittal of the project to the Department for review is necessary, the exemption process commonly adds time to the project review process. Completion of any analysis needed, typically historic and/or archeological review, can take six months or more.

An appeal to the Board of Supervisors of a categorical exemption may be filed after the first approval action on a project. In some cases, this approval does not occur until several months after the exemption has been issued. Appeals may be filed following any discretionary approval action, up to six months after the time of the decision (or 30 days from the time of decision if a Notice of Exemption was filed), so appeals of categorical exemptions may be filed years after the exemption was first issued (see Attachment B). Appeals of categorical exemptions must be heard within 30 days by the Board of Supervisors.

In summary, under the current rules it is not possible to categorize the proportion of time spent in appeals for categorical exemptions. For the smallest projects where an exemption is issued at the PIC, an appeal essentially comprises the entirety of the time that a project spends in the CEQA process. For exemptions that take six months or more to complete, the appeal process would represent up to an additional 30% of the project review time; however, this additional time may not occur until several months or years after the exemption has been issued, potentially after substantial investment by the project sponsor. As with MNDs, it is unclear to the public when appeals can be filed on categorical exemptions.

Under the proposed legislation, the actual time spent on the exemption process and appeals would not change, except that appeals would need to be filed after the first approval action rather than after any approval action. Therefore, it would be less likely that the Board of Supervisors would be hearing appeals months or even years after an exemption was issued, and there would not be an opportunity for multiple appeals of the same exemption. As a corollary, noticing of actions would improve, for those actions and/or hearings that are not currently noticed. As with MNDs, it would also be clearer to the public when appeals could be filed.

#### **Exemption Case Study: 2835 Broderick**

The project at 2835 Broderick Street, described in the attached case study, was declared exempt on July 3, 2011, 14 months after the application for environmental review was filed. The Planning Commission held a discretionary review (DR) hearing on the project in October 2011. A building permit was issued in April 2012, which was appealed to the Board of Permit Appeals. The categorical exemption was appealed to the Board of Supervisors on July 10, 2012, which delayed a Board of Appeals rehearing scheduled for July 25, 2012. The CEQA appeal was scheduled for September 4, 2012 and ultimately withdrawn, and the postponed Board of Permit Appeals rehearing occurred on September 19, 2012.

Under the proposed legislation, the exemption would have been appealable to the Board of Supervisors during the 20 days following the building permit issuance, and the appeal would have been heard approximately six months earlier than under the current conditions. Without the delay of the late Board of Supervisors appeal, the Board of Permit Appeals would have completed their hearing and rehearing process in July 2012 as scheduled.

#### **COST OF APPEALS**

An important consideration beyond the amount of time that appeals add to different types of projects is the monetary and time cost of appeals. On the Department's side, appeals at the Board of Supervisors are highly disruptive to the Department's work. Appeal filings themselves often have a "domino effect" because they are unpredictable and require concerted effort and redirection of staff time away from other projects, resulting in extended time frames for environmental review of multiple projects as the result of a single appeal. Preparation of appeal responses can occupy upwards of 80 hours of staff time, in addition to the time spent at briefings

and at appeal hearings themselves. This necessity can have severe ramifications for other project schedules.

As mentioned above, for EIR appeals, where the appeal timelines are clear, appeals can be incorporated into the overall project schedule and thereby considered and accounted for in a planner's workload. Conversely, exemption or MND appeals filed many months or years after project approval create substantial time conflicts for planners. More predictability in the timing of appeal filings would allow staff to plan for appeal time in their overall workloads.

In addition to Department time, appeals can be a very costly and confusing process for appellants. Members of the public with substantial resources and knowledge are able to file multiple appeals and/or appeals late in the process under current conditions. With more clarity about the process and consistent parameters around when and how many appeals can be filed, the accessibility of the CEQA appeal process for all members of the public would improve.

The most profound changes that would result from the proposed legislation would be in the predictability and clarity of the appeal process.

## **DESCRIPTION OF ATTACHMENTS**

In addition to this narrative description, the Department has prepared the following attachments to address Commissioner inquiries.

### **ATTACHMENT A: CASE STUDIES**

Attachment A provides a review of two projects: a negative declaration for a special use district and an exemption for the addition of a garage to a historic resource. These two cases illustrate how different aspects of the proposed Ordinance would have affected these two very different projects.

### **ATTACHMENT B: NUMBER OF CEQA APPEALS**

Attachment B lists CEQA appeals filed to the Clerk of the Board of Supervisors during 2010, 2011 and year-to-date 2012. This list is a draft compilation that demonstrates the breath of approvals that may be appealed to the Board and the outcomes that the Board has delivered during the past three years.

### **ATTACHMENT C: APPEAL TIME LINE**

Attachment C summarizes key dates that would be established under Version Two of the proposed Ordinance and compares these dates to existing dates that are either codified or existing City procedures. Version Two of the proposed Ordinance was introduced on 11/20/12 by Supervisor Wiener.

#### **ATTACHMENT D: CATALOG OF PRIMARY COMMENTS RECEIVED TO DATE**

Attachment D summarizes the key comments on the proposal received to date. This attachment provides the Department's response and identifies if the proposed Ordinance (Version Two) reflects any changes on this topic.

#### **ATTACHMENT E: COMPARISON TABLES**

Attachment E examines the basic components of CEQA appeals under existing procedures, the procedures proposed in the current Ordinance (Supervisor Wiener's proposal), and the procedures as considered by the Planning Commission in 2010 (Supervisor Alioto-Pier's proposal). Changes from existing procedures are shown in grey.

3151-3155 Scott Street (King Edward II)					
Event	Action	Date	Existing Appeal Procedures	Proposed Appeal Procedures	Comments
First Permit Filed	File Environmental, Zoning Map, and Planning Code Amend. Applications	June 2010	n/a	n/a	
CEQA Document	Preliminary Mitigated Neg. Dec. Issued	May 2011	n/a	n/a	
Misc. Action	CEQA document appealed to Planning Commission	June 2011	20-30 day review for potential appeals	No change	
"First Approval"	Commission upholds Mit. Neg Dec. and approves Conditional Use Authorization	July 14, 2011	n/a	n/a	
other actions-a	Conditional use Authorization appealed to Board of Supervisors	August 15, 2011	n/a	n/a	
other actions-b	Conditional Use Authorization Appeal hearing scheduled at Board of Supervisors	September 13, 2011	Under existing procedures, a CU hearing cannot be held if a CEQA appeal is filed.	Under the proposed procedures, approval actions could continue contingent upon a valid CEQA document.	
CEQA appeal to BOS file date	CEQA appeal filed	September 8, 2011	Under existing procedures, this appeal did not need to be filed at the same time as the CU appeal.	Under the proposal, the CEQA appeal would need to occur within 30 days of the CU approval.	This appeal was filed 5 days before the CU appeal hearing at the BOS. This caused the CU appeal hearing to be delayed until the CEQA appeal could be scheduled. Under the proposal, both appeals would have been scheduled and heard on September 13, 2011.
CEQA hearing scheduled	Joint CU & CEQA Hearing	October 4, 2011	Under existing procedures, the Board combined the appeal hearings into a joint hearing.	Under the proposal, the Board could have considered the CEQA concerns during their consideration of the SUD as this approval requires Board action.	The Board unanimously upheld the CEQA document. The Board upheld the CU by a 10-1 vote.
<p><b>Project Summary:</b> This project involves the conversion a three-story over- basement, 29-room hotel ("Edward II Inn &amp; Suites") to 25 units of group housing with approximately 1,856 sf of supportive services/community space and associated building alterations. The project would include interior reconfiguration of the building for the proposed use, and minor exterior work including repainting, window replacement, and façade enhancements. The project would include the creation of the "Lombard and Scott Street Affordable Group Housing Special Use District".</p>					
<p><b>Overall Comments:</b> No City action, including funding, could occur while the CEQA review was underway or during the appeal process. Moreover, the project was unable to take advantage of state affordable housing funding cycles and the project was further delayed. The proposed revisions to the process would not curtail any appeal opportunities on this project, but they would have made the Board hearing process more efficient and would have allowed the project sponsor to continue seeking approvals while the appeal was pending, which might have enabled applications for state funding in 2011.</p>					

2853 Broderick						
Event	Action	Date	Existing Procedures	Proposed Procedures	Comments	
First Permit Filed	Sought Variance, Needed HRER to determine historic significance	5/25/2010		No change proposed.	The project is a code-complying project, however, this building is a historic resource and needed an HRER to determine if the project would impair the resource.	
CEQA Document	Exemption	7/3/2011	No notice would have been required.	Under the proposal, notice would be required in conjunction with the DR hearing that this approval action triggered the potential for CEQA appeals.	This is a code-complying project that would be ministerial in many California cities and therefore not subject to CEQA. In SF, this project can be brought before the Commission to see if extraordinary discretion should be used to disapprove or alter the project. The approval action is discretionary and therefore CEQA is required.	
Misc. Action-A	HRER	1/14/2011	This review is required for this project and takes approximately 6 months to complete.	No change proposed.	The HRER determined that raising the building three feet and adding a garage would not negatively affect the resource.	
	A discretionary review request was filed.	7/1/2011		No change proposed.	In this case one neighbor objected to the project and filed a request for DR before the Commission. Staff reviewed the DR requestor's complaint and determined that the DR request should be treated as an "abbreviated DR" as it did not merit full staff review.	
Misc. Action-B	Commission Approves the project	10/6/2011		No change proposed.	The Commission agreed with staff and found no extraordinary circumstances and approved the project.	
"First Approval"	Department of Building Inspection Issues a Building Permit	4/17/2012				
other actions-a	Board of Appeals suspends the Building Permit due to an appeal filed on the permit	5/2/2012	Under current procedures, code complying projects can be brought to three hearings: DR hearing, Building Permit appeal, and CEQA appeal.	No change proposed.		
other actions-b	Board of Appeals hearing on the Building Permit: Board unanimously upholds permit and denies appeal.	6/20/2012		No change proposed.		
other actions-c	Neighbor files a rehearing request.			No change proposed.		

2853 Broderick						
	Event	Action	Date	Existing Procedures	Proposed Procedures	Comments
12	other actions-d	Board of Appeals re-hearing is scheduled.	7/25/2012	Under current procedures, all actions related to a project are halted if a CEQA appeal is filed.	Under the proposal, the BoA hearing on the building permit could proceed simultaneously with the CEQA appeal. The building permit could be approved but it would be contingent upon the BOS upholding the CEQA document.	The hearing on the appeal of the Building Permit was scheduled for consideration by the Board of Appeals on 7/25/12 but this hearing is put on hold so that the Board of Supervisors can consider the CEQA appeal.
13	CEQA appeal to BOS file date	Seven neighbors file a CEQA appeal.	7/10/2012		Under the proposal, the notice at the time of the DR hearing would have informed the neighbors of the ability to appeal CEQA and started a 30-day clock that would have required this appeal to be filed by summer of 2011.	The proposal would not circumvent the rights to appeal but would better inform the public of appeal rights and in this case would have pushed the CEQA appeal a full year earlier in the process.
14	CEQA hearing scheduled	Clerk schedules CEQA appeal hearing	7/19/2012	Under current procedures, an appeal of an exemption shall be filed in 30 days if a Notice of Exemption (NOE) was filed, or 6 months if no NOE.	Under proposed procedures, an appeal of an exemption shall be filed within 20 days of first approval action provided there was notice.	In this case, due to the Board of Supervisors summer break the BOS hearing is delayed by one month.
15	CEQA Hearing	CEQA appeal is rejected.	9/4/2012	Under current procedures, even when an appeal is withdrawn the	No change proposed.	In this case, the appellants withdrew the CEQA appeal.
16	other actions-e	Board of Appeals re-hearing on the building permit: permit is again upheld and the appeal denied, unanimously with one absent commissioner.	9/19/2012	Under current procedures, a rehearing request is the last venue for local appeal outside of a lawsuit.	No change proposed.	
17		<b>Project Summary:</b> The proposal involves raising the building by approximately three (3) feet to insert a garage at the ground floor level, expanding the ground floor level towards the rear of the building, and creating a new curb cut. The project would add approximately 680 square feet (sf) of residential space to the existing 3,774-sf building resulting in 4,454 total sf.				
18		<b>Project Overall Comments:</b> This Code-compliant project required over a year to review and was then subject to more than one year with of appeals, including a CEQA appeal. While all of the appeals avenues would remain under the proposal, the timing would be different. Under the proposed legislation, the exemption would have been appealable to the Board of Supervisors during the 20 days following the first approval action, in this case in April 2012. Without the delay of the Board of Supervisors appeal at the end of the process, the Board of Permit Appeals would have completed their hearing and rehearing process without delay, in July 2012 as scheduled.				
19						

**DRAFT: Work in Progress**

Year	Address	Validity	Appeal Type	Result	Exemption Date	Hearing Date	No. of days between Exemptions & Appeal Hearing
2010	10 Bernal Heights	Yes, valid.	CEQA-Exemption	Affirm Exemption		11/16/2010	
2010	136 Ord Street	Yes, valid.	CEQA-Exemption	Affirm Exemption		1/5/2011	
2010	1269 Lombard Ave	Yes, valid.	CEQA-Exemption	Affirm Exemption	3/11/2010	2/1/2011	327
2010	2462 27th Avenue	Yes, valid.	CEQA-Exemption	Affirm Exemption	11/19/2009	4/27/2010	159
2010	900 Folsom St	yes, valid.	CEQA-EIR	appeal withdrawn	n/a	7/13/2010	
2010	260 5th Street	Yes, valid.	CEQA-EIR	appeal withdrawn	n/a	7/13/2010	
2010	Candelstick/Bayview	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	7/13/2010	
2010	10 Lundys Lane	Yes, valid.	CEQA-Exemption	Affirm Exemption		11/1/2011	
2010	100 32nd Ave	Yes, valid.	CEQA-Exemption	Rescind Exemption	4/17/2009	7/13/2010	452
2010	1111 California Street	Yes, valid.	CEQA-Exemption	Affirm Exemption		5/4/2010	
2010	424 Francisco Street	Yes, valid.	CEQA-Exemption	Reverse Exemption		5/12/2010	
2010	555 Washington	Yes, valid.	CEQA-EIR	Reverse EIR	n/a	4/20/2010	
2010	MTA Transit Service Reductions for Fiscal Embergency	Yes, valid.	CEQA-Exemption	Affirm EIR	n/a	4/13/2010	
2010	70 Goldmine Dr	Yes, valid.	CEQA-Exemption	permit withdrawn	n/a	n/a	
2010	935-965 Market St (City Place)	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	9/7/2010	
2010	222 2nd Street	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	9/28/2010	
2011	795 Foerster Street	Yes, valid.	CEQA-Exemption	Affirm Exemption	6/8/2009	3/22/2011	652
2011	Calaveras Dam Replacement	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	3/15/2011	
2011	Park Merced	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	3/29/2011	
2011	350 Mission	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	3/29/2011	
2011	1635 Grant Ave	Yes, valid.	CEQA-Exemption	Affirm Exemption		4/12/2011	
2011	AT&T Lightspeed	Yes, valid.	CEQA-Exemption	Affirm Exemption	2/22/2011	4/26/2011	63
2011	1787 Union Street	Yes, valid.	CEQA-Exemption	Affirm Exemption		5/24/2011	
2011	701 Lombard	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	6/7/2011	
2011	Treasure Island	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	6/7/2011	
2011	800 Presidio	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	6/21/2011	
2011	1945 Hyde Street	Yes, valid.	CEQA-Exemption	Affirm Exemption	1/27/2011	8/2/2011	187
2011	660-670 4th Street	Yes, valid.	CEQA-Exemption	Affirm Exemption		9/6/2011	
2011	1171 Lombard	Yes, valid.	CEQA-GRE	Reverse Exemption	8/16/2011	10/4/2011	49
2011	1338 Filbert	Not timely.	CEQA-Exemption	n/a			
2011	Mobile Food Facilities Ordinance	Not valid.	CEQA-Exemption	n/a			
2011	Housing Element	Yes, valid.	CEQA-EIR	Affirm EIR	n/a	5/10/2011	
2011	3151-3155 Scott Street (King Edward II)	Yes, valid.	Neg Dec	Affirm Neg Dec	n/a		
2011	Laguna Honda Reservoir	Not timely.	CEQA-Exemption	n/a	n/a		
2012	601 Dolores	yes, valid.	CEQA-Exemption	appeal withdrawn			
2012	2853-2857 Broderick St	yes, valid.	CEQA-Exemption	appeal withdrawn	7/3/2011	9/4/2012	
2012	Oak & Fell	yes, valid.	CEQA-Exemption	pending	n/a		
2012	1100 Lombard	Yes, valid.	CEQA-Exemption	appeal withdrawn			
2012	MTA Order No. 4005		CEQA-Exemption		n/a		
2012	1111 California Street	Not timely.	CEQA-Exemption	n/a	n/a		
2012	401 Van Ness Avenue	Not timely.	CEQA-Exemption	n/a		n/a	
2012	125 Crown Terrace	Yes, valid.	CEQA-Exemption	pending		6/12/2012	
2012	8 Washington	Yes, valid.	CEQA-EIR	Affirm EIR			
2012	Beach Chalet	Yes, valid.	CEQA-EIR	Affirm EIR		7/10/2012	
2012	CPMC EIR	Yes, valid.	CEQA-EIR	pending			
2012	SF MOMA	Yes, valid.	CEQA-EIR	Affirm EIR		1/10/2012	
2012	Transit Center District Plan	Yes, valid.	CEQA-EIR	Affirm EIR		7/10/2012	
2012	America's Cup	Yes, valid.	CEQA-EIR	Affirm EIR		1/10/2012	

Event			
No.	Event	Timing	Is this new?
1	Notice of Intent to Adopt Neg Dec	20-30 days, depending on State requirements	No
2	Commission hearing on Neg Dec	30 days after close of appeal period	No
3	Comment period for an EIR	30-60 days, except under unusual circumstances	No
4	Filing of CEQA Appeal	within either 20-30 days of Neg Dec /EIR adoption and first approval, depending on State requirements or within 20 days of issuance of exemption and first approval.	Yes, existing procedures allow for the filing of appeal after of CEQA adoption/issuance and before the expiration date of the FINAL approval.
4	Clerk to schedule the appeal hearing	No less than 30 and no more than 45 days	Yes, existing procedures require an appeal to be scheduled within 30 days.
5	Planning to provide the Clerk with interested parties	20 days prior to scheduled appeal hearing	No
6	Clerk to provide notice by mail	no less than 14 days prior to the scheduled hearing	No
7	Public and Project sponsors may submit written materials	no later than noon, 11 days prior to scheduled hearing	Yes, existing procedures require all parties to submit materials 8 days prior to the hearing.
8	Planning Department to provide response to the appeal	no later than noon, 8 days prior to scheduled hearing	No
9	Board shall act on an appeal	within 30 days of scheduled hearing, unless the Full Board is not present. If there are not at least 3 hearings during the 30 days then the Board shall act within 40 days of the hearing. The hearing shall not be postponed more than 90 days.	No

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
1	Provide adequate opportunity for all parties to provide written materials.	While the time is limited it is acceptable to the Department as a trade-off to well-defined procedures.	No	SF Planning Department, HPC
2	Increase consistency/specificity of "Date of Decision."	Can't be done in all occasions, but more specificity where possible would help.	Yes; in 11/20 version	SF Planning Department, HPC, UC Hastings, SF Architectural Heritage
3	Lengthen the appeal window	The standard 20-day appeal window could be expanded to 30 days.	No	HPC
4	Amend the definition of "historic resource" that would require notice such that any HR found in any adopted survey would require notice.	We believe that the draft proposal does provide such notice. The reference to "Public Resources Code" does not change this. Clarifications can be made such that this is clear to everyone.	Yes; in 11/20 version	HPC, SF Architectural Heritage, Coalition for Adequate Review

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
5	Eliminating a separate appeal hearing could constrain the Board's ability to act.	The separate appeal process is not required by law and would not prevent the Board from considering the CEQA document.	No	Center for Biological Diversity
6	Narrow definition of historical resources may conflict with state law.	Ordinance defines resource only for purpose of local noticing provision, not for purpose of CEQA analysis. Notice for exemptions not required under state law so there is no conflict with CEQA.	No	Center for Biological Diversity
7	Timeline for submittals would require that written materials be provided before notice is given-- impossible for public involvement.	This is true. Modifications should be made to address this point. Need to align notice to occur prior to submittal due date. Substitute legislation has hearing 30-45 days from last appeal date; notification list provided 20 days before hearing; noticing 14 days before hearing.	Yes; in 11/20 version	Center for Biological Diversity
8	The proposed Ordinance would "deem valid" prior CEQA approval actions because if the Board affirms the CEQA document the following actions would start the clock for law suits: filing of notices for exemptions or notices of decisions.	Prior approval actions based on environmental document would be valid while appeal is pending, but invalidated if environmental document is revised on appeal. Change made in 11/20 Substitute Legislation to clarify that a project is not finally approved by the City until the appeal period expires or an appealed document is upheld. Already in Code at Section 31.16(e). New language just adds this clarification, that if the Board affirms a CEQA determination, prior approvals are valid.	Yes; in 11/20 version	Center for Biological Diversity, Lippe Gaffney Wagner, Sierra Club

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
9	The proposed Ordinance would require appellants to file two appeals for review of a Neg Dec	Yes, but no appeal to BOS would be needed if PC rejects the Neg Dec.	No	Center for Biological Diversity, S. Flashman, Coalition for Adequate Review
10	Notice should be provided for all exemptions, both on the web and to interested parties.	Can't ensure notice of all exemptions.	No	Center for Biological Diversity
11	How does ERO determine if a HR is significant based upon "preponderance of the evidence" per Public Resources Code or lower, "substantial evidence" per proposed ordinance.	Ordinance defines resource only for purpose of local noticing provision, not for purpose of CEQA analysis. Change made in 11/20 substitute legislation clarifies issue.	Yes; in 11/20 version	Center for Biological Diversity
12	Allows email notification to substitute for mailed notice whenever the City official has an email address for the party.	Ordinance expressly states that email may be used only if CEQA doesn't require mailed notice.	No	Center for Biological Diversity
13	Does the "community plan exemption" reference to "streamlining procedures" refer to SB 226 (partial exemption) or to department practice of "tiering" analysis (not an exemption).	These are not germane to ordinance, and Department does not engage in tiering via CPE.	No	Center for Biological Diversity

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
14	Removing "fair argument" standard creases confusion about the City's standard for nag Dec or EIR. UC Hastings believes that this change is possible an unlawful attempt to change the legal standards for when an EIR or Nag Dec should be completed. Concern is from Section 31.11(g) which says Commission finding would be based on "substantial evidence"	The proposal is not trying to change legal standard in state law. Under state law there needs to be substantial evidence to support the fair argument.	No	Center for Biological Diversity & UC Hastings; Lippe Gaffney Wagner, Sierra Club, Coalition for Adequate Review
15	Public comment period on a draft EIR could be extended only under "usual circumstances" instead of the current threshold of projects with "exceptional size or complexity".	"Unusual circumstances" is the language from state statues. Ordinance language revision is for consistency with CEQA.	No	UC Hastings, Coalition for Adequate Review
16	Exemptions which are not noticed are only available for appeal for 20-30 days.	CEQA exemption notices would be incorporated into notification of entitlements. In circumstances where there is no notification of entitlements and no public hearing, there would be posting by the Planning Department and the appeal period would be 20 days. If such notice is not posted, then the appeal period would be extended to 30 days.	Perhaps lengthen appeal period if no notice.	UC Hastings

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
17	State law requires NOD to be filed within 5 days of approval. The proposed Ordinance is not specific on when NOD is required.	Local law does not need to nor should it reproduce State Law. If further information would be helpful, the Department could produce an informational brochure to assist the public.	No	UC Hastings
18	New appeal requirements too onerous: 1) signed statement, 2) substantive appeal, 3) approval action, 4) fee. Also, from SF Tomorrow, written authorization, Certification Motion, and written materials supporting appeal too onerous for various reasons.	The requirements are fundamental and should be provided by appellants.	No	UC Hastings; SF Tomorrow
19	Pending appeals should halt "approval actions" not just "activities that would physically change the environment". Otherwise as the approvals stack up, the BOS may not seriously consider the CEQA appeal.	Change made in 11/20 Substitute Ordinance to clarify that approvals can continue during pendency of the appeal for projects that require multiple approvals, but, project sponsors do so at risk, because all approvals, including those taken during pendency of an appeal are voided if the Board does not affirm the CEQA document.	Yes; in 11/20 version	UC Hastings, Coalition for Adequate Review

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
20	Shifts burden for BOS findings from reasons why EIR should be affirmed to reasons why EIR should be reversed.	Ordinance is consistent with CEQA.	No	UC Hastings
21	Currently, the BOS should reject the EIR if it does not comply with CEQA or is not adequate, accurate and correct. The proposal would change this to if adequate, accurate, and objective or reflects independent analysis.	Language consistent with state law	No	UC Hastings
22	Remanded decisions are limited in scope. Currently only remanded issues can be considered. Under the proposal only the portions of the EIR which have been revised can be considered.	Existing language refers to "new information" as being subject to appeals but this seems redundant since "new information" is a revision. Language is consistent with State law.	No	UC Hastings, Lippe Gaffney Wagner, S. Flashman, Coalition for Adequate Review

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
23	The BOS as the "decision making body" would result in only appeals before the Board Committee this is not sufficient.	The BOS committee only "refers" an item to the BOS. The whole BOS would still need to act on the issue. This may just limit the public comment to the Committee at the Board's discretion; it would not grant the Committee final approval authority.	No	UC Hastings
24	Planning Commission should not certify EIRs for projects where it doesn't have decision authority. Amend Sec 31.15 to address this	Larger issue than this ordinance. There is no legal problem with the current procedure of the Planning Commission certifying all EIRs.	No	Lippe Gaffney Wagner
25	Notice of appeal is provided 10 days before hearing, but written materials have to be submitted 11 days before hearing	Should be adjusted. Notice could be provided as soon as hearing date is scheduled. See Item 7.	Yes; in 11/20 version	Lippe Gaffney Wagner
26	Materials submitted after deadline not distributed but they can be considered later in court.	Onus on appellant to distribute materials after deadline, not on Clerk of Board.	No	Lippe Gaffney Wagner
27	Filing of appeal on EIR limited to those who commented on Draft EIR. All comments through close of final hearing are relevant under statute.	Per CEQA statute. Similar language already in 31.16(a). Technically administrative remedies are not exhausted if comment was not raised on Draft EIR.	No	Lippe Gaffney Wagner, Coalition for Adequate Review

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
28	Limiting appeal only to portions of ND/EIR that have been revised problematic because 1) All comments through close of final hearing are relevant under statute and 2) project itself could be revised.	Per CEQA statute. Consistent with current Section 31.16. As with Item 22, "new issues" falls within the umbrella of "revisions".	No	Lippe Gaffney Wagner
29	CEQA requires EIRs to be appealable to the elected body. Therefore a separate appeal hearing is required even when the BOS is the deciding body.	There would still be appeal hearing at Board it would just be done concurrently with approval hearing. This is what's been done in practice to make hearing more efficient, avoid repeated comments, not put onus on speakers/appellants to figure out what is CEQA issue and what is project issue.	No	Lippe Gaffney Wagner, Coalition for Adequate Review
30	Appellants should not be required to submit a copy of the CEQA document in order to appeal.	This is consistent with current Clerk of the Board requirements.	No	Lippe Gaffney Wagner, Coalition for Adequate Review
31	Nothing specifies that the HPC should review CEQA and NEPA documents that may impact historic resources.	The City Charter already requires that the HPC have the opportunity to comment on environmental documents for projects that may impact historic resources.	No	SF Architectural Heritage, Sierra Club

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
32	The proposal removes the public's right to appeal CEQA determinations if the BOS is the CEQA decision-making body.	State CEQA law does not require an appeal process if the CEQA decision-making body is an elected body such as the BOS. Board can choose not to affirm CEQA determination/document which would be same consideration as appeal and have same outcome.	No	SF Architectural Heritage, Sierra Club
33	Public notification for exemptions and "first approval actions" are at time discretionary, therefore there is no certainty as to when time limits for appeals are triggered.	The proposal increases notification processes. Under the proposal, any CEQA document which was associated with a hearing a CEQA notification would be sent informing the public of the opportunity for appeal-- this is not currently provided. When a notice isn't provided there would be a 30-day window. When notice is required but not properly provided, the current timelines for appeals would apply.	No	SF Architectural Heritage
34	The ability to appeal should be preserved until the final project-related approval.	If the project is fully described, there is no reason why the information underlying the CEQA document would change through later permits. If the project is altered through later permits, a new CEQA document would be required and this new document would reopen the project to CEQA appeals.	No	Sierra Club

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
35	Appeals cannot be limited to those who have submitted comments during the comment period or at public hearing.	This is consistent with State law regarding exhaustion of administrative remedies.	No	Sierra Club, S. Flashman
36	Low-income residents will be affected as they may not be on department lists for notification and may need additional time to review the documents.	The proposal adds CEQA notification to existing notification processes and does not curtail existing notification for tenants. For the Planning Department, most of those notices are provided to those who live or own property within a certain distance from the proposed project.	No	A. Goodman
37	Notification of a Discretionary Review Hearing before the PC should include notice of CEQA action and PC action on the DR should begin the clock for the CEQA appeal.	DR is not considered an "approval" action. Instead, a DR is a potential "disapproval" from the Commission prior to the granting of the building permit. The building permit is the underlying approval.	No	SFHAC

Item No.	Requested Amendment or Concern Raised	Department Response	Has Supervisor Wiener proposed a change in response?	Requested by
38	Community plan exemptions to allow reliance on prior environmental documents is not consistent with CEQA and may be subject to legal challenge. Any agency determination of exemption is subject to legal challenge.	The proposed language is consistent with state law.	No	Coalition for Adequate Review
39	31.08(a), (b), and (c) omit the existing requirement to post a list of "categorically exempt" projects.	List remains available to the public and any changes require public hearing.	No	Coalition for Adequate Review
40	31.08 (d) excuses the ERO from providing a list of categorical exemptions to other agencies and inappropriately delegates authority.	The ERO may delegate authority to the Planning Department and other agencies. This delegation is current practice.	No	Coalition for Adequate Review
41	Limiting CEQA appeals to "first approval" would allow later approvals without CEQA review.	While appeals would be filed only on the "first approval", if later permits exceeded the bounds of the initial CEQA review, additional CEQA review would be required. CEQA review covers the whole of the project regardless of the number of approval actions.	No	Coalition for Adequate Review
42	31.10(a) eliminates shadow study analysis from the initial study.	Comment is not accurate; no change to existing requirements is proposed.	No	Coalition for Adequate Review
43	Removes public notice for "Intent to Adopt a Negative Declaration"	No change to existing requirements is proposed.	No	Coalition for Adequate Review

<b>Item No.</b>	<b>Requested Amendment or Concern Raised</b>	<b>Department Response</b>	<b>Has Supervisor Wiener proposed a change in response?</b>	<b>Requested by</b>
44	Eliminates existing requirements for a public hearing when there is a notice of intent to adopt a neg dec and eliminates notice on neg decs (31.11(d) and (e).	No change to existing requirements is proposed.	No	Coalition for Adequate Review
45	Sec 31.12 misstates legal standard for when an EIR is required.	Comment is mistaken; Sec 31.12 does not establish legal standard.	No.	Coalition for Adequate Review
46	Eliminates provisions for Notice of Availability of a draft EIR.	No change to existing requirements is proposed.	No.	Coalition for Adequate Review
47	Eliminates notice for "city-sponsored projects" of 5 acres or greater.	This is consistent with existing practice for plan areas and refers only to mailed notices to individuals, not overall noticing.	No.	Coalition for Adequate Review
48	Removes the requirement for providing the public with copies of draft EIRs	Requirements are clarified but accessibility of EIRs to the public is unchanged; electronic availability is encouraged.	No	Coalition for Adequate Review
49	Sec. 31.16(c) over-burdens appellants.	This Section is consistent with the existing requirements for submitting valid appeals as established by the Clerk of the Board.	No.	Coalition for Adequate Review
50	Sec 31.16(d), 31.16(c), and 31.16(f) impose unlawful requirements on appeals of EIRS and neg decs	Ordinance codifies existing practice and makes requirements clearer.	No	Coalition for Adequate Review

The Way It Is Now:

Environmental Notice & Appeal Provisions – Existing Procedures			
	Exemption	Neg Dec	EIR
<b>Notice</b>	None required for most. Cat ex as defined in 31.08 (f) requires notice for historic resources, demolitions or class 31 or 32 exemptions.)	Site Posting. Mailed notice to interested parties; approving entities; owners w/in 300' of site & adjacent occupants. Newspaper advertisement. Notice of determination may be filed after approval of project	DEIR: Site Posting. Mailed notice to interested parties; approving entities; agencies w/expertise; owners w/in 300' of site. Newspaper advertisement. Final EIR: Mailed notice to all C&R document recipients (commenters on DEIR, interested parties, etc).
<b>Appeal to CPC</b>	No appeal	Allowed	Not necessary; Planning Commission certifies Final EIR
<b>Appeal to BOS</b>	Allowed	Allowed	Allowed
<b>Deadline for Filing Appeal to BOS - if "ripe" &amp; "timely"</b>	If Building Permit: "ripe" after first approval / "timely" until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal . If CU: "ripe" after Commission hearing until permit issued & "timely" until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal.	If Building Permit: "ripe" after first approval / "timely" until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal . If CU: "ripe" after Commission hearing until permit issued & "timely" until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal.	20 days after CPC certification of FEIR
<b>Who Can Appeal to BOS</b>	Any person	Any person	Any person who commented prior to certification
<b>Deadline for BOS Appeal Hearing</b>	Clerk practice is to schedule hearing within 45 days after appeal filing	Clerk practice is to schedule hearing within 45 days after appeal filing	30 days after appeal filing

The Way It Would Be Under Proposed Ordinance 2012: \* Note: only procedures that would change are detailed below. grey box and underlined text.

Environmental Appeal Provisions – Proposed Ordinance 2012			
	Exemption	Neg Dec	EIR
Notice	<p><u>Requires that notice be given for demolitions and 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**.</u></p> <p><u>Further provides 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.</u></p>	No change**.	No change**.
Appeal to CPC	No change.	<u>Appeal to the Planning Commission is required in order to enable subsequent appeal to the Board of Supervisors.</u>	No change.
Appeal to BOS	No change**.	No change**.	No change.
Deadline for Filing Appeal to BOS	<p><u>Within one of these periods as applicable:</u></p> <p><u>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;</u></p> <p><u>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</u></p> <p><u>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.</u></p>	Within 20 days of the adoption of the negative declaration approving the project	No change.
Who Can Appeal to BOS	<u>Any person, or any person who objected to exemption..</u>	<u>Any person who appealed PND or commented at PND appeal hearing before the Planning Commission.</u>	No change.
Deadline for BOS Appeal Hearing	<u>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.</u>	<u>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.</u>	No change.

**\*\*Note: In addition to the above changes there are two changes which apply to all types of CEQA documents.**

1. Consistent with the recommendations of the PC and the HPC in 2010, this proposal would codify the existing procedures for notification of City-sponsored projects that are five (5) acres or more for all types of CEQA documents. The proposal would to delete the requirement to mail notice to owners within 300 feet of all exterior boundaries of the project area of (1) a notice of intent to adopt a neg dec, or (2) a notice of completion of a draft EIR, for projects that either are citywide in scope or where the total area of land that is part of the project is 5 acres or more.
2. 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.

The Way It Would Have Been Under Proposal Reviewed by PC & HPC in 2010: \* Note: only procedures that would change are detailed below. grey box and underlined text.

<b>Environmental Appeal Provisions – Proposed Ordinance 2010</b>			
	<b>Exemption</b>	<b>Neg Dec</b>	<b>EIR</b>
<b>Notice</b>	No change.	No change.	No change.
<b>Appeal to CPC</b>	No change.	No change.	No change.
<b>Appeal to BOS</b>	No change.	<u>Appeal to the Planning Commission is required in order to enable subsequent appeal to the Board of Supervisors.</u>	No change.
<b>Deadline for Filing Appeal to BOS</b>	<u>10 days after first project approval or permit issuance</u>	<u>20 days after PC approval /adoption of FND</u>	No change.
<b>Who Can Appeal to BOS</b>	<u>Any person, or any person who objected to exemption at hearing on related approval action, if applicable.</u>	<u>Any person who appealed PND or commented at PND appeal hearing</u>	No change.
<b>Deadline for BOS Appeal Hearing</b>	<u>Board decision within 45 days after appeal filing</u>	<u>Board decision within 45 days after appeal filing</u>	No change.

## LEGISLATIVE DIGEST

[CEQA Procedures]

**Ordinance amending 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, including without limitation: codifying procedures for appeals of exemptions and negative declarations; providing for the Board to make the final CEQA decision on projects requiring Board legislative action, negating the need to file formal CEQA appeals; revising noticing procedures for environmental impact reports and negative declarations for plan area projects exceeding five acres; expanding noticing requirements for certain exempt projects; and clarifying existing noticing requirements for exempt projects.**

### Existing Law

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

### Amendments to Current Law

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

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

## FILE NO.

- 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 for which notice is required 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 determinations on its web page.
  - Provides in Section 31.08(f) that projects that rely on an exemption determination and for which the first approval of the project occurs 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 approval of the project 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

environmental impact reports (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, in which case, the Board must affirm the CEQA determination of the Planning Department or Planning Commission before the project will be finally approved by the City. 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. The Board will be the CEQA decision-making body for projects that require the Board's approval to be implemented. If 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 within specified periods: (1) for an EIR, within 20 days of an EIR certification and first 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, within 20 days of the granting of the first appealable entitlement; (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 of the 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 of the project.
  - To file an appeal, one must pay a fee, and the person filing the appeal must have submitted comments during the public comment period on the draft EIR if

the appeal is of an EIR; if the appeal pertains to a negative declaration, the negative declaration must have been appealed to the Planning Commission first. The grounds for the appeal and all written materials in support of the appeal must be filed with the appeal.

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

FILE NO.

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

### Background Information

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

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

Since the appeal requirement to the Board under CEQA only applies where Planning renders the final CEQA decision, the ordinance provides that where the Board must approve a project, the Board will become the final decision-maker for CEQA purposes, thereby negating the need under CEQA for a formal appeal process. Instead of requiring the public to file an appeal, the public may raise CEQA issues as part of Board hearings on the project and the Board must affirm the earlier CEQA determination of Planning as part of its approval of the project.

1 [CEQA Procedures]

2

3 **Ordinance amending Administrative Code Chapter 31 to reflect revisions in the**

4 **California Environmental Quality Act and to update and clarify certain procedures**

5 **provided for in Chapter 31, including without limitation: codifying procedures for**

6 **appeals of exemptions and negative declarations; providing for the Board to make the**

7 **final CEQA decision on projects requiring Board legislative action, negating the need**

8 **to file formal CEQA appeals; revising noticing procedures for environmental impact**

9 **reports and negative declarations for plan area projects exceeding five acres;**

10 **expanding noticing requirements for certain exempt projects; and clarifying existing**

11 **noticing requirements for exempt projects.**

12 NOTE: Additions are *single-underline italics Times New Roman*;

13 deletions are ~~*strike-through italics Times New Roman*~~.

14 Board amendment additions are double-underlined;

15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. The Planning Department has determined that the actions contemplated in

18 this ordinance comply with the California Environmental Quality Act (California Public

19 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the

20 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

21 Section 2. The San Francisco Administrative Code Chapter 31 is hereby amended by

22 amending Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, and

23 31.15, to read as follows:

24 **SEC. 31.04. RESPONSIBILITY.**

25 Supervisor Wiener  
**BOARD OF SUPERVISORS**

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

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

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

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

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

25 Supervisor Wiener  
BOARD OF SUPERVISORS

Page 2  
11/30/2012

originated at : n:\legana\as2012\1200175\00809330.doc  
revised on: 11/30/2012 – i:\board of supervisors\legislation\121019 ceqa appeal reform  
2012\ordinance\ceqa\_procedures\_v2.doc

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

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

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

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

10 (a) An Office of Environmental Review is hereby created in the Planning  
11 Department, which shall be responsible, acting through the Director of Planning, for the  
12 administration of this Chapter 31 of those actions assigned to the Planning Department by Section  
13 31.04.

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

18 (c) In addition to the powers and duties conferred below, the Environmental Review  
19 Officer may, upon delegation by the Planning Commission as to specific projects, take  
20 testimony at supplemental public hearings on draft environmental impact reports, in addition  
21 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section  
22 31.14 of this Chapter, and shall report to, and make all such testimony available to, the  
23 Planning Commission at a public hearing.

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

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

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

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

23 (h) Adoption and/or revision of administrative regulations to implement CEQA shall  
24 be by resolution of the Planning Commission after a public hearing. The Environmental

1 Review Officer may adopt necessary forms, checklists and processing guidelines to  
2 implement CEQA and this Chapter 31 without a public hearing.

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

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

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

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

13 CEQA provides that certain kinds of projects may be subject to CEQA. Some of these  
14 projects may be excluded or *categorieslly* exempt from CEQA. If not excluded or *categorieslly*  
15 exempt, CEQA provides a process whereby an initial study is completed, then a determination  
16 is made as to whether a negative declaration, mitigated negative declaration, or an  
17 environmental impact report ("EIR") should be prepared. In accordance with the requirements  
18 of CEQA and as specified herein, the Planning Commission and/or the Environmental Review  
19 Officer shall determine when CEQA applies to a project, when the project is excluded or  
20 exempt, or when a negative declaration, mitigated negative declaration, or environmental impact  
21 report is required.

22 **SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.**

23 (a) CEQA provides that certain ~~classes~~ kinds of projects are exempt from CEQA either  
24 because the project is exempt by statute ("statutory exemption"); the project is in a class of projects

1 that generally do not have a significant effect on the environment ~~and therefore are categorically~~  
2 ~~exempt from CEQA ("categorical exemption"); CEQA streamlining procedures allow reliance on a~~  
3 ~~prior environmental document prepared on a zoning or planning level decision, for example, as~~  
4 ~~provided in community plan areas and for specified urban infill projects ("community plan~~  
5 ~~exemption"); or the activity is covered under the general rule that CEQA applies only to projects that~~  
6 ~~have the potential for causing a significant effect on the environment, thus, where it can be seen with~~  
7 ~~certainty that there is no possibility that the activity in question may have a significant effect on the~~  
8 ~~environment, the activity is not subject to CEQA ("general rule exclusion"). Unless otherwise~~  
9 ~~specifically stated, reference in this Chapter 31 to "exemptions" or "exempt from CEQA" or an~~  
10 ~~"exemption determination" shall collectively refer to statutory exemptions, categorical exemptions,~~  
11 ~~community plan exemptions and general rule exclusions.~~

12 (b) For categorical exemptions:

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

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

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

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

11           ~~(e)~~(d) The Environmental Review Officer shall advise other departments of ~~the~~  
12 ~~categorical~~ exemptions. The Environmental Review Officer may delegate the determination  
13 whether a project is *categorically* exempt from CEQA to other departments, provided that other  
14 departments shall consult with the Environmental Review Officer regarding the application of  
15 ~~the categorical~~ exemptions, and provided further that the Environmental Review Officer shall  
16 be responsible for all determinations so delegated to other departments. When the Planning  
17 Department or other City department determines that a project is exempt from CEQA, the issuance of  
18 the exemption determination shall be considered an exemption determination by the Planning  
19 Department.

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

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

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

21                   ~~(g)(f)~~ When the Planning Department or other City department provides notice of a public  
22 hearing on a proposed approval of a project that it has determined to be exempt from CEQA and the  
23 proposed approval is the first approval of the project, which will be appealable to the Board of  
24 Supervisors under Section 31.16 after the approval, the notice shall (1) inform the public of the

1 exemption determination and how the public may obtain a copy of the exemption determination, (2)  
2 inform the public that it may appeal the CEQA exemption determination to the Board of Supervisors  
3 within the timeframe specified in Section 31.16, and (3) inform the public that under CEQA, in a later  
4 court challenge a litigant may be limited to raising only those issues previously raised at a hearing on  
5 the project or at an appeal hearing on the CEQA determination or in written correspondence delivered  
6 to the Planning Department or other City department at, or prior to, such hearing.

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

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

## 24 **SEC. 31.09. DETERMINATION OF NEED FOR EVALUATION.**

25 Supervisor Wiener  
BOARD OF SUPERVISORS

Page 9  
11/30/2012

originated at : n:\egana\as2012\1200175\00809330.doc  
revised on: 11/30/2012 – i:\board of supervisors\legislation\121019 ceqa appeal reform  
2012\ordinance\ceqa\_procedures\_v2.doc

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

## 12 **SEC. 31.10. INITIAL EVALUATION OF PROJECTS.**

13 (a) ~~Upon receiving an environmental evaluation application for a project, or upon referral~~  
14 ~~of a project by the board, commission or department that is to carry out or approve the project, the~~  
15 ~~Environmental Review Officer shall determine whether such project is exempt from environmental~~  
16 ~~review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the~~  
17 ~~level of environmental analysis required. In the event it is clear at the outset that an environmental~~  
18 ~~impact report is required, the Environmental Review Officer may, with the consent of the applicant,~~  
19 ~~make an immediate determination and dispense with the initial study.~~ Each environmental  
20 evaluation application or referral shall include a project description using as its base the  
21 environmental information form set forth as Appendix H of the CEQA Guidelines, which form  
22 shall be supplemented to require additional data and information applicable to a project's  
23 effects, including consistency with the environmental issues included in the Eight Priority  
24 Policies set forth in Section 101.1 of the Planning Code and incorporated into the General

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

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

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

21 (d) During preparation of the initial study, the Environmental Review Officer may  
22 consult with any person having knowledge or interest concerning the project. In cases in  
23 which the project is to be carried out or approved by more than one government agency and  
24

1 the City is the lead agency, the Environmental Review Officer shall solicit input from all other  
2 government agencies that are to carry out or approve the project.

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

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

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

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

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

1           **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**  
2 **DECLARATIONS.**

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

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

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

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

23                   (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

1 Department, and shall be mailed to the appellant, to the applicant, to the board(s),  
2 commission(s) or department(s) that will carry out or approve the project, to any individual or  
3 organization that has submitted comments on the proposed negative declaration, and to any  
4 other individuals or organizations that previously ~~has~~ have requested such notice in writing.

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

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

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

23 (j) After the City has decided to carry out or approve the project in accordance with  
24 CEQA procedures, the Environmental Review Officer ~~may~~ shall endeavor to file a notice of

1 determination with the county clerk in the county or counties in which the project is to be  
2 located. If required by CEQA, the notice of determination shall also be filed with the California  
3 Office of Planning and Research.

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

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

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

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

22 (b) 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 to prepare the draft EIR. If such data and information are  
25

1 not submitted, the Environmental Review Officer may suspend work on the draft EIR. The  
2 data and information submitted shall, if the Environmental Review Officer so requests, be in  
3 the form of all or a designated part or parts of the proposed draft EIR itself, although the  
4 Environmental Review Officer shall in any event make his or her own evaluation and analysis  
5 and exercise his or her independent judgment in preparation of the draft EIR for public review.

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

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

## 22 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

23 (a) The Environmental Review Officer shall provide public notice of the availability of the  
24 draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The

1 Environmental Review Officer shall provide the notice of availability at the same time that the notice of  
2 completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days  
3 prior to the scheduled public hearing on the draft EIR. The notice of availability shall be distributed in  
4 the manner required by CEQA and in any event.—~~Notice shall be:~~

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

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

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

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

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

22 (5) Mailed to the owners of all real property within the area that is the subject of the  
23 environmental impact report and within 300 feet of all exterior boundaries of such area. In the case of  
24 City-sponsored projects that involve rezonings, area plans or General Plan amendments and are either

1 citywide in scope or the total area of land that is part of the project, excluding the area of public streets  
2 and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to mail the  
3 notice of availability to the owners within 300 feet of all exterior boundaries of the project area.

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

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

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

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

1           ~~(c) — Each notice and request for comments shall state that any comments must be returned~~  
2 ~~within a certain time after the sending of the draft EIR, and if comments are not returned within that~~  
3 ~~time it shall be assumed that the agency or person has no comment to make. The time limit shall~~  
4 ~~normally be thirty (30) days, or forty-five (45) days if required by CEQA. The Environmental Review~~  
5 ~~Officer may allow a longer period for comments on projects of exceptional size or complexity. The~~  
6 ~~Planning Commission or the Environmental Review Officer may, upon the request of an agency or~~  
7 ~~person from whom comments are sought, grant an extension of time beyond the original period for~~  
8 ~~comments, but such extension shall not interfere with the holding of any hearing on the draft EIR for~~  
9 ~~which notice has already been given.~~

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

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

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

20           ~~(3) (e) The Planning Commission shall hold a public hearing on every draft EIR during~~  
21 ~~the public comment period, with such hearing combined as much as possible with other~~  
22 ~~activities of the Planning Commission. The Environmental Review Officer may, upon~~  
23 ~~delegation by the Planning Commission, take testimony at supplemental public hearing(s) on~~  
24 ~~draft EIRs, in addition to, and not in lieu of, the hearing conducted by the Planning~~

1 Commission, and shall report to and make all testimony received by the Environmental  
2 Review Officer available to the Planning Commission at a public hearing. ~~Notice of the Planning  
3 Commission hearings and all hearings at which the Environmental Review Officer takes testimony shall  
4 be given by publication in a newspaper of general circulation in the City at least 30 days prior to the  
5 hearing, by posting in the offices of the Planning Department, by posting on or near the site proposed  
6 for the project; and by mail sent not less than 30 days prior to the hearing to the applicant, to the  
7 board, commission or department that is to carry out or approve the project, and to any other  
8 individual or organization requesting such notice.~~

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

## 12 **SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.**

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

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

21 (c) A public record of proceedings shall be kept of each case in which an EIR is  
22 prepared, including all comments received in writing in addition to a record of the public  
23 hearing. The final EIR shall indicate the location of such record. The Environmental Review

1 Officer shall cause the hearing record to be recorded by a phonographic reporter. Any transcription  
2 of a hearing record shall be at the expense of the person requesting such transcription.

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

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

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

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

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

19 ~~—— (1) A letter of appeal shall be submitted to the Clerk of the Board within twenty (20)~~  
20 ~~calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for~~  
21 ~~appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the~~  
22 ~~Board. The grounds for appeal shall be limited to issues related to the adequacy, accuracy and~~  
23 ~~objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an~~  
24 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~

25 Supervisor Wiener  
BOARD OF SUPERVISORS

Page 22  
11/30/2012

originated at : n:\egana\as2012\1200175\00809330.doc  
revised on: 11/30/2012 – i:\board of supervisors\legislation\121019 ceqa appeal reform  
2012\ordinance\ceqa\_procedures\_v2.doc

1 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~  
2 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~  
3 ~~to the Clerk of the Board.~~

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

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

10 ~~(b) ——— The Clerk of the Board shall promptly schedule a hearing on the appeal before the full~~  
11 ~~Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more~~  
12 ~~than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so~~  
13 ~~that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal~~  
14 ~~with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and~~  
15 ~~to all organizations and individuals who have previously requested such notice, not less than ten (10)~~  
16 ~~days prior to the date of the hearing.~~

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

23 ~~(d) ——— The Board shall affirm the Planning Commission's certification of the final EIR only if~~  
24 ~~the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct,~~

1 ~~and that the findings contained in the Planning Commission's certification are correct. The Board may~~  
2 ~~affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of~~  
3 ~~the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make~~  
4 ~~specific findings and remand the final EIR to the Planning Commission for further action consistent~~  
5 ~~with the Board's findings. The Board shall act by motion in affirming or reversing the Planning~~  
6 ~~Commission's certification of the final EIR.~~

7 (e) ~~— The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~  
8 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~  
9 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~  
10 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~  
11 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~  
12 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~  
13 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~  
14 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~  
15 ~~certification of the final EIR is affirmed by action of the Board.~~

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

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

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

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

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

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

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

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

17                   (3) For projects that require multiple City approvals, while the appeal is pending,  
18 and until the CEQA determination is affirmed by the Board, other City boards, commissions,  
19 departments and officials may consider the approval of the project that is the subject of the CEQA  
20 determination on appeal but shall not undertake activities to implement the project that physically  
21 change the environment except activities that are essential to abate hazards to the public health and  
22 safety, including abatement of hazards on a structure or site determined by the appropriate City  
23 official, including but not limited to the Director of Building Inspection, the Director of Public Works,

1 the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency  
2 presenting an imminent hazard to the public and requiring immediate action.

3 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full  
4 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the  
5 hearing no less than 30 and no more than 45 days following expiration of the time frames set forth in  
6 Subsections 31.16 (d),(e), or (f), as applicable, for filing an appeal. The Clerk shall provide notice of  
7 the appeal by mail to the appellant or appellants and to all organizations and individuals who have  
8 previously requested such notice in writing, no less than 14 days prior to the date the appeal is  
9 scheduled to be heard by the Board. The Planning Department shall provide to the Clerk of the Board  
10 the list of individuals and organizations that have commented on the decision or determination in a  
11 timely manner, or requested notice of an appeal, no less than 20 days prior to the scheduled hearing.

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

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

20 (7) The Board shall act on an appeal within 30 days of the date scheduled for the  
21 hearing, provided that if the full membership of the Board is not present on the last day on which the  
22 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but  
23 not later than, the full membership of the Board is present; and provided further, if the Board of  
24 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. The date of the final approval of the  
17 project shall occur no earlier than either (1) the expiration date of the appeal period, if no appeal is  
18 filed, or (2) the date the Board affirms the CEQA determination, if the CEQA determination is  
19 appealed.

20 (10) If the Board reverses the CEQA decision, the prior CEQA decision and approval  
21 actions for the project, including, but not limited to, any approvals of the project granted during the  
22 pendency of the appeal, shall be deemed void.

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

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

5                   (2) The appellant of a final EIR shall submit a letter of appeal and written materials  
6 in support of the appeal to the Clerk of the Board within 20 days after the Planning Commission's  
7 certification of the EIR and the first approval of the project.

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

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

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

1           (e) Appeal of Negative Declarations. In addition to those requirements set forth in Section  
2 31.16(c) above, the following requirements shall apply only to appeals of negative declarations.

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

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

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

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

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

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

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

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

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

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

22                   (A) For a private project seeking a permit, license or other entitlement for  
23 use for which the City otherwise provides an appeal process for the entitlement (“appealable  
24

1 entitlement”), the appeal of an exemption determination shall be filed within 20 days of the date the  
2 City grants the first permit, license or other entitlement for use that is an appealable entitlement.

3 (B) For all projects not covered by subsection (A), if the Planning  
4 Department posts on the Planning Department's website as provided in Section 31.08(g) a written  
5 decision or written notice of the first approval of the project that informs the public of the first date of  
6 posting of the notice on the website and informs the public that the exemption determination may be  
7 appealed to the Board of Supervisors as provided in this Section 31.16, the appeal shall be filed within  
8 20 days of the first date of the notice.

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

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

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

16 (5) The Board shall reverse the exemption determination if it finds that the project  
17 does not conform to the requirements set forth in CEQA for an exemption. If the Board finds that the  
18 project does not conform to the requirements set forth in CEQA for an exemption, the Board shall  
19 remand the exemption determination to the Planning Department for further action consistent with the  
20 Board's findings. In the event the Board reverses the exemption determination of any City department  
21 other than the Planning Department, the exemption determination shall be remanded to the Planning  
22 Department, and not the City department making the original exemption determination, for  
23 consideration of the exemption determination in accordance with the Board's directions.

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

By: \_\_\_\_\_  
ELAINE C. WARREN  
Deputy City Attorney