

[Amendment of Administrative Code Chapter 31 to provide for appeals of certain environmental determinations, setting forth a fee for appeals and providing public notice.]

Ordinance amending Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of certain determinations under the California Environmental Quality Act, setting forth a fee for such appeals and to provide public notice of certain determinations.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

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

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

SEC. 31.16. APPEAL OF CERTAIN ENVIRONMENTAL DETERMINATIONS.

(a) In accordance with the provisions set forth in this Section 31.16, the following determinations may be appealed to the Board of Supervisors (the "Board"): (1) Certification of a Final EIR by the Planning Commission; (2) Approval of a negative declaration or mitigated negative declaration (collectively referred to as a "negative declaration") by the Planning Commission; (3) Determination by the Planning Department to prepare an addendum to an EIR or a negative declaration as set forth in California Environmental Quality Act ("CEQA") Guidelines Section 15164; (4) Determination by the Planning Department or any other authorized City department that a project is categorically exempt from CEQA; (5) Determination by the Planning Department that a project is statutorily exempt or excluded from CEQA where such determination involves the discretionary application of factors set forth in CEQA; and (6) Determination by the Planning Department that a General Rule Exclusion applies to a project, as set forth in CEQA Guidelines Section 15061(b)(3).

1 (b) In addition to the applicable requirements of Section 31.16 (c), (d) or (e) below, the
2 following requirements shall apply to an appeal of any of the determinations listed in Section 31.16(a).

3 (1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set
4 forth in Subsections 31.16(c), (d) or (e), as applicable. The letter of appeal shall state the specific
5 grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section
6 31.22, payable to the Clerk of the Board. Appellant shall submit twelve (12) copies of all written
7 materials in support of the appeal with the letter of appeal. All Appellants must sign the letter of
8 appeal and no appeal may be maintained on behalf of other individuals or entities without their express
9 written consent. Appellants shall submit with the appeal a copy of the CEQA document or CEQA
10 decision that is being appealed. The grounds for appeal shall be limited to issues related to the
11 adequacy of the environmental review, the completeness of the environmental analysis or the
12 correctness of the determination being appealed as further set forth in subsections 31.16 (c), (d) or (e).
13 The appellant shall submit a copy of the letter of appeal to the Environmental Review Officer at the
14 time appellant submits a letter of appeal to the Clerk of the Board. The Clerk of the Board may reject
15 an appeal if Appellant fails to comply with this subsection 31.16(b)(1).

16 (2) After receipt of the letter of appeal, the Environmental Review Officer shall promptly
17 transmit copies of the environmental review documents to the Clerk of the Board and make the
18 administrative record available to the Board.

19 (3) While the appeal is pending, the City shall not carry out, consider the approval of, or
20 make any other discretionary decision regarding, a project that is the subject of the appeal, provided
21 that activities may be undertaken which are essential to abate hazards to the public health and safety,
22 including abatement of hazards on a structure or site determined by the appropriate City official,
23 including but not limited to the Director of Building Inspection, the Director of Public Works, the
24 Director of Public Health, the Fire Marshall or the Port Chief Engineer, to be an emergency
25 presenting an imminent hazard to the public and requiring immediate action.

1 (4) Following consultation with the Environmental Review Officer, the Clerk of the Board
2 shall promptly schedule a hearing on the appeal before the full Board, without regard to any rule or
3 policy of the Board requiring a 30-day review period. If more than one person submits a letter of
4 appeal on a decision or determination, the Board shall consolidate such appeals so that they are heard
5 simultaneously. Where the appeals are consolidated, the Board shall allot to appellants the same total
6 time for testimony at the public hearing as the Board allots to the Applicant or Project Sponsor. The
7 Board may consolidate or coordinate its hearing on the appeal with other hearings on the project.
8 Notice of the appeal shall be provided by mail to the appellants and to all organizations and
9 individuals who have previously requested such notice in writing, no less than ten (10) days prior to the
10 date the appeal is scheduled to be heard by the Board. At its discretion, the Planning Department may
11 mail additional notice to individuals and organizations that have commented on the decision or
12 determination.

13 (5) The Planning Department, or other City agency sponsoring the proposed project or
14 responsible for environmental review, shall submit twelve (12) copies of all written materials to the
15 Board no later than noon, six (6) days prior to the scheduled hearing. The Planning Department or
16 other City Agency shall provide copies of its written materials to the appellants at the same time.

17 (6) The Board shall conduct its own independent review of the CEQA determination. The
18 Board shall consider anew all facts, evidence and/or issues related to the adequacy, accuracy and
19 objectiveness of the environmental review and the CEQA determination and decision regarding such
20 environmental review, including but not limited to the sufficiency of the information and the correctness
21 of the conclusions of the Planning Commission, the Environmental Review Officer or the authorized
22 City department. The Board shall consider the record before the Planning Commission, the
23 Environmental Review Officer or other City department, and may, at its discretion, consider new facts,
24 evidence and/or issues that were not introduced before the Planning Commission, the Environmental
25 Review Officer, or other City department authorized to make environmental determinations.

1 (7) The Board shall act on an appeal within thirty (30) days of the date of appeal, provided
2 that the Environmental Review Officer may request that the Clerk of the Board postpone the hearing
3 and decision to allow the Environmental Review Officer or other authorized City department to provide
4 full information to the Board regarding the appeal, provided further that the latest date to which said
5 hearing and decision may be so postponed shall be not more than sixty (60) days from the date of filing
6 the appeal. In addition, the Board may postpone its hearing and/or decision on the appeal provided
7 that the latest date to which the Board may postpone said hearing and/or decision shall be not more
8 than sixty (60) days from the date of filing the appeal for any environmental document or determination
9 other than an EIR. In the case of an appeal on an EIR, the Board may postpone its hearing and/or
10 decision on the appeal no more than ninety (90) days from the date of filing the appeal. The Board
11 shall state on the record the reasons for postponing its hearing and/or decision. Notwithstanding the
12 foregoing, the Environmental Review Officer may request that the Board's hearing be further
13 postponed if the Planning Department requires additional time to respond to issues raised or material
14 submitted with an appeal where the Planning Department is required to undertake additional study of
15 the project or environmental issues raised in the appeal.

16 (8) The Board may affirm, amend or reverse the decision or determination of the Planning
17 Commission, Planning Department or other authorized City agency by a vote of a majority of all
18 members of the Board. A tie vote shall be deemed to be disapproval of the decision or determination;
19 provided, however, that in the event of a tie vote the Board may continue its decision on the appeal to
20 the next meeting at which the full Board will be present to consider the appeal. The Board shall act by
21 motion. The Board shall adopt findings in support of its decision, which may include adoption and/or
22 incorporation of findings made by the Planning Commission, Environmental Review Officer or other
23 City department authorized to act on the environmental review decision or determination below. If the
24 Board reverses the decision or determination, the Board shall adopt specific findings setting forth the
25 reasons for its decision to reverse the decision or determination.

1 (9) In the event the Board remands an environmental determination or document to the
2 Planning Commission or Planning Department, the Planning Commission or Planning Department
3 shall take such action as may be required by the specific findings made by the Board and consider
4 anew the remanded portions of its environmental determination. Any further appeal shall be limited to
5 the portions of the environmental document or determination which have been revised by the Planning
6 Commission or Planning Department, and appellant shall have commented on the revised
7 environmental document or determination to the Planning Commission or Environmental Review
8 Officer. The Board's subsequent review, if any, also shall be so limited to the portions of the
9 environmental document which have been revised by the Planning Commission or Planning
10 Department. Any additional appeals to the Board shall comply with the procedures set forth in this
11 Section 31.16.

12 (10) The Board may reject an appeal if it finds the appeal fails to comply with this section
13 31.16. The Board shall act by motion in rejecting an appeal.

14 (11) The date of the final EIR, the final negative declaration, the Addendum, the statutory
15 exclusion, categorical exemption or General Rule Exclusion shall be the date upon which the Planning
16 Commission, Planning Department or other authorized City department, as applicable, originally
17 approved the environmental document if an appeal is filed and the Board affirms the action of the
18 Planning Commission, Planning Department or other authorized City department, and the City
19 approved the project prior to the filing of the appeal. If the City has not approved the project prior to
20 the filing of the appeal, the date of the environmental document shall be the date upon which the Board
21 acts to approve the environmental document.

22 (c) In addition to those requirements set forth in section 31.16(b) above, the following
23 requirements shall apply to appeals of EIRs.

24 (1) In order to appeal the Planning Commission's certification of an EIR, any appellant
25 shall have submitted comments to the Planning Commission or the Environmental Review Officer on a

1 draft EIR, either in writing during the public review period, or orally or in writing at a public hearing
2 on the EIR.

3 (2) A letter of appeal shall be submitted to the Clerk of the Board within fifteen (15) days
4 after the Planning Commission's certification of the EIR.

5 (3) The grounds for appeal of an EIR shall be limited to issues related to the adequacy,
6 accuracy and objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR
7 as an informational document and the correctness of its conclusions, and the correctness of the findings
8 contained in the Planning Commission's certification of the EIR.

9 (4) The Board shall affirm the Planning Commission's certification of the final EIR if the
10 Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct, and
11 that the findings contained in the Planning Commission's certification are correct. The Board may
12 amend the EIR, provided that the Environmental Review Officer recommends such amendments and
13 provided further that CEQA does not require additional public notice, an additional public hearing or
14 further public review for such amendments. The Board may reverse the Planning Commission's
15 certification of the EIR. If the Board reverses the Planning Commission's certification of the final EIR,
16 it shall make specific findings and remand the final EIR to the Planning Commission for further action
17 consistent with the Board's findings.

18 (d) In addition to those requirements set forth in section 31.16(b) above, the following
19 requirements shall apply to appeals of negative declarations.

20 (1) In order to appeal the Planning Commission's approval of a negative declaration, any
21 appellant shall have appealed the negative declaration to the Planning Commission, or shall have
22 submitted comments to the Planning Commission or the Environmental Review Officer on a proposed
23 negative declaration either in writing during the public review period, or orally or in writing at a
24 public hearing on the negative declaration. In the event a negative declaration is not appealed to the
25 Planning Commission, the negative declaration may not be appealed to the Board.

1 (2) A letter of appeal shall be submitted to the Clerk of the Board within ten (10) days after
2 the Planning Commission's approval of the negative declaration. The grounds for appeal of a negative
3 declaration shall be limited to raising issues related to the adequacy of the analysis, the Planning
4 Commission's finding that the project could not have a significant effect on the environment, including
5 in the case of a mitigated negative declaration, the adequacy and feasibility of the mitigation measures.

6 (3) When the Board makes its substantive determination, the Board shall affirm a negative
7 declaration if it finds that the project could not have a significant effect on the environment, may refer
8 the negative declaration back to the Planning Department for revisions, or may amend the negative
9 declaration provided that the Environmental Review Officer recommends such amendments and
10 provided further that CEQA does not require additional public notice, an additional public hearing or
11 further public review for such amendments. The Board may overrule the negative declaration and
12 make specific findings and remand the negative declaration to the Planning Commission for further
13 action consistent with the Board's findings.

14 (4) In the event a negative declaration is remanded to the Planning Commission, the
15 Planning Commission shall take action consistent with the Board's direction. If the Planning
16 Department revises a negative declaration pursuant to the Board's direction, the revised negative
17 declaration shall be scheduled for hearing at the Planning Commission. The Environmental Review
18 Officer shall not be required to comply with the procedures set forth in Administrative Code Section
19 31.11(b), (c), (d) or (e) prior to the Planning Commission hearing. The revised negative declaration
20 shall be available for review by the public at least twenty (20) days prior to the Planning Commission
21 hearing. The Environmental Review Officer shall provide notice to the public that the revised negative
22 declaration is available for review and notice of the date of the Planning Commission hearing in the
23 manner set forth in Administrative Code Section 31.11(f).

1 (e) In addition to those requirements set forth in section 31.16(b) above, the following
2 requirements shall apply to appeals of statutory exclusions or exemptions, categorical exemptions, an
3 addendum to an EIR or a negative declaration, or a General Rule Exclusion.

4 (1) Any person or entity may appeal the determination by the Planning Department or other
5 authorized City department that a statutory exemption from CEQA applies, that the project is
6 categorically exempt from CEQA, that an addendum to an EIR or negative declaration should be
7 prepared as set forth in CEQA Guidelines Section 15164, or that a General Rule Exclusion as set forth
8 in CEQA Guidelines Section 15061(b)(3) applies. No hearing on the CEQA determination before the
9 Planning Commission or other City commission or board is required before the determination may be
10 appealed to the Board. Any appeal shall be made within ten (10) days of the date the first permit for
11 the project is issued or the first approval of the project is granted.

12 (2) The Board shall affirm the determination if it finds, as applicable, that the project
13 conforms to the requirements set forth in CEQA for statutory exemptions, categorical exemptions,
14 addenda to an EIR or negative declaration, or a General Rule Exclusion. The Board may provide
15 additional analysis of the determination, provided that the Environmental Review Officer recommends
16 such additional analysis and provided further that CEQA does not require additional public notice, an
17 additional public hearing or further public review for such additional analysis. The Board may refer
18 the determination to the Planning Department for revisions or reconsideration, or may overrule the
19 determination and request preparation of specified environmental documentation. If the Board finds
20 that the project does not conform to the requirements set forth in CEQA for statutory exemptions,
21 categorical exemptions, addenda to an EIR or a General Rule Exclusion, the Board shall make specific
22 findings and remand the CEQA determination to the Planning Department for further action consistent
23 with the Board's findings.

24 (3) In the event the Board reverses the environmental determination of any City department
25 other than the Planning Department, the environmental determination shall be remanded to the

1 Planning Department, and not the City department making the original environmental determination,
2 for consideration of the environmental determination in accordance with the Board's directions.

3 Section 2. Administrative Code Section 31.08 is hereby amended as follows.

4 SEC. 31.08. CATEGORICAL EXEMPTIONS.

5 (a) CEQA provides that certain classes of projects generally do not have a
6 significant effect on the environment and therefore are categorically exempt from CEQA.
7 Each public agency must list the specific activities that fall within each such class, subject to
8 the qualification that these lists must be consistent with both the letter and the intent of the
9 classes set forth in CEQA. Except as provided in this section 31.08, projects that are
10 categorically exempt are not subject to the requirements of this Chapter 31.

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

18 (c) CEQA provides for public agencies to request additions, deletions and
19 modifications to the classes of projects listed as categorically exempt in CEQA. The Planning
20 Commission shall make any such requests, after a public hearing thereon held according to
21 the procedure specified in Section 31.04(c) of this Chapter for adoption of administrative
22 regulations.

23 (d) The Environmental Review Officer may adopt necessary forms, checklists
24 and processing guidelines to aid the Planning Department and other departments in
25 determining that a project may be categorically exempt in accordance with the letter and the

1 intent expressed in the classes of categorical exemptions specified in CEQA and with the
2 administrative regulations adopted by the Planning Commission.

3 (e) The Environmental Review Officer shall advise other departments of the
4 categorical exemptions. The Environmental Review Officer may delegate the determination
5 whether a project is categorically exempt from CEQA to other departments, provided that
6 other departments shall consult with the Environmental Review Officer regarding the
7 application of the categorical exemptions, and provided further that the Environmental Review
8 Officer shall be responsible for all determinations so delegated to other departments.

9 (f) When the Environmental Review Officer, or any other department to
10 which the Environmental Review Officer has delegated responsibility pursuant to Section
11 31.08(e) above, has determined that a project is excluded or categorically exempt from
12 CEQA, notice to the public shall be provided for all such determinations involving the following
13 types of projects: (1) any historical resources as defined in CEQA, including without limitation,
14 any buildings and sites listed individually or located within districts listed (i) in Planning Code
15 Articles 10 or 11, (ii) in City-recognized historical surveys, (iii) on the California Register, or
16 (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3)
17 any demolition of an existing structure; or, (4) any Class 32 categorical exemption. Written
18 determinations of categorical exemptions for these types of projects shall be posted in the
19 offices of the Planning Department and shall be mailed to any individuals or organizations that
20 have previously requested such notice in writing.

21 (g) When the Environmental Review Officer, or any other department to
22 which the Environmental Review Officer has delegated responsibility pursuant to Section
23 31.08(e) above, has determined that a project is excluded or categorically exempt from
24 CEQA, the Environmental Review Officer may issue a Certificate of Exemption from
25 Environmental Review by posting a copy thereof in the offices of the Planning Department,

1 and by mailing copies thereof to the applicant, the board(s), commission(s) or department(s)
2 that will carry out or approve the project, and to any individuals or organizations who have
3 previously requested such notice in writing.

4 ~~(h) — The Planning Commission may take testimony on any categorical exemption at
5 the public hearing, if any, in connection with the Planning Commission's consideration of the project
6 that is the subject of the categorical exemption.~~

7 Section 3. Administrative Code Section 31.11 is hereby amended to read as follows:

8 SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE
9 DECLARATIONS.

10 (a) When any negative declaration is required, it shall be prepared by or at
11 the direction of the Environmental Review Officer. The negative declaration shall describe the
12 project proposed, include the location of the property, preferably shown on a map, and the
13 name of the project proponent, state the proposed finding that the project could not have a
14 significant effect on the environment, and have attached to it a copy of the initial study
15 documenting reasons to support that finding. The negative declaration shall also indicate
16 mitigation measures, if any, included in the project to avoid potentially significant effects.

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

21 (c) The Environmental Review Officer shall provide a notice of intent to adopt
22 a negative declaration or mitigated negative declaration by publication in a newspaper of
23 general circulation in the City, by posting in the offices of the Planning Department and on the
24 subject site, by mail to the owners of all real property within the area that is the subject of the
25 negative declaration and within 300 feet of all exterior boundaries of such area, and by mail to

1 all organizations and individuals who have previously requested such notice in writing,
2 sufficiently prior to adoption of the negative declaration to allow the public and agencies a
3 review period of not less than twenty (20) days, or thirty (30) days if required by CEQA. In the
4 case of projects that either are citywide in scope or where the total area of land that is part of the
5 project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review
6 Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of
7 the project area.

8 (d) The notice of intent shall specify the period during which comments are to
9 be received, a brief description of the project and its location, and the address where copies of
10 the negative declaration and all documents referenced in the negative declaration are
11 available for review.

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

16 (f) The Planning Commission shall hold a public hearing on any such appeal
17 within not less than twenty-one (21) nor more than ninety (90) days after the close of the
18 appeal period. Notice of such hearing shall be posted in the offices of the Planning
19 Department, and shall be mailed to the appellant, to the applicant, to the board(s),
20 commission(s) or department(s) that will carry out or approve the project, to any individual or
21 organization that has submitted comments on the proposed negative declaration, and to any
22 other individual or organization that has requested such notice in writing.

23 (g) After such hearing the Planning Commission shall affirm the proposed
24 negative declaration if it finds that the project could not have a significant effect on the
25 environment, may refer the proposed negative declaration back to the Planning Department

1 for revisions, or shall overrule the proposed negative declaration and order preparation of an
2 environmental impact report if it finds that the project may have a significant effect on the
3 environment.

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

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

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

20 Section 4. Administrative Code Section 31.13 shall be amended to read as follows:

21 SEC. 31.13. DRAFT ENVIRONMENTAL IMPACT REPORTS.

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

25

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

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

15 (d) When the draft EIR has been prepared, the Environmental Review Officer
16 shall file a notice of completion of such draft as required by CEQA. A copy of such notice, or
17 a separate notice containing the same information, shall thereupon be posted in the offices of
18 the Planning Department and on the subject site, and mailed to the applicant, the board(s),
19 commission(s) or department(s) that will carry out or approve the project, and to any individual
20 or organization that has requested such notice in writing. The notice of completion shall be
21 sent by mail to the owners of all real property within the area that is the subject of the
22 environmental impact report and within 300 feet of all exterior boundaries of such area. In the
23 case of projects that either are citywide in scope or where the total area of land that is part of the
24 project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review
25 Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of

1 the project area. A copy of the draft EIR shall be provided to the applicant and to such
2 board(s), commission(s) or department(s) and to any individual or organization that has so
3 requested.

4 Section 5. Administrative Code Section 31.15 shall be amended to read as follows:

5 SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.

6 (a) A final EIR shall be prepared by, or at the direction of, the Environmental
7 Review Officer, based upon the draft EIR, the consultations and comments received during
8 the review process, and additional information that may become available. The final EIR shall
9 be made available to the public no less than ten (10) days prior to the Planning Commission hearing to
10 consider certification of the Final EIR.

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

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

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

1 Section 6. Administrative Code Section 31.22 shall be amended to read as follows:

2 SEC. 31.22. BASIC FEES.

3 (a) The following basic fees shall be charged by the Planning Department, as
4 specified in Section 31.19 above:

5 (1) For an initial study of a project excluding use of special expertise or
6 technical assistance, as described in Section 31.21 below, the initial fee shall be:

7 - Where the total estimated construction cost as defined by the San Francisco Building Code
8 is less than \$10,000: \$950;

9 - Where said total estimated construction cost is \$10,000 or more, but less than
10 \$200,000: \$950 PLUS .41% of the cost over \$10,000;

11 - Where said total estimated construction cost is \$200,000 or more, but less than
12 \$1,000,000: \$1,730 PLUS .31% of the cost over \$200,000;

13 - Where said total estimated construction cost is \$1,000,000 or more, but less than
14 \$10,000,000: \$4,248 PLUS .26% of the cost over \$1,000,000;

15 - Where said total estimated construction cost is \$10,000,000 or more, but less than
16 \$30,000,000: \$27,647 PLUS .08% of the cost over \$10,000,000;

17 - Where said total estimated construction cost is \$30,000,000 or more, but less than
18 \$50,000,000: \$44,067 PLUS .03% of the cost over \$30,000,000;

19 - Where said total estimated construction cost is \$50,000,000 or more, but less than
20 \$100,000,000: \$49,540 PLUS .007% of the cost over \$50,000,000;

21 - Where said total estimated construction cost is \$100,000,000 or more: \$53,189 PLUS
22 .003% of the cost over \$100,000,000.

23 - Where there is no construction cost: \$950; plus time and materials as set forth in
24 subsection (b)(2).

25 An applicant proposing significant revisions to a project for which an application is on

1 file with the Planning Department shall be charged time and materials to cover the full costs in
2 excess of the fee paid, total charge not to exceed three times the initial fee without providing
3 an estimate of cost.

4 (2) For preparation of an environmental impact report excluding use of
5 special expertise or technical assistance, as described in Section 31.21 below, the initial fee
6 shall be:

7 - Where the total estimated construction cost as defined in the San Francisco Building Code is
8 less than \$200,000: \$16,000;

9 - Where said total estimated construction cost is \$200,000 or more, but less than
10 \$1,000,000: \$16,000 PLUS .4% of the cost over \$200,000;

11 - Where said total estimated construction cost is \$1,000,000 or more, but less than
12 \$10,000,000: \$19,187 PLUS .27% of the cost over \$1,000,000;

13 - Where said total estimated construction cost is \$10,000,000 or more, but less than
14 \$30,000,000: \$43,514 PLUS .11% of the cost over \$10,000,000;

15 - Where said total estimated construction cost is \$30,000,000 or more, but less than
16 \$50,000,000: \$64,854 PLUS .03% of the cost over \$30,000,000;

17 - Where said total construction cost is \$50,000,000 or more, but less than
18 \$100,000,000: \$70,328 PLUS .03% of the cost over \$50,000,000;

19 - Where said total estimated construction cost is \$100,000,000 or more: \$84,554 PLUS
20 .01% of the cost over \$100,000,000.

21 - Where there is no construction cost: \$16,000 plus time and materials as set forth in
22 Subsection (b)(2).

23 Projects sponsored by City agencies shall be only subject to time and material costs
24 incurred.

25

1 An applicant proposing significant revisions to a project for which an application
2 is on file with the Planning Department shall be charged time and materials to cover the full
3 costs in excess of the fee paid, total charge not to exceed three times the initial fee without
4 providing an estimate of cost.

5 (3) For an appeal to the Planning Commission: The fee shall be \$200 to the
6 appellant, and an additional fee shall be paid by the project sponsor based on the time and
7 materials the Planning Department expends in responding to the appeal; provided, however,
8 that this additional fee shall not exceed three times the cost of the initial evaluation as set forth
9 in Paragraph (1) above without providing an estimate of costs.

10 (4) For preparation of an addendum to an environmental impact report that
11 has previously been certified, pursuant to Section 15164 of the State CEQA Guidelines:
12 \$5,000.

13 (5) For preparation of a supplement to a draft or certified final environmental
14 impact report: One-half of the fee that would be required for a full environmental impact report
15 on the same project, as set forth in Paragraph (2) above.

16 (6) For reevaluation of a modified project for which a negative declaration
17 has been prepared: \$500 plus time and materials as set forth in Subsection (b)(2).

18 (7) For preparation of a Certificate of Exemption from Environmental Review
19 determining that a project is categorically exempt, statutorily exempt, ministerial/nonphysical,
20 an emergency, or a planning and feasibility study: \$150 plus time and materials as set forth in
21 Subsection (b)(2).

22 (8) For preparation of a letter of exemption from environmental review: \$65.

23 (9) For reactivating an application that the Environmental Review Officer has
24 deemed withdrawn due to inactivity and the passage of time, subject to the approval of the
25 Environmental Review Officer and within six months of the date the application was deemed

1 withdrawn: \$1,000 plus time and materials to cover any additional staff costs, total charge not
2 to exceed twice the initial fee for the original application without providing an estimate of cost.

3 (10) **For an appeal of certification of EIR, adoption of a negative declaration,**
4 **or other environmental determination.** Appellant shall pay two hundred nine dollars (\$209.00)
5 for an appeal to the Board of the Planning Commission's certification of an EIR ~~to the Board~~ or
6 adoption of a negative declaration, or other Planning Department environmental determination under
7 CEQA. Such fee shall be used to defray the cost of producing the EIR for the Board as well as
8 the cost of Planning Department staff time. Such fee shall be refunded to the appellant in the
9 event the Board of Supervisors remands the environmental ~~impact report~~ document or
10 determination to the Planning Commission for revisions based upon the same specific issues
11 related to the adequacy and accuracy of the ~~final EIR~~ environmental document stated in the
12 appeal. The Planning Department may charge the applicant for any time and material costs incurred
13 for any appeal to the Board.

14 (b) **Payment.**

15 (1) The fee specified in Subsection (a)(1) shall be paid to the Planning
16 Department at the time of the filing of the environmental evaluation application, and where an
17 environmental impact report is determined to be required, the fee specified in Subsection
18 (a)(2) shall be paid at the time the preliminary draft environmental impact report I (PDEIR I) is
19 prepared, except as specified below. However, the Director of Planning may authorize phased
20 collection of the fee for a project whose work is projected to span more than one fiscal year.

21 (2) The Planning Department shall charge the applicant for any time and
22 material costs incurred in excess of the fee paid where authorized above. The total additional
23 charge shall not exceed two times the initial fee paid without providing an estimate of cost.
24 Provided, however, that where a different limitation on time and materials is set forth
25 elsewhere in this Section, that limitation shall prevail.

1 (3) Any fraternal, charitable, benevolent or any other nonprofit organization,
2 which organization is exempt from taxation under the Internal Revenue laws of the United
3 States and the Revenue and Taxation Code of the State of California as a bona fide fraternal,
4 charitable, benevolent or other nonprofit organization, may defer payment of the fees
5 specified herein, with the exception of the fees payable pursuant to Section 31.22(a)(3) and
6 Section 31.22(a)(10) herein, the time of issuance of the building permit, before the building
7 permit is released to the applicant; or (2) within one year of the date of completion of the
8 environmental review document, whichever is sooner, provided that the application is for the
9 development of residential units all of which units are affordable to low and moderate income
10 households, as defined in the Guidelines of the United States Housing and Urban
11 Development Department, for a period of 20 years, which exemption shall apply
12 notwithstanding the inclusion in the development of other nonprofit ancillary or accessory
13 uses.

14 (4) An exemption from paying the full fees set forth in Section 31.22(a)(3)
15 and Section 31.22(a)(10) herein may be granted when the requestor's income is not enough
16 to pay the fee without affecting his or her abilities to pay for the necessities of life, provided
17 that the person seeking the exemption demonstrates to the Environmental Review Officer that
18 he or she is substantially affected by the proposed project.

19 (5) Exceptions to the payment provisions noted above may be made when
20 the Environmental Review Officer has authorized phased collection of the fee for a project
21 whose work is projected to span more than one fiscal year.

22 (c) **Refunds.** When a request for an initial evaluation or for preparation of an
23 environmental impact report is (1) either withdrawn by the applicant prior to publication of an
24 environmental document or (2) deemed canceled by the Planning Department due to inactivity
25

1 on the part of the applicant, then the applicant shall be entitled to a refund of the fees paid to
2 the Department less the time and materials expended minus a \$200 processing fee.

3 (d) **Late Charges and Collection of Overdue Accounts.** A surcharge of
4 one percent per month shall be added to the fee amount owing the Department for fee
5 accounts in arrears more than 30 days. The Zoning Administrator may call upon other City
6 agencies or duly licensed collection agencies for assistance in collecting delinquent accounts
7 more than six months in arrears, in which case any additional costs of collection may be
8 added to the fee amount outstanding. If the Department seeks the assistance of a duly
9 licensed collection agency, the approval procedures of Administrative Code Article 5, Section
10 10.39-1 et seq. will be applicable.

11 (e) These amendments to fees related to the Planning Department are
12 intended to provide revenues for the staffing and other support necessary to provide more
13 timely processing of applications within that Department.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 Kate Herrmann Stacy
19 Deputy City Attorney
20
21
22
23
24
25