

File No. 121019

Committee Item No. _____

Board Item No. 21

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____ Date _____

Board of Supervisors Meeting

Date July 23, 2013

Cmte Board

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- Resolution
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AMENDED IN BOARD 7/16/2013

Completed by: ARTHUR KHOS

Date 7/18/13

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

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1 [Administrative Code - California Environmental Quality Act Procedures, Appeals, and Public
2 Notice Requirements]

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 20 acres; expanding**
10 **noticing requirements for certain exempt projects; clarifying existing noticing**
11 **requirements for exempt projects; and making environmental findings.**

12
13 NOTE: Additions to Codes are in *single-underline italics Times New Roman font*.
14 Deletions to Codes are in *strikethrough italics Times New Roman font*.
15 Board amendment additions are in double-underlined Arial font.
16 Board amendment deletions are in ~~strikethrough Arial font~~.

17
18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. The Planning Department has determined that the actions contemplated in
20 this ordinance comply with the California Environmental Quality Act (California Public
21 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
22 Board of Supervisors in File No. 121019 and is incorporated herein by reference.

23 Section 2. The Administrative Code Chapter 31 is hereby amended by amending
24 Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, ~~and 31.15, and~~
25 31.19 to read as follows:

1 **SEC. 31.04. RESPONSIBILITY AND DEFINITIONS.**

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

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

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

17 (d) For proposed projects that the Environmental Review Officer of the Planning
18 Department has determined may have an impact on historic or cultural resources, the Historic
19 Preservation Commission has the authority pursuant to Charter Section 4.135 to may review and
20 comment on such environmental documents and determinations under in a manner consistent with
21 CEQA and this Chapter 31.

22 ~~(e)~~(e) Where adoption of administrative regulations by resolution of the Planning
23 Commission after public hearing is specified herein, there shall be notice by publication in a
24 newspaper of general circulation in the City at least ~~twenty~~ (20) days prior to the hearing and
25 by posting in the offices of the Planning Department, with copies of the proposed regulations

1 sent to the Board of Supervisors and any other affected boards, commissions and
2 departments of the City and to all organizations and individuals who have previously
3 requested such notice in writing. The decision of the Commission in adopting administrative
4 regulations shall be final.

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

8 (g) Notifications.

9 (1) Unless CEQA requires a mailed notice by the United States Postal Service in
10 hard copy form, or an organization or individual or organization requests notice in hard copy
11 form, a City official may provide any mailed notice required by this Chapter using electronic mail
12 transmission whenever an organization or individual provides an email address to the City
13 official; provided that any notices required by this Chapter shall be provided by mail in hard
14 copy form to any organizations or individuals who have requested such notice in writing prior
15 to the effective date of this provision unless such organizations or individuals affirmatively
16 request electronic notification as provided below has an email address for the individual or
17 organization.

18 (2) Electronic Notifications. The Environmental Review Officer shall
19 implement an electronic notification system for the notification requirements in this Chapter
20 31. The Environmental Review Officer shall offer interested organizations and individuals the
21 opportunity to subscribe to an automated electronic mail notification system. The system shall
22 distribute all notifications required by this Chapter to subscribers. Subscribers shall have the
23 option to receive electronic mail regarding all CEQA notifications or all CEQA notifications for:
24 (i) a specific project; (ii) a specific neighborhood, as defined by the Planning Department for
25 notification purposes; (iii) historic districts designated under Articles 10 or 11 of the Planning

1 Code or listed on the National Register of Historic Places; (iv) exemption determinations; (v)
2 negative declarations; and (vi) environmental impact reports. The Environmental Review
3 Officer shall implement the electronic notification system within three months of the operative
4 date of the ordinance enacting this provision of Chapter 31. In the event the system is not
5 operable within such period, the Planning Department shall provide monthly status reports to
6 the Board of Supervisors on the progress the Planning Department has made in implementing
7 the electronic notification system.

8 (h) Definitions.

9 "Approval Action" means:

10 (1) For a private project seeking an entitlement from the City and determined to be
11 exempt from CEQA:

12 (A) The first approval of the project in reliance on the exemption by the City
13 Planning Commission following a noticed public hearing, including, without limitation, a discretionary
14 review hearing as provided for in Planning Code Section 311 or Section 312, or, if no such hearing is
15 required, either:

16 (B) The first approval of the project in reliance on the exemption by another
17 City commission, board or official following a noticed public hearing granting an Entitlement of Use
18 for the Whole of the Project; or

19 (C) The issuance of the Building Permit or other Entitlement of Use for the
20 Whole of the Project in reliance on the exemption without a noticed public hearing.

21 (2) For all other projects determined to be exempt from CEQA:

22 (A) The first approval of the project in reliance on the exemption by a City
23 decision-making body at a noticed public hearing; or

1 (B) If approved without a noticed public hearing, the decision by a City
2 department or official in reliance on the exemption that commits the City to a definite course of action
3 in regard to a project intended to be carried out by any person.

4 (3) For all projects determined to require the preparation of a negative declaration,
5 the approval of the project by the first City decision-making body that adopts the negative declaration
6 or mitigated negative declaration as provided for in Section 31.11(h) of this Chapter.

7 (4) For all projects determined to require the preparation of an environmental
8 impact report, the approval of the project by the first City decision-making body following the
9 certification of completion of the environmental impact report by the Planning Commission as
10 provided for in Section 31.15(d) of this Chapter.

11 "Building Permit" means a permit issued by the Department of Building Inspection as provided
12 by Building Code Section 106A, including, without limitation, a site permit as defined in Building Code
13 Section 106A.3.4.2.

14 "Date of the Approval Action" means the date the City takes the action on the project that is
15 defined as the "Approval Action," regardless of whether the Approval Action is subject to an
16 administrative appeal.

17 "Entitlement of Use for the Whole of the Project" means an entitlement that authorizes the
18 project applicant to carry out the project as described in the CEQA determination decision for the
19 project. Incidental permits needed to complete a project, such as a tree removal permit or a street
20 encroachment permit that alone do not authorize the use sought, would not be an Entitlement of Use for
21 the Whole of the Project, unless such permit is the primary permit sought for the project.

22 (i) The Planning Department or other City department as authorized by Section
23 31.08(d), when rendering a CEQA decision, shall identify the Approval Action for the project
24 and provide that information to the public prior to or at the time of project approval. The
25 information shall be posted on Planning Department's website and also may be provided in an

1 environmental review document or exemption determination, in information posted by the
2 Planning Department at its offices or on its website, or in a notice about the project or the
3 CEQA decision provided to the public by the Planning Department or other City department.

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

5 (a) An Office of Environmental Review is hereby created in the Planning
6 Department, which shall be responsible, acting through the Director of Planning, for the
7 administration of those actions of this Chapter 31 assigned to the Planning Department by Section
8 31.04.

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

13 (c) In addition to the powers and duties conferred below, the Environmental Review
14 Officer may, upon delegation by the Planning Commission as to specific projects, take
15 testimony at supplemental public hearings on draft environmental impact reports, in addition
16 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section
17 31.14 of this Chapter, and shall report to, and make all such testimony available to, the
18 Planning Commission at a public hearing.

19 (d) The Environmental Review Officer shall also take such measures, within his or
20 her powers, as may be necessary to assure compliance with this Chapter 31 by persons, and
21 officials, boards, commissions, departments or agencies outside the Planning Department,
22 and shall periodically review the effectiveness and workability of the provisions of this Chapter
23 31 and recommend any refinements or changes that he or she may deem appropriate for
24 improvement of such provisions.

1 (e) All projects *that are not excluded or categorically exempt from CEQA* shall be
2 referred to the Environmental Review Officer except those exempt projects covered by a delegation
3 agreement with the Environmental Review Officer as provided for in Section 31.08(d) of this Chapter.

4 All other officials, boards, commissions, departments, bureaus and offices of the City shall
5 cooperate with the Environmental Review Officer in the exercise of his/her responsibilities,
6 and shall supply necessary information, consultations and comments.

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

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

18 (h) Adoption and/or revision of administrative regulations to implement CEQA shall
19 be by resolution of the Planning Commission after a public hearing. The Environmental
20 Review Officer may adopt necessary forms, checklists and processing guidelines to
21 implement CEQA and this Chapter 31 without a public hearing.

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

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

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

6 (l) The Environmental Review Officer shall process applications for environmental
7 review in accordance with the requirements for equal treatment of permit applicants, unless
8 there is a written finding of a public policy basis for not doing so, as set forth in Campaign and
9 Governmental Conduct Code Section 3.400 and the written guidelines adopted by the
10 Planning Department as required by Section 3.400. For purposes of Section 3.400, this
11 Section of Chapter 31 and any corresponding written guidelines of the Planning Department,
12 the Board finds that expediting environmental review out of order, on a priority basis for the
13 purpose of expediting permit processing shall qualify as a public policy basis for projects
14 consisting of: (1) publicly funded affordable housing projects that provide new affordable
15 housing in 100 percent of the on-site dwelling units (where such units are rented or sold at the
16 economic levels defined in Planning Code Section 415); and (2) bicycle and pedestrian
17 projects that are designed primarily to address public safety issues. When an application for
18 environmental review for any project within one of the categories listed above is submitted to
19 the Planning Department, the Environmental Review Officer shall, throughout all stages of the
20 environmental review process, give precedence to all submittals associated with such project
21 over other projects. The Planning Department also shall provide a written preliminary
22 assessment of the eligibility of such projects for an exemption within 60 days of submittal of a
23 complete Preliminary Project Assessment or equivalent application to the Planning
24 Department. As part of the assessment, the Planning Department shall identify as feasible,
25

1 based on the content of the submittal, the issues that may affect the type and schedule of the
2 environmental review and the process for analysis of such issues.

3 (m) The Environmental Review Officer shall prepare an annual report to the
4 Planning Commission and the Board of Supervisors on all appeals filed under any of the
5 appeal provisions of this Chapter 31. The first annual report shall be filed approximately one
6 year after the effective date of this provision of Chapter 31.

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

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

17 **SEC. 31.08. CATEGORICAL EXEMPTIONS.**

18 (a) CEQA provides that certain *classes projects are exempt from CEQA because: the*
19 *project is exempt by statute ("statutory exemption"); the project is in a class of projects that generally*
20 *do not have a significant effect on the environment and therefore are categoryally exempt from*
21 *CEQA ("categorical exemption"); CEQA streamlining procedures allow reliance on a prior*
22 *environmental document prepared on a zoning or planning level decision, for example, as provided in*
23 *community plan areas and for specified urban infill projects ("community plan exemption"), except as*
24 *might be necessary to examine whether there are project-specific significant effects, which*
25 *are peculiar to the project or its site; or the activity is covered under the general rule that CEQA*

1 applies only to projects that have the potential for causing a significant effect on the environment, thus,
2 where it can be seen with certainty that there is no possibility that the activity in question may have a
3 significant effect on the environment, the activity is not subject to CEQA ("general rule exclusion").
4 Unless otherwise specifically stated, reference in this Chapter 31 to "exemptions" or "exempt from
5 CEQA" or an "exemption determination" shall collectively refer to statutory exemptions, categorical
6 exemptions, community plan exemptions and general rule exclusions.

7 (b) For categorical exemptions:

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

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

20 ~~(e)(3) CEQA provides for~~ allows public agencies to request that the Secretary of
21 the Resources Agency make additions, deletions and modifications to the classes of projects
22 listed as categorically exempt in CEQA. The Planning Commission shall make any such
23 requests, after a public hearing thereon held according to the procedure specified in Section
24 31.04~~(e)~~(e) of this Chapter for adoption of administrative regulations.

1 ~~(d)~~(c) The Environmental Review Officer may ~~adopt~~ create necessary forms,
2 checklists and processing guidelines to aid the Planning Department and other departments in
3 determining that whether a project may be *categoryically* exempt in accordance with the letter
4 and the intent expressed in ~~the classes of categorical exemptions specified in~~ CEQA and with the
5 administrative regulations adopted by the Planning Commission.

6 ~~(e)~~(d) The Environmental Review Officer shall advise other departments of the
7 requirements of CEQA for determining whether a project is exempt from environmental review
8 ~~the categorical~~ exemptions. The Environmental Review Officer may delegate the determination
9 whether a project is *categoryically* exempt from CEQA to other departments, provided that other
10 departments shall consult with the Environmental Review Officer regarding the application of
11 ~~the categorical~~ exemptions. Further, at the time of each exemption determination, such other
12 departments shall inform the Environmental Review Officer and, if written, provide to the
13 Environmental Review Officer a copy, of the exemption determination containing the
14 information specified in Section 31.08(e) of this Chapter 31, to the Environmental Review
15 Officer, and provided further that the The Environmental Review Officer shall be responsible
16 for all determinations so delegated to other departments. When the Planning Department or other
17 City department determines that a project is exempt from CEQA, the issuance of the exemption
18 determination shall be considered an exemption determination by the Planning Department. The
19 Environmental Review Officer shall post on its website the same information about exemption
20 determinations issued by other departments as it provides for exemption determinations
21 issued by the Planning Department.

22 ~~(f)~~(e) When the Environmental Review Officer, or any other department to which the
23 Environmental Review Officer has delegated responsibility pursuant to Section 31.08~~(e)~~(d)
24 above, has determined that a project is *excluded or categoryically* exempt from CEQA, the
25 Environmental Review Officer following provisions shall apply:

1 (1) Posting Exemption Determinations.

2 (A) For all exemption determinations, the Environmental Review
3 Officer shall post on the Planning Department website the following information about each
4 exemption determination: (1) a project description in sufficient detail to convey the location,
5 size, nature and other pertinent aspects of the scope of the proposed project as necessary to
6 explain the applicability of the exemption; (2) the type or class of exemption determination
7 applicable to the project; (3) other information, if any, supporting the exemption determination;
8 (4) the Approval Action for the project, as defined in Section 31.04(h); and (5) the date of the
9 exemption determination.

10 (B) For projects that involve the issuance of multiple discretionary
11 permits or other project approvals, in addition to the requirements of Section 31.08(e)(1)(A),
12 the Environmental Review Officer shall describe and evaluate the whole of the project that will
13 result from all discretionary approvals and identify any additional discretionary approvals
14 required other than the Approval Action that are known to the Environmental Review Officer at
15 the time of the issuance of the exemption determination, and post this information on the
16 Planning Department website.

17 (1)(2) The Environmental Review Officer may ~~May~~ issue a Certificate of Exemption
18 from Environmental Review by preparing a written exemption determination containing the
19 information in Section 31.08(e)(1), and by posting a copy in the offices of the Planning Department
20 and on the Planning Department website, and by mailing copies to the applicant, the board(s),
21 commission(s) or department(s) that will carry out or approve the project, and to any individuals or
22 organizations and individuals who previously have requested such notice in writing.

23 (2)(3) The Environmental Review Officer shall ~~Shall~~ prepare a Certificate of
24 Exemption from Environmental Review or comparable written exemption determination and
25 provide notice to the public as provided for in Section 31.08(e)(2) ~~shall be provided~~ for all such

1 determinations involving the following types of projects involving: ~~(1)(A)~~ any historical
2 resources, ~~as defined in CEQA, including without limitation, as~~ any buildings and sites listed
3 individually or located within districts ~~(i)~~ listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-~~
4 ~~recognized historical surveys, (iii) on an historic resource survey that has been adopted or officially~~
5 ~~recognized by the City, on the California Register or determined eligible for listing on the California~~
6 ~~Register by the State Historical Resources Commission, including, without limitation, any location, or~~
7 ~~(iv) listed on or determined eligible for the National Register of Historic Places, or (ii) a~~
8 ~~resource that the Environmental Review Officer determines, based on substantial evidence, to be a~~
9 ~~historical resource under Public Resources Code Section 5024.1; (2)(B) any Class 31 categorical~~
10 exemption; ~~(3)(C) any demolition as defined in Planning Code Section 317 or in Planning Code~~
11 ~~Section 1005(f) of an existing structure; or, (4)(D) any Class 32 categorical exemption; or (e)~~
12 ~~any community plan exemption. *Written determinations of categorical exemptions*~~ All exemption
13 determinations for these types of projects shall be in writing, posted in the offices of the
14 Planning Department and on the Planning Department's website, and shall be mailed to any
15 individuals or organizations that have previously requested such notice in writing.

16 (g)(f) Informing the Public of the Approval Action for a Project as Part of Public
17 Hearing Notice.

18 (1) When the Planning Department or other City department provides notice of a
19 public hearing on the Approval Action for a project that it has determined to be exempt from CEQA,
20 the notice shall:

21 (A) Inform the public of the exemption determination and how the public may
22 obtain a copy of the exemption determination;

23 (B) Inform the public of its appeal rights to the Board of Supervisors with
24 respect to the CEQA exemption determination following the Approval Action and within the time frame
25 specified in Section 31.16 of this Chapter; and

1 (C) Inform the public that under CEQA, in a later court challenge a litigant
2 may be limited to raising only those issues previously raised at a hearing on the project or in written
3 correspondence delivered to the Board of Supervisors, Planning Commission, Planning
4 Department or other City board, commission or department at, or prior to, such hearing, or as part
5 of the appeal hearing process, if any, on the CEQA determination decision.

6 (2) Additionally, when the Planning Department provides a notice under Planning
7 Code Section 311 or Section 312 of the opportunity to request a discretionary review hearing before
8 the Planning Commission on a Building Permit application, the notice shall:

9 (A) Contain the information required by this Section 31.08(f) in addition to
10 any notice requirements in the Planning Code;

11 (B) Inform the notification group that if a discretionary review hearing is
12 requested before the Planning Commission, the Approval Action for the project under this Chapter 31
13 will occur upon the Planning Commission's approval of the Building Permit application, if such
14 approval is granted; and

15 (C) Inform the notification group that if a discretionary review hearing is not
16 requested, the Approval Action for the project will occur upon the issuance of a Building Permit by the
17 Department of Building Inspection, if such permit is granted. The notice also shall advise the
18 notification group of how to request information about the issuance of the Building Permit.

19 (g) A City board, commission, department or official that grants the Approval Action for a
20 project of the type defined in Section 31.16(f)(e)(2)(B) of this Chapter, which Approval Action is taken
21 without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, shall thereafter
22 arrange for the Planning Department to post on the Planning Department's website a written decision
23 or written notice of the Approval Action for the project that informs the public of the first date of
24 posting on the website and advises the public that the exemption determination may be appealed to the
25 Board of Supervisors as provided in Section 31.16(f)(e)(2)(B) of this Chapter within 30 days after the

1 first date of posting of the notice. When the Environmental Review Officer, or any other department to
2 which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e)
3 above, has determined that a project is excluded or categorically exempt from CEQA, the
4 Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by
5 posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the
6 applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and
7 to any individuals or organizations who have previously requested such notice in writing.

8 (h) **Filing Notice of Exemption.** After the City has decided to carry out or approve the
9 project and the project is considered finally approved as provided for in Section 31.16(e)(b)(11), in
10 accordance with CEQA procedures, the Environmental Review Officer may file a notice of exemption
11 with the county clerk in the county or counties in which the project is to be located. The Planning
12 Commission may take testimony on any categorical exemption at the public hearing, if any, in
13 connection with the Planning Commission's consideration of the project that is the subject of the
14 categorical exemption. The Planning Department shall also post a copy of the notice of
15 exemption in the offices of the Planning Department and on the Planning Department website,
16 and mail a copy of the notice of exemption to any organizations and individuals who
17 previously have requested such notice in writing.

18 (i) **Modification of Exempt Project.**

19 (1) The Environmental Review Officer has the authority under Section
20 31.19(b) to re-evaluate the application of an exemption to a project in the event that a project
21 changes after the Approval Action for the project. As provided for in Section 31.19(b), the
22 Environmental Review Officer shall consider the modified project relative to the project
23 description as provided in the original application submitted to the Planning Department and
24 the project description in the exemption determination. If, upon this consideration, the
25 Environmental Review Officer concludes that the project as modified exceeds the scope of the

1 original project for any aspect of the project regulated under the Planning Code, or introduces
2 a new use not previously included in the project, then the Environmental Review Officer shall
3 issue a new exemption determination or, if the project would no longer be eligible for an
4 exemption, the Environmental Review Officer shall inform the project sponsor that an initial
5 study will be required. If the modified project requires a new CEQA decision, the Where a
6 change occurs to a project that the Environmental Review Officer has determined to be
7 exempt, prior to any subsequent approval actions, the Environmental Review Officer shall
8 determine whether the change is a substantial modification that requires reevaluation as
9 provided for in Section 31.19(b) of this Chapter 31. A substantial modification of an exempt
10 project requiring reevaluation under Section 31.19(b) shall mean either:

11 (A) A change in the project as described in the original application
12 upon which the Environmental Review Officer based the exemption determination, or in the
13 exemption determination posted on the Planning Department website at the time of issuance,
14 which would constitute an expansion or intensification of the project as defined in the Planning
15 Code. An expansion or intensification of the project as defined in the Planning Code includes,
16 but is not limited to: (A) a change that would expand the building envelope or change the use
17 that would require public notice under Planning Code Sections 311 or 312, or (B) a change in
18 the project that would constitute a demolition under Planning Code Sections 317 or 1005(f).

19 (B) New information or evidence of substantial importance presented
20 to the Environmental Review Officer that was not known and could not have been known with
21 the exercise of reasonable diligence at the time the Environmental Review Officer issued the
22 exemption determination that shows the project no longer qualifies for the exemption.

23 (2) When the Environmental Review Officer determines that a change in a
24 project is a substantial modification, the Environmental Review Officer shall make a new
25 CEQA decision as provided for under Section 31.19(b) of this Chapter 31. The Planning

1 Department will require payment of fees as defined in the Department's fee schedule for the
2 applicable type of environmental review. ~~If~~When the Planning Commission or Planning
3 Department renders a new CEQA exemption determination decision for a project after the Approval
4 Action, as provided for in Section 31.19(b), and the City takes a new Approval Action for the project
5 in reliance on the new CEQA determination decision, the new CEQA determination decision may be
6 appealed in accordance with the provisions of Section 31.16 of this Chapter, as to those issues
7 associated with the project changes since the original exemption determination.

8 (3) When the Environmental Review Officer determines that a change in an
9 exempt project is not a substantial modification, the Environmental Review Officer shall post a
10 notice of the determination in the offices of the Planning Department and on the Planning
11 Department website and mail such notice to the applicant, board(s), commission(s) or
12 department(s) that will carry out or approve the project, and to any organizations and
13 individuals who previously have requested such notice in writing.

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

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

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

2 (a) ~~Upon receiving an environmental evaluation application for a project, or upon referral~~
3 ~~of a project by the board, commission or department that is to carry out or approve the project, the~~
4 ~~Environmental Review Officer shall determine whether such project is exempt from environmental~~
5 ~~review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the~~
6 ~~level of environmental analysis required. In the event it is clear at the outset that an environmental~~
7 ~~impact report is required, the Environmental Review Officer may, with the consent of the applicant,~~
8 ~~make an immediate determination and dispense with the initial study.~~ Each environmental
9 evaluation application or referral shall include a project description using as its base the
10 environmental information form set forth as Appendix H of the CEQA Guidelines, which form
11 shall be supplemented to require additional data and information applicable to a project's
12 effects, including consistency with the environmental issues included in the Eight Priority
13 Policies set forth in Section 101.1 of the Planning Code and incorporated into the General
14 Plan, shadow impacts, including the analysis set forth in Planning Code Section 295, and
15 such other data and information specific to the urban environment of San Francisco or to the
16 specific project. Each environmental evaluation application or referral shall be certified as true
17 and correct by the applicant or referring board, commission or department. Each initial study
18 shall include an identification of the environmental effects of a project using as its base the
19 environmental checklist form set forth in Appendix G of the CEQA Guidelines and addressing
20 each of the questions from the checklist form that are relevant to a project's environmental
21 effects; provided that the checklist form shall be supplemented to address additional
22 environmental effects, including consistency with the environmental issues included in the
23 Eight Priority Policies set forth in Section 101.1 of the Planning Code and incorporated into
24 the General Plan, shadow impacts, ~~including the analysis set forth in Planning Code Section 295,~~
25

1 including the analysis set forth in Planning Code Section 295, and such other environmental
2 effects specific to the urban environment of San Francisco or to the specific project.

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

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

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

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

18 (f) In accordance with CEQA, Public Resources Code Sections 21080(c) and
19 21080(d), Based based on the analysis and conclusions in the initial study, the Environmental
20 Review Officer shall determine whether there is substantial evidence to support a "fair
21 argument" that the project may have a significant effect on the environment and an
22 environmental impact report is required, or whether a project could not have a significant
23 effect on the environment and a negative declaration is required.-:

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

4 ~~(2) Prepare a mitigated negative declaration if the initial study identified~~
5 ~~potentially significant effects, but (A) revisions in the project plans or proposals made by or~~
6 ~~agreed to by the applicant before a proposed mitigated negative declaration and initial study~~
7 ~~are released for public review would avoid the effects or mitigate the effects to a point where~~
8 ~~clearly no significant effects would occur, and (B) there is no substantial evidence, in light of~~
9 ~~the whole record before the Planning Department, that the project as revised may have a~~
10 ~~significant effect on the environment.~~

11 ~~(3) Prepare an environmental impact report if the Planning Department~~
12 ~~determines based on substantial evidence in the record that the project may have a significant~~
13 ~~effect on the environment. In other words, if the Planning Department is presented with a fair~~
14 ~~argument that a project may have a significant effect on the environment, the Planning~~
15 ~~Department shall prepare an environmental impact report even though it may also be~~
16 ~~presented with other substantial evidence that the project will not have a significant effect.~~

17 ~~*determine, based on the requirements of CEQA, whether there is a "fair argument" that the*~~
18 ~~*project could have a significant effect on the environment, and whether a negative declaration or*~~
19 ~~*environmental impact 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.*~~

24 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**
25 **DECLARATIONS.**

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

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

17 (c) The Environmental Review Officer shall provide a notice of intent to adopt a
18 negative declaration ~~or mitigated negative declaration~~ ("notice of intent") to those persons required
19 by CEQA. In each instance, the Environmental Review Officer shall provide notice by:

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

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

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

1 (4) Posting on the subject site. The Planning Department shall develop
2 guidance on the requirements for posting to assure that posters are visible from the closest
3 public street or other public space.

4 ~~(4)(5)~~, ~~by mail~~ Mail to the owners of all real property, and to the extent
5 practicable, the residential occupants, within the area that is the subject of the negative
6 declaration and within 300 feet of all exterior boundaries of such area, and by mail to all
7 organizations and individuals who have previously requested such notice in writing,
8 sufficiently prior to adoption of the negative declaration to allow the public and agencies a
9 review period of not less than ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day circulation period is
10 required by CEQA. In the case of City-sponsored projects that involve rezonings, Area Plans or
11 General Plan amendments and are either citywide in scope or the total area of land that is part of the
12 project, excluding the area of public streets and alleys, is 20 acres or more, the Environmental Review
13 Officer shall not be required to provide notice by mail pursuant to this Section 31.11(c)(4) except
14 to the owners, and to the extent practicable, the residential occupants, within the exterior
15 boundaries of the project area, and to all organizations and individuals who previously requested
16 such notice in writing.

17 (d) The notice of intent shall specify the period during which comments are to be
18 received, the date, time and place of any public hearings on the project when known to the
19 Planning Department at the time of the notice, a brief description of the project and its location,
20 ~~and~~ the address where copies of the negative declaration and all documents referenced in the
21 negative declaration are available for review, and the Planning Department staff contact. The
22 notice of intent, and shall include a statement that no appeal of the negative declaration to the Board
23 of Supervisors under Section 31.16 of this Chapter will be permitted unless the appellant first files an
24 appeal of the preliminary negative declaration to the Planning Commission, and any other information
25 as required by CEQA.

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

5 (f) The Planning Commission shall ~~hold~~ schedule a public hearing on any such
6 appeal within ~~not less than fourteen (14) nor more than thirty (not less than 14 nor more than 30)~~
7 days after the close of the appeal period. Notice of such hearing shall be posted in the offices
8 of the Planning Department and on the Planning Department website, and shall be mailed to
9 the appellant, to the applicant, to the board(s), commission(s) or department(s) that will carry
10 out or approve the project, to any individual or organization that has submitted comments on
11 the proposed negative declaration, and to any other individuals or organizations that previously
12 have requested such notice in writing.

13 (g) After holding such hearing the Planning Commission shall affirm the proposed
14 negative declaration if it finds that the project could not have a significant effect on the
15 environment, may refer the proposed negative declaration back to the Planning Department
16 for specified revisions, or shall overrule the proposed negative declaration and order
17 preparation of an environmental impact report if it finds ~~based on~~ substantial evidence to
18 support a fair argument that the project may have a significant effect on the environment.

19 (h) If the proposed negative declaration is not appealed as provided herein, or if it is
20 affirmed on appeal, the negative declaration shall be considered final, subject to any
21 necessary modifications. Thereafter, the first City decision-making body to act on approval of
22 the project shall review and consider the information contained in the final negative
23 declaration, together with any comments received during the public review process, and, upon
24 making the findings as ~~provided in~~ required by CEQA, shall adopt the negative declaration,
25 prior to approving the project. A public notice of the proposed action to adopt the negative

1 declaration and take the Approval Action for the project shall advise the public of its appeal rights to
2 the Board of Supervisors with respect to the negative declaration following the Approval Action in
3 reliance on the negative declaration and within the time frame specified in Section 31.16 of this
4 Chapter. All decision-making bodies shall review and consider the negative declaration and
5 make findings as required by CEQA prior to approving the project.

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

10 (j) After the City has decided to carry out or approve the project and the project is
11 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
12 procedures, and upon the payment of required fees by the project sponsor, the Environmental
13 Review Officer may shall file a notice of determination with the county clerk in the county or
14 counties in which the project is to be located. If required by CEQA, the notice of determination
15 shall also be filed with the California Office of Planning and Research. When the
16 Environmental Review Officer files a notice of determination with the county clerk or the
17 California Office of Planning and Research or both, the Planning Department also shall post a
18 copy of the notice of determination in the offices of the Planning Department and on the
19 Planning Department website, and mail a copy of the notice of determination to any
20 organizations and individuals who previously have requested such notice in writing.

21 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**
22 **REQUIRED.**

23 When the Environmental Review Officer determines If it is determined that a project may have a
24 significant effect on the environment and that an environmental impact report is required by CEQA,
25 the Environmental Review Officer shall distribute a notice of preparation in the manner and

1 containing the information required by CEQA and provide such other notice as required by CEQA. In
2 addition, the Environmental Review Officer shall prepare a notice advising the public of the notice of
3 preparation and of any scheduled scoping meetings and publish the notice of preparation in a
4 newspaper of general circulation in the City, ~~shall~~ post the notice of preparation in the offices
5 of the Planning Department and on the Planning Department website, and ~~shall~~ mail the notice of
6 preparation to the applicant, the board(s), commission(s) or department(s) that will carry out
7 or approve the project and to all organizations and individuals who have previously requested
8 such notice in writing. ~~The Environmental Review Officer shall provide such other notice as~~
9 ~~required by CEQA.~~

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

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

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

22 (c) During preparation of the draft EIR, the Environmental Review Officer may
23 consult with any person having knowledge or interest concerning the project. If he/she has not
24 already done so in accordance with Section 31.10 above, in cases in which the project is to be
25

1 carried out or approved by more than one public agency, the Environmental Review Officer
2 shall consult with all other public agencies that are to carry out or approve the project.

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

14 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

15 (a) The Environmental Review Officer shall provide public notice of the availability of the
16 draft EIR and schedule a public hearing on the draft EIR with the Planning Commission. The
17 Environmental Review Officer shall provide the notice of availability at the same time that the notice of
18 completion is filed as required by CEQA. The notice of availability shall be distributed at least 30 days
19 prior to the scheduled public hearing on the draft EIR. The Environmental Review Officer shall
20 distribute the notice of availability in the manner required by CEQA and in each instance.—Notice
21 shall be:

22 (1) ~~sent~~ Send the notice to any public agencies with jurisdiction by law that CEQA
23 requires the lead agency to consult with and request comments from on the draft EIR, and may send
24 copies of the draft EIR to and consult with, in the discretion of the Environmental Review
25 Officer, other persons with special expertise with respect to any environmental impact involved. as

1 follows: after filing a notice of completion as required by CEQA, the Environmental Review Officer
2 shall send a copy of the draft EIR to any public agencies as required by CEQA, and may send copies to
3 and consult with persons who have special expertise with respect to any environmental impact
4 involved.

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

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

14 (B) For the types of projects set forth in Sections 31.08(e)(3)(A) and
15 31.08(e)(3)(B) of this Chapter 31, and for any other projects that may be subject to the
16 approval of the Historic Preservation Commission, the Environmental Review Officer shall
17 send a copy of the draft EIR to the Historic Preservation Commission and obtain any
18 comments that the Historic Preservation Commission has on the draft EIR at a noticed public
19 meeting. The Planning Department shall schedule the public meeting at least seven days prior
20 to any Planning Commission hearing on the draft EIR. But, if the calendars of the two
21 commissions do not allow such scheduling without extending the noticed public comment
22 period, the Planning Department shall schedule the public meeting as far in advance of the
23 Planning Commission hearing as possible, consistent with not extending the public comment
24 period.

1 (2) Post the notice in the offices of the Planning Department and, on the Planning
2 Department website, and on the site of the project.

3 (3) Post on the subject site. The Planning Department shall develop
4 guidance on the requirements for posting to assure that posters are visible from the closest
5 public street or other public space.

6 (3)(4) Publish the notice in a newspaper of general circulation in the City.

7 (4)(5) Mail the notice to the applicant, the board(s), commission(s) or department(s)
8 that will carry out or approve the project, and to any individuals or organizations that previously have
9 requested such notice in writing.

10 (5)(6) Mail the notice to the owners of all real property, and to the extent
11 practicable, the residential occupants, within the area that is the subject of the environmental
12 impact report and within 300 feet of all exterior boundaries of such area. In the case of City-sponsored
13 projects that involve rezonings, area plans or General Plan amendments and are either citywide in
14 scope or the total area of land that is part of the project, excluding the area of public streets and alleys,
15 is 20 acres or more, the Environmental Review Officer shall not be required to provide notice by mail
16 pursuant to this Section 31.14(a)(5) to the owners and, to the extent practicable, the residential
17 occupants within the exterior boundaries of the project area, and to all organizations and
18 individuals who previously requested such notice in writing.

19 (b) The notice of availability shall contain the information required by CEQA and in each
20 instance shall:

21 (1) State the starting and ending dates for the draft EIR review period during which
22 the Environmental Review Officer will receive comments and if comments are not returned within that
23 time it shall be assumed that the agency or person has no comment to make. The public review period
24 shall not be less than 30 days nor more than 60 days except under unusual circumstances. When a draft
25 EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall

1 not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State
2 Clearinghouse. The Planning Commission or the Environmental Review Officer may, upon the request
3 of an agency or person with special expertise from whom comments are sought, grant an extension of
4 time beyond the original period for comments, but such extension shall not prevent with the holding of
5 any hearing on the draft EIR for which notice has already been given.

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

8 (3) State that only commenters on the Draft EIR will be permitted to file an appeal of
9 the certification of the Final EIR to the Board of Supervisors under Section 31.16 of this Chapter.

10 (c) The Planning Department shall make the draft EIR available to the public upon the
11 filing of the notice of completion with the California Office of Planning and Research ~~date of the~~
12 notice of availability. The Planning Department shall post a copy of the draft EIR on the Planning
13 Department website and provide a copy of the draft EIR to the applicant and to such board(s),
14 commission(s) or department(s) and to any ~~individuals or organizations~~ individuals that ~~who~~
15 previously have requested a copy in writing, in electronic form on a text searchable digital storage
16 device or by text searchable a diskette or by electronic mail transmission when an email address is
17 provided, unless a printed hard copy is specifically requested.

18 (e) ~~Each notice and request for comments shall state that any comments must be returned~~
19 ~~within a certain time after the sending of the draft EIR, and if comments are not returned within that~~
20 ~~time it shall be assumed that the agency or person has no comment to make. The time limit shall~~
21 ~~normally be thirty (30) days, or forty five (45) days if required by CEQA. The Environmental Review~~
22 ~~Officer may allow a longer period for comments on projects of exceptional size or complexity. The~~
23 ~~Planning Commission or the Environmental Review Officer may, upon the request of an agency or~~
24 ~~person from whom comments are sought, grant an extension of time beyond the original period for~~
25

1 ~~comments, but such extension shall not interfere with the holding of any hearing on the draft EIR for~~
2 ~~which notice has already been given.~~

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

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

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

13 ~~(3) (e) The Planning Commission shall hold a public hearing on every draft EIR during~~
14 ~~the public comment period, with such hearing combined as much as possible with other~~
15 ~~activities of the Planning Commission. The Environmental Review Officer may, upon~~
16 ~~delegation by the Planning Commission, take testimony at supplemental public hearing(s) on~~
17 ~~draft EIRs, in addition to, and not in lieu of, the hearing conducted by the Planning~~
18 ~~Commission, and shall report to and make all testimony received by the Environmental~~
19 ~~Review Officer available to the Planning Commission at a public hearing. Notice of the Planning~~
20 ~~Commission hearings and all hearings at which the Environmental Review Officer takes testimony shall~~
21 ~~be given by publication in a newspaper of general circulation in the City at least 30 days prior to the~~
22 ~~hearing, by posting in the offices of the Planning Department, by posting on or near the site proposed~~
23 ~~for the project; and by mail sent not less than 30 days prior to the hearing to the applicant, to the~~
24 ~~board, commission or department that is to carry out or approve the project, and to any other~~
25 ~~individual or organization requesting such notice.~~

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

4 (f) To the extent practicable, any comments already received from any agency,
5 organization or individual shall be available at the public hearing.

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

7 (a) A final EIR shall be prepared by, or at the direction of, the Environmental Review
8 Officer, based upon the draft EIR, the consultations and comments received during the review
9 process, and additional information that may become available. Not less than 10 days prior to
10 the Planning Commission hearing to consider certification of the final EIR, the final EIR shall
11 be made available to the public and to any board(s), commission(s) or department(s) that will
12 carry out or approve the project.

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

18 (c) ~~A public~~An administrative record of proceedings shall be kept of each case in
19 which an EIR is prepared, including all comments received in writing in addition to a record of
20 the public hearing. The final EIR shall indicate the location of such record. The Environmental
21 Review Officer shall cause the hearing on the draft EIR record to be recorded by a phonographic
22 reporter and transcribed and retained as part of the administrative record. Any separate or
23 additional transcription of a hearing record shall be at the expense of the person requesting
24 such transcription.

1 (d) When the final EIR has been prepared and in the judgment of the Planning
2 Commission it is adequate, accurate and objective, reflecting the independent judgment and
3 analysis of the Planning Commission, the Planning Commission shall certify its completion in
4 compliance with CEQA. The notice of the Planning Commission hearing on the certification of the
5 final EIR shall inform the public of the expected Date of the Approval Action on the project and
6 of its appeal rights to the Board of Supervisors with respect to the final EIR after such date and
7 within the time frame specified in Section 31.16 of this Chapter. The certification of completion
8 shall contain a finding as to whether the project as proposed will, or will not, have a significant
9 effect on the environment.

10 (e) After the City has decided to carry out or approve the project and the project is
11 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
12 procedures and upon the payment of required fees by the project sponsor, the Environmental
13 Review Officer shall file a notice of determination with the county clerk in the county or counties in
14 which the project is to be located. If required by CEQA, the notice of determination shall also be filed
15 with the California Office of Planning and Research. The Environmental Review Officer shall also
16 post the notice of determination in the offices of the Planning Department and on the Planning
17 Department website, and mail a copy to any organizations and individuals who previously
18 have requested such notice in writing.

19 SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.

20 (a) After evaluation of a proposed project has been completed pursuant to this
21 Chapter, a substantial modification of the project may require reevaluation of the proposed
22 project.

23 (b) ~~Where such a modification occurs as to a project that has been determined to~~
24 ~~be excluded or categorically exempt pursuant to this Chapter, a new determination shall be~~
25 ~~made as provided in this Chapter. For a project that the Planning Department has determined~~

1 is exempt, when a project changes and a City department re-refers the project application to
2 the Planning Department for review, such review shall include the Environmental Review
3 Officer. The Environmental Review Officer shall consider the modified project relative to the
4 project description as provided in the original application submitted to the Planning
5 Department and the project description in the exemption determination. When the
6 Environmental Review Officer determines that a change in an exempt project is a substantial
7 modification as defined in Section 31.08(i), the Environmental Review Officer shall make a
8 new CEQA decision as provided in this Chapter.

9 (1) If the Environmental Review Officer again determines that the project as
10 modified is exempt, the Environmental Review Officer shall make a new exemption
11 determination in accordance with the applicable provisions of Section 31.08(e), still within the
12 scope of the previous original project for any aspect of the project regulated under the
13 Planning Code, and does not introduce a new use not previously included in the project, the
14 Environmental Review Officer shall note this determination in writing in the case record and
15 no further evaluation shall be required by this Chapter. The Planning Department shall post a
16 notice of the determination in the offices of the Planning Department and on the Planning
17 Department website, and mail such notice to the applicant, the board(s), commission(s) or
18 department(s) that will carry out or approve the project, and to any individuals or organizations
19 who have previously requested such notice in writing.

20 (2) If the Environmental Review Officer determines that the project as
21 modified is no longer within exceeds the scope of the previous original project for any aspect
22 of the project regulated under the Planning Code, or introduces a new use not previously
23 included in the project, the Environmental Review Officer shall issue a new CEQA decision.
24
25

1 ~~_____ (1)(A) If the modified project is again determined to be excluded or~~
2 ~~categorically exempt, no further evaluation shall be required by the Environmental Review~~
3 ~~Officer shall issue a new exemption determination in accordance with this Chapter.~~

4 ~~(2) _____ (2)(B) If the Environmental Review Officer determines that the modified~~
5 ~~project is determined not to be excluded or categorically exempt, an initial study shall be~~
6 ~~conducted as provided in this Chapter.~~

7 ~~(3) _____ (C) The Planning Department may issue guidance to other City~~
8 ~~departments in determining the type of project modification that might occur after an Approval~~
9 ~~Action that would require additional CEQA review. The guidance may also advise on the~~
10 ~~process and considerations that the Planning Department would use in such cases to~~
11 ~~determine whether to issue a new exemption determination or undertake further~~
12 ~~environmental review.~~

13 * * * *

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

16 **~~SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS.~~**

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

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

1 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~
2 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~
3 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~
4 ~~to the Clerk of the Board.~~

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

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

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

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

24 ~~(d)———— The Board shall affirm the Planning Commission's certification of the final EIR only if~~
25 ~~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
4 below in Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption
5 of a 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.~~

8 ~~(1) CEQA decisions are not appealable to the Board if the Board is the~~
9 ~~CEQA decision-making body for the project because the Board of Supervisors must affirm the~~
10 ~~CEQA decision of the Planning Commission or the Planning Department, prior to or as part of~~
11 ~~its approval of the project.~~

12 ~~(2) For purposes of this Chapter 31, the Board is the CEQA decision-making~~
13 ~~body for the project if any of the following circumstances apply:~~

14 ~~(A) At the time an appeal is filed, the Board has affirmed the CEQA~~
15 ~~decision rendered by a non-elected body of the City and approved the project;~~

16 ~~(B) One or more proposed approval actions for the project are~~
17 ~~pending before the Board of Supervisors prior to the expiration of the time frames set forth in~~
18 ~~Sections 31.16 (d),(e), or (f), as applicable, for filing the appeal; or~~

19 ~~(C) The Planning Department prepared the CEQA decision in support~~
20 ~~of a proposed ordinance.~~

21 ~~(3) For any project for which the Board is the CEQA decision-making body as~~
22 ~~defined by this Section 31.16, any person may raise objections to the CEQA decision in~~
23 ~~writing prior to or at a public hearing on the project held by the Board or a committee of the~~
24 ~~Board. The Board shall consider any written or oral objections raised prior to the close of the~~
25 ~~public hearing on the project. Procedures for the submittal of materials to the Board by the~~

1 public or the preparation of a response by the Planning Department to any objections raised
2 shall be as set forth by the Board in its Rules of Order, provided, however, that before the
3 Board takes action to approve the project, the Board shall provide the Planning Department
4 with an adequate opportunity to submit a written response to any objections to the CEQA
5 decision raised by the public prior to the close of the public hearing.

6 ~~———— (4) ———~~ For any project for which the Board is the CEQA decision making body as
7 defined by this Section 31.16, prior to or as part of its consideration of the project, the Board
8 shall affirm or reject the CEQA decision for the project rendered by the Planning Commission
9 or the Planning Department.

10 ~~(e)(b)~~ Appeal Procedures. *In addition to the applicable requirements of Section 31.16 ~~(d)(c)~~*
11 *pertaining to EIRs, Section 31.16 ~~(e)(d)~~ pertaining to negative declarations or Section 31.16 ~~(f)(e)~~*
12 *pertaining to exemption determinations, the following requirements shall apply to an appeal of any of*
13 *the decisions listed in Section 31.16(a).*

14 ~~(1)~~ The appellant shall submit a letter of appeal along with all written materials in
15 support of the appeal to the Clerk of the Board within the time frames set forth in Sections 31.16 (c),
16 (d), or (e), or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and
17 shall be accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San
18 Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,
19 authorized in writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a
20 copy of the CEQA decision being appealed, if available, and otherwise shall submit it when
21 available EIR certification or the negative declaration approval by the Planning Commission, or
22 a copy of the exemption determination by the Planning Department that is being appealed and
23 a copy of the Approval Action taken for the project by a City board, commission, department
24 or official. The appellant shall submit a copy of the letter of appeal and all any other written materials
25 submitted to the Clerk in support of the appeal to the Environmental Review Officer at the time

1 appellant submits the letter of appeal to the Clerk of the Board. The submission to the
2 Environmental Review Officer may be made by electronic means. The Clerk of the Board shall
3 have three business days from the time of submittal of the appeal to assess the appeal
4 package for completeness and compliance with this subpart. If complete and compliant with
5 this subpart, the Clerk shall process the appeal within the time limits from provisional
6 acceptance. An appeal shall be accepted by the Clerk with notice given to the appellants that
7 the acceptance is conditioned upon the Planning Department determining that the appeal of
8 the CEQA decision, whether rendered by the Planning Department or another City
9 commission, department, agency or official, has been filed in a timely manner, and the Clerk
10 otherwise determining that the appeal complies with the requirements of this section. The
11 Planning Department shall make such determination within three working days of receiving
12 the Clerk's request for review. Within seven working days of the filing of the appeal the Clerk
13 shall mail notice to the appellants of the acceptance or rejection of the appeal. The Clerk of the
14 Board may reject an appeal if appellant fails to comply with this Section 31.16(e)(b)(1).

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

18 (3) For projects that require multiple City approvals, after the Clerk has
19 scheduled the appeal for hearing while the appeal is pending, and until the CEQA
20 determination decision is affirmed by the Board, (A) the Board may not take action to approve
21 the project but may hold hearings on the project and pass any pending approvals out of
22 committee without a recommendation for the purpose of consolidating project approvals and
23 the CEQA appeal before the full Board, and (B) other City boards, commissions, departments and
24 officials may shall not carry out or consider further the approval of the project that is the subject of
25 the CEQA determination decision on appeal but shall not undertake activities to implement the

1 project that physically change the environment except activities that are essential to abate hazards
2 to the public health and safety, including abatement of hazards on a structure or site determined by the
3 appropriate City official, including but not limited to the Director of Building Inspection, the Director
4 of Public Works, the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an
5 emergency presenting an imminent hazard to the public and requiring immediate action.

6 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
7 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the
8 hearing no less than 30 and no less than 30-21 and no more than 45 days following expiration of
9 the time frames set forth in Sections 31.16 (c), (d), or (e), or (f), as applicable, for filing an appeal. The
10 Planning Department shall assist the Clerk in determining when the time period for filing an
11 appeal of a particular project has expired. If more than one person submits a letter of appeal,
12 the Board shall President may consolidate such appeals so that they are heard
13 simultaneously. The Clerk shall provide notice of the appeal by mail to the appellant or appellants
14 and to all organizations and individuals who previously have requested such notice in writing. The
15 Clerk shall provide such notice no less than 14 days prior to the date the appeal is scheduled to be
16 heard by the Board. The Planning Department shall provide to the Clerk of the Board the list of
17 individuals and organizations that have commented on the decision or determination in a timely
18 manner, or requested notice of an appeal, no less than 20 days prior to the scheduled hearing.

19 (5) Members of the public, appellant and real parties in interest or City agencies
20 sponsoring the proposed project may submit written materials to the Clerk of the Board no later than
21 noon, 11 days prior to the scheduled hearing. The Planning Department shall submit to the Clerk
22 of the Board a written response to the appeal no later than noon, eight days prior to the
23 scheduled hearing. Appellant may submit a written reply to any new information included in
24 the Planning Department response, provided that Appellant delivers a copy of such reply to
25 the Clerk of the Board, each individual Board member, and the Planning Department no later

1 than noon, five days prior to the scheduled hearing. Any written document submitted after
2 these deadlines shall not be distributed to the Supervisors as part of their hearing materials.
3 The Clerk will distribute any written document submitted by these deadlines noon, eight days
4 prior to the scheduled hearing to the Board through the Board's normal distribution
5 procedures, and such written materials will be part of the record. Written materials submitted
6 later than noon, eight days prior to the scheduled hearing, other than any Appellant reply
7 submitted in compliance with the provisions of this section 31.16(b)(5) and Planning
8 Department responses to the appeal, will not be considered part of the record unless five
9 Board members agree each submits a formal request in writing to the Clerk of the Board, on
10 official letterhead, with the Board member's original signature, at the appeal hearing or before,
11 subject to the Board's Rules of Order, to include such written materials in the official file and
12 considered as part of the record.

13 (6) The Board shall conduct its own independent review of whether the CEQA
14 decision adequately complies with the requirements of CEQA. The Board shall consider anew all
15 facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA
16 decision, including, but not limited to, the sufficiency of the CEQA decision and the
17 correctness of its conclusions.

18 (7) The Board shall act on an appeal within 30 days of the date scheduled for the
19 hearing, provided that if the full membership of the Board is not present on the last day on which the
20 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but
21 not later than, the full membership of the Board is present; and provided further, if the Board of
22 Supervisors does not conduct at least three regular Board meetings during such 30 day period, the
23 Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon or
24 at the next regularly scheduled Board meeting should such deadline fall within a Board
25 recess; and provided further that the latest date to which said decision may be so postponed under this

1 Section shall be not more than 90 days from the expiration of the time frames set forth in Sections 31.16
2 (c), (d), or (e), or (f), as applicable, for filing an appeal.

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

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

16 (10) If the Board reverses the CEQA decision, the prior CEQA decision and any
17 actions approving the project, including, but not limited to, any approvals of the project granted
18 during the pendency of the appeal, in reliance on the reversed CEQA decision, shall be deemed
19 void.

20 (11) The date the project shall be considered finally approved shall occur no earlier
21 than either the expiration date of the appeal period, if no appeal is filed, or the date the Board affirms
22 the CEQA decision, if the CEQA decision is appealed.

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

1 (1) Any person or entity that has submitted comments to the Planning Commission
2 or the Environmental Review Officer on a draft EIR, either in writing during the public review period,
3 or orally or in writing at a public hearing on the EIR, may appeal the Planning Commission's
4 certification of the final EIR.

5 (2) The appellant of a final EIR shall submit a letter of appeal and written
6 materials in support of the appeal to the Clerk of the Board after the Planning Commission
7 certifies the final EIR as complete and no later than within 30 days after the Date of the
8 Approval Action for the project following the Planning Commission's certification of the EIR.

9 (3) The grounds for appeal of an EIR shall be limited to whether the EIR complies
10 with CEQA, including whether it is adequate, accurate and objective, sufficient as an informational
11 document, correct in its conclusions, and reflects the independent judgment and analysis of the City
12 and whether the Planning Commission certification findings are correct.

13 (4) The Board shall affirm the Planning Commission's certification of the final EIR
14 if the Board finds that the final EIR complies with CEQA, including that it is adequate, accurate and
15 objective, sufficient as an informational document, correct in its conclusions, and reflects the
16 independent judgment and analysis of the City and that the Planning Commission certification
17 findings are correct.

18 (5) The Board shall reverse the Planning Commission's certification of the EIR if the
19 Board finds that the EIR does not comply with CEQA, including that it or is not adequate, accurate
20 and objective, is not sufficient as an informational document, that its conclusions are incorrect
21 or it does not reflect the independent judgment and analysis of the City, or that the Planning
22 Commission certification findings are incorrect. If the Board reverses the Planning Commission's
23 certification of the final EIR, it shall remand the final EIR to the Planning Commission for further
24 action consistent with the Board's findings. Any further appeals of the EIR shall be limited only to the
25 portions of the EIR that the Planning Commission has revised and any appellant shall have commented

1 on the revised EIR at or before a public hearing held on the revised EIR or the project, if any. The
2 Board's subsequent review, if any, also shall be limited to the portions of the EIR that the Planning
3 Commission has revised including, without limitation, new issues that have been addressed. Any
4 additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.

5 (e)(d) **Appeal of Negative Declarations.** In addition to those requirements set forth in Section
6 31.16(e)(b) above, the following requirements shall apply only to appeals of negative declarations.

7 (1) Any person or entity that has filed an appeal of the preliminary negative
8 declaration with the Planning Commission during the public comment period provided by this Chapter
9 31 for filing comments on the preliminary negative declaration may appeal the Planning Commission's
10 approval of the final negative declaration.

11 (2) The appellant of a negative declaration shall submit a letter of appeal to the
12 Clerk of the Board after the Planning Commission approves the final negative declaration and
13 within 30 days after the Date of the Approval Action for the project taken in reliance on the negative
14 declaration.

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

20 (4) The Board shall affirm the Planning Commission approval of the negative
21 declaration if it finds that the negative declaration conforms to the requirements of CEQA and that the
22 record does not include substantial evidence to support a fair argument that the project could
23 not have ~~may~~ have a significant effect on the environment.

24 (5) The Board shall reverse the Planning Commission approval of the negative
25 declaration if it finds that the negative declaration does not conform to the requirements of CEQA or

1 there is substantial evidence to support a fair argument that the project may have a significant
2 effect on the environment that has not been avoided or mitigated to a less than significant level by
3 mitigation measures or project modifications agreed to by the project sponsor or incorporated into the
4 project. If the Board reverses the decision of the Planning Commission, it shall remand the negative
5 declaration to the Planning Department for further action consistent with the Board's findings.

6 (A) In the event the Board remands the negative declaration to the Planning
7 Department for revision, the Environmental Review Officer shall finalize the revised negative
8 declaration and send notice to the public, as set forth in Section 31.11 of this Chapter, of the
9 availability of the revised negative declaration. No appeal to the Planning Commission of the revised
10 negative declaration shall be required. In the event an organization or individual wishes to appeal the
11 revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30
12 days of publication of the revised negative declaration and shall comply with the procedures set forth
13 in this Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the
14 negative declaration that the Planning Department has revised.

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

20 (f)(e) Appeal of Exemption Determinations. In addition to those requirements set forth in
21 Section 31.16(e)(b) above, the following requirements shall apply to appeals of exemption
22 determinations.

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

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

4 (A) For a private project seeking a permit, license or other entitlement for
5 use for which the City otherwise provides an appeal process for the entitlement, the appeal of an
6 exemption determination shall be filed after the Planning Department issues the exemption
7 determination and within 30 days after the Date of the Approval Action, regardless of whether the
8 Approval Action is subject to a shorter appeal period. Departments that issue permits or entitlements
9 supported by exemption determinations shall take steps as they determine appropriate to advise
10 applicants seeking permits, licenses or other entitlements for use of the 30-day appeal period for the
11 exemption determination.

12 (B) For all projects not covered by Section (A):

13 (i) If the Approval Action is taken following a noticed public hearing
14 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
15 filed after the Planning Department issues the exemption determination and within 30 days after
16 the Date of the Approval Action.

17 (ii) If the Approval Action is taken without a noticed public hearing
18 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
19 filed after the Planning Department issues the exemption determination an approval of the
20 project in reliance on the exemption determination and within 30 days after the first date the
21 Planning Department posts on the Planning Department's website a notice as provided in Section
22 31.08(g) of this Chapter.

23 (C) As to an exemption determination for a project for which no City
24 entity posted the exemption determination on the City's website or otherwise provided public
25

1 notice of the exemption determination under this Chapter 31, an appeal may be filed within 30
2 days following the appellant's discovery of the exemption determination.

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

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

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

15 Section 4. As stated in San Francisco Administrative Code, Chapter 31, the purpose
16 of Chapter 31 is to provide procedures for San Francisco to carry out its responsibilities as a
17 lead agency under the California Environmental Quality Act ("CEQA"), a State statute that has
18 played a key role in protecting the environment. As stated in Chapter 31, Section 31.01,
19 CEQA provides for the orderly evaluation of projects and preparation of environmental
20 documents, and requires adoption of corresponding objectives, criteria and procedures by
21 local agencies. By adopting this ordinance, the Board of Supervisors intends to reaffirm the
22 policies and objectives stated in Chapter 31, Section 31.02, including without limitation,
23 providing decision makers and the public with meaningful information regarding the
24 environmental consequences of proposed activities, identifying ways that environmental
25 damage can be avoided or significantly reduced, providing public input in the environmental

1 review process, bringing environmental considerations to bear at an early stage in the
2 planning process, avoiding unnecessary delays or undue complexity of review and providing
3 procedural direction on implementation of CEQA by the City. Nothing in this ordinance is
4 intended to change the policies and objectives of CEQA, to limit any rights of appeal provided
5 to the public under CEQA, or to limit the authority of the San Francisco Board of Supervisors
6 or the San Francisco Planning Commission to hear and decide CEQA appeals as provided in
7 this Chapter.

8 Section 45. Effective Date. This ordinance shall become effective 30 days from the
9 date of passage.

10 Section 6. Operative Date. This ordinance shall become operative on the later date of
11 September 1, 2013, or five business days after the Secretary of the Planning Commission
12 provides a memorandum to the Clerk of the Board of Supervisors advising that the Planning
13 Commission has held a public hearing at which the Planning Department has demonstrated to
14 the Planning Commission that it has updated its website to provide up-to-date information to
15 the public about each CEQA exemption determination in a format searchable by location,
16 such as through the "Active Permits In My Neighborhood" tool now used by the Planning
17 Department and the Building Department.

18 Section 57. This section is uncodified. In enacting this Ordinance, the Board intends to
19 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
20 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
21 are explicitly shown in this legislation as additions, deletions, Board amendment additions,

22 ///

23 ///

24 ///

25 ///

1 and Board amendment deletions in accordance with the "Note" that appears under the official
2 title of the legislation.

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

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By: *Elaine C. Warren*
ELAINE C. WARREN
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(7/16/2013, Amended in Board)

[Administrative Code - California Environmental Quality Act Procedures, Appeals, and Public Notice Requirements]

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; revising noticing procedures for environmental impact reports and negative declarations for plan area projects exceeding 20 acres; expanding noticing requirements for certain exempt projects; clarifying existing noticing requirements for exempt projects; and making environmental findings.

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 establishes procedures for appeal of exemption determinations and negative declarations to the Board of Supervisors and 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. Responsibility and Definitions.**

- 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 ("HPC") and the Environmental

Review Officer ("ERO") in transmitting notices to the County Clerk. Provides that the HPC may review projects that may impact historic or cultural resources.

- **Notifications.** Adds Section 31.04(g) to provide for notices electronically unless someone requests a hard copy or if otherwise specified by CEQA. The Planning Department ("Planning") must provide a hard copy notice to persons requesting such notice before the effective date of this provision unless they affirmatively opt for electronic notice.
- **Electronic Notification System.** In Section 31.04(g), requires Planning to establish an electronic notification system for all notices provided under Chapter 31. The system must allow persons to pick different specified categories of projects or different types of CEQA documents for which they would like to receive electronic notice. The system must be operative within three months of operative date of ordinance. If not, Planning must provide monthly progress reports to the Board.
- **Definitions.** Adds Section 31.04(h) to define "Approval Action," "Building Permit," "Date of the Approval Action," and "Entitlement of Use for the Whole of the Project," all of which relate to describing the approval action for a project that triggers the ability to file an appeal of a CEQA exemption determination or negative declaration to the Board of Supervisors.
- Defines "Approval Action" for an exempt project as:
 - (1) for private projects:
 - (A) the first approval of the project in reliance on the exemption at a noticed public hearing at the Planning Commission, or, if no such hearing is required,
 - (B) the first approval in reliance on the exemption that grants an entitlement for the whole of the project, either by another commission, board or official after a public hearing or by any official of the City without a public hearing.
 - (2) for the City's own projects (e.g. not private projects):
 - (A) the first approval in reliance on the exemption of the project at a noticed public hearing, or
 - (B) if approved without a public hearing, the decision in reliance on the exemption that commits the City to a definite course of action in regard to the project.

- Defines "Approval Action" for projects covered by a negative declaration to mean the approval of the project by the first City decision-making body that adopts the negative declaration.
- **Section 31.05. Office of Environmental Review.**
 - 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.
 - In Section 31.05(l), adds a new finding by the Board that expediting environmental review for publicly funded affordable housing projects and bicycle and pedestrian safety projects for purposes of expediting permit processing qualifies as a public policy basis. It then directs Planning to give precedence through all stages of the environmental review process to these projects. As part of its preliminary assessment of projects, Planning must determine within 60 days of a complete assessment application whether a project qualifies for exemption. It directs Planning to identify issues that affect the type, schedule and process of environmental review.
 - In Section 31.05(m) adds a new requirement that the ERO provide an annual report to the Planning Commission and the Board of Supervisors on appeals filed under any of the appeal-provisions of the ordinance.
- **Section 31.08. Exemptions.**
 - Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for projects covered by statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
 - Requires the Planning Department to post on its website and provide to city departments a list of the types of projects in the city that Planning has identified as categorically exempt.
 - Provides in Section 31.08(d) that when departments other than Planning issue exemptions, they shall inform Planning and provide Planning with a copy of each exemption determination containing the information specified in Section 31.08(e). Planning shall post that information on its website.
 - **Posting and Noticing Exemptions.** In Section 31.08(e) specifies posting and notices requirements for exemptions:

(1) Requires for each exemption determination, that Planning post on its website a project description; the type or class of exemption; other information, if any, supporting the exemption determination; the City approval action that is the Approval Action for the project; and the date of the exemption determination.

(2) Requires for projects that involve multiple discretionary permits or other project approvals, that Planning additionally post on its website a list of other discretionary approval actions known to the ERO at the time of the exemption determination and describe the whole of the project for all the discretionary approval actions.

(3) In Section 31.08(e)(2), provides that Planning may use a written exemption determination form, such as a Certificate of Exemption from Environmental Review. If such a form is used, it shall contain the information required by Section 31.08(e)(1). Planning shall post it on its website and at its offices, and mail copies to the applicant, City entities that will approve the project, and anyone requesting written notice.

(4) In Section 31.08(e)(3) requires Planning to use a written exemption determination and provide notice in accordance with Section 31.08(e)(2) for all projects involving historic resources, Class 31 categorical exemptions, any demolition, any Class 32 categorical exemption, and any community plan exemption. Clarifies the definition of projects that involve historic resources or demolitions for purposes of this requirement.

o **Noticing Approval Actions for Exempt Projects.**

(1) Requires in Section 31.08(f)(1) that public hearing notices inform the public if the City will take an Approval Action that triggers the ability to file an appeal of a CEQA exemption determination to the Board of Supervisors. Such notices must advise the public of the exemption determination, how to obtain a copy, and the consequences of failing to timely raise objections to the exemption.

(2) Requires in Section 31.08(f)(2) that when the Planning Department provides notice under Planning Code Sections 311 and 312 (advising of the right to request a discretionary review hearing) the notice shall contain the information in Section 31.08(f)(1) and advise those noticed that if a discretionary review hearing is requested and the project is approved by the Planning Commission, such approval will be the Approval Action that triggers the ability to file an appeal of the CEQA exemption determination. If a discretionary review hearing is not requested, the issuance of the Building Permit will trigger the Approval Action.

(3) Requires in Section 31.08(g) that when City entities take an Approval Action on a City project (e.g. a project not involving private entitlements) without a

noticed public hearing, the City entity shall arrange for Planning to post a notice on Planning's website informing the public that the CEQA exemption may be appealed to the Board of Supervisors within 30 days after the first date of posting of the notice.

- **Filing Notices of Exemption.** In Section 31.08(h) specifies that notices of exemption, which CEQA provides may be filed with the County Clerk to start the running of a statute of limitation, may be filed only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to anyone who has requested notice.
- **Modification of Exempt Project.** Adds Section 31.08(i) to provide:
 - (1) When an exempt project changes after the Approval Action and it requires a subsequent approval, the ERO must determine whether the change is a substantial modification. A substantial modification is defined as:
 - (A) A change in the project in a way that constitutes an expansion or intensification of the project, such as expanding the building envelope, changing the use, or undertaking a demolition.
 - (B) New information presented to the ERO that was not known and could not have been known with the exercise of reasonable diligence at the time of the original determination, that shows the project no longer qualifies for the exemption.
 - (2) When a project is substantially modified, the ERO shall make a new CEQA decision as provided for in Section 31.19(b), which could be a new exemption, or an initial study, leading to a negative declaration or environmental impact report. The new CEQA decision will be subject to appeal to the Board.
 - (3) When the ERO determines that a change in a project is not a substantial modification, the ERO shall post that determination on its website and in its offices, and mail the notice to the applicant, City approving entities, and anyone requesting written notice.
- **Sections 31.09 and 31.10. Determination of Need for and Initial Evaluation of Projects.**
 - Makes minor clarifying revisions to these sections to reflect actual practice of the Planning Department in its initial evaluation of projects.

- Clarifies in Section 31.10(f) that in accordance with CEQA, the ERO shall determine whether there is substantial evidence to support a "fair argument" that a project may have a significant effect on the environment and an EIR is required, or whether a project could not have a significant effect on the environment and a negative declaration is required.
- **Section 31.11. Negative Declarations or Mitigated Negative Declarations.**
 - Provides for Planning to develop guidance for posting notices on the subject site so posters are visible from the closest public location.
 - Provides in Section 31.11(c)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to each property owner within 300 feet of the exterior boundaries of the project area, but adds a requirement that for all mailed notices, it must include residential occupants, if practical. Provides that Planning shall post all preliminary negative declarations on its website.
 - Provides in Section 31.11(d) that the notice of intent shall inform the public that only persons appealing the preliminary negative declaration to the Planning Commission will be permitted to appeal the final negative declaration to the Board of Supervisors.
 - Provides in Section 31.11(h) that a notice proposing to adopt the negative declaration and take the Approval Action for the project shall advise the public of its appeal rights to the Board of Supervisors following the Approval Action in reliance on the negative declaration.
 - Specifies in Section 31.11(j) that a CEQA-required notice of determination shall be filed with the County Clerk to start the running of a statute of limitation, only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. Also, the applicant must have paid any required fees. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notice in its offices, on the website and to mail the notice to anyone who has requested notice.
- **Sections 31.12 – 31.15. Environmental Impact Reports.**
 - Deletes language at the beginning of Section 31.12 concerning when to prepare an EIR because that issue is now addressed by Section 31.10(f). 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 in Section 31.14(a)(1) that the Planning Department shall obtain comments from the Historic Preservation Commission on a draft EIR for any projects that may impact historic or cultural resources. Planning shall obtain any comments seven days before the Planning Commission holds a public hearing on the draft EIR, unless to do so would extend the comment period, in which case, it shall obtain comments as far in advance of the Planning Commission hearing as possible.
- Provides in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of the Draft EIR to each property owner within 300 feet of the exterior boundaries of the project area, but adds a requirement that for all mailed notices, it must include residential occupants, if practical. Provides that Planning shall post all draft EIRs on its website.
- Provides in Section 31.14(b)(3) that the notice of availability shall inform the public that only commenters on the Draft EIR will be permitted to file an appeal of the certified EIR to the Board of Supervisors.
- Requires in Section 31.14(c) that Planning make the draft EIR available on Planning's website and provide a copy in electronic form on a text searchable digital storage device or by text searchable electronic mail transmission to anyone who requests a copy and provides an email address, unless they request a hard copy.
- Requires in Section 31.15(a) that Planning make a final EIR available to the public no less than 10 days before the Planning Commission hearing to consider certification of the final EIR.
- Provides in Section 31.15(c) for retention as part of the administrative record a transcription of a recording by a phonographic reporter of any public hearing on a draft EIR.
- Provides in Section 31.15(d) that the notice of the certification hearing shall inform the public of its appeal rights to the Board of Supervisors after such date.
- In section 31.15(e) contains the same provision regarding the filing of notices of determination for EIRs as found in Section 31.11(j) for negative declarations.
- **Section 31.16. Appeal of CEQA Decisions to the Board of Supervisors.**

- 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. Adds an entirely new Section 31.16.
- Provides in Section 31.16(a) that exemption determinations, negative declarations and environmental impact reports may be appealed to the Board of Supervisors.
- Specifies the period in which appeals may be filed:
 - (1) For an EIR, no later than 30 days after certification of the EIR by the Planning Commission.
 - (2) For a negative declaration, after the Planning Commission approves the negative declaration and within 30 days of the Date of the Approval Action taken in reliance on the negative declaration.
 - (3) For exemptions, after an exemption is issued and within one of these periods as applicable:
 - (A) For a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process for the entitlement, within 30 days of the Date of the Approval Action, even where the appeal period for the entitlement is shorter. Departments that grant entitlements supported by an exemption determination shall take steps to advise applicants that the appeal period for exemption determinations is 30 days after approval of the entitlement.
 - (B) For the City's own projects not involving a private entitlement, if the Approval Action is taken at a public hearing, within 30 days of the Date of the Approval Action; if the Approval Action is taken without a public hearing, within 30 days of the posting on Planning's website of a notice as provided in Section 31.08(g).
 - (C) If no City entity posts the exemption determination on the City's website or otherwise provides notice of the exemption determination under Chapter 31; an appeal may be filed within 30 days of discovery of the exemption determination.
- Specifies the requirements for filing 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, one must have first appealed the negative declaration to the Planning Commission. The grounds for the appeal must be filed with the appeal.

- Provides that the Planning Department shall advise the Clerk of the Board in three working days after an appeal is filed whether the appeal is timely. The Clerk will have seven working days to advise the appellant whether the appeal complies with all of the ordinance requirements, including whether it was timely filed.
- Specifies that for projects requiring multiple approvals, after the Clerk has scheduled the appeal for hearing and while the appeal is pending at the Board, other City agencies and officials may not carry out or approve the project, except for taking essential actions to abate hazards to public health and safety. The Board must affirm the CEQA decision before it approves the project, however, it may hold hearings on the project and pass proposed approval actions out of committee without recommendation so that the project approvals and CEQA appeal may be consolidated before the full Board. If the Board reverses the CEQA determination of Planning, all approvals taken by other City agencies and officials, including those taken during the pendency of the appeal, are void.
- Specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with a list of interested parties.
- Directs the Clerk to schedule the appeal hearing before the full Board. The Clerk shall schedule the CEQA appeal hearing no less than 21 and no 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.
- Provides that the Board President may consolidate multiple appeals on the same project so they are heard simultaneously.
- Specifies that the public, appellant and project sponsor may submit written materials to the Clerk no later than noon, 11 days prior to the scheduled hearing.
- Provides that the Clerk will distribute materials submitted by noon, eight days before the hearing, through the Clerk's normal distribution procedure.
- Provides that 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.
- 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.

(1) In the case of EIRs, if the Board reverses Planning's certification, any further appeals of the revised EIR are limited to revised portions, including any new information, and an appellant must comment on the revised EIR at any earlier public hearing on the revisions.

(2) 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.

- **Section 31.19. Evaluation of Modified Projects.**
 - Revises Section 31.19(b) to provide that when the ERO determines that a change in an exempt project is a substantial modification as defined in Section 31.08(i), the ERO shall make a new CEQA decision – either an exemption determination or an initial study, and if necessary, prepare an EIR.
 - Provides that Planning may issue guidance to other City departments in determining the type of project modification for exempt projects that might occur after an Approval Action that would require additional CEQA review.
- **Section 4.** Includes findings expressing an intent by the Board of Supervisors to reaffirm the policies and objectives stated in Chapter 31, Section 31.02, and to not change any policies or objectives in CEQA, or to limit any rights of appeal under CEQA or the authority of the Board of Supervisors or the Planning Commission to hear and decide CEQA appeals as provided in Chapter 31.
- **Section 5.** Specifies an effective date for the ordinance of 30 days after passage.
- **Section 6.** Specifies an "Operative Date" of no earlier than September 1, 2013, and not until after the Planning Department has demonstrated to the Planning Commission that it has updated its website to provide up-to-date information to the public about each CEQA exemption determination in a format searchable by location, such as through the "Active Permits In My Neighborhood" tool now used by the Planning Department and the Building Department.

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, reflect current Planning Department practices; provide for codified procedures for appealing EIRs, negative

declarations and exemption determinations to the Board; and provide for enhanced noticing of CEQA decisions. The provisions concerning appeals to the Board 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 decision, 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 EIR. 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, after the project is approved. 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 Order for conducting land use appeal hearings.

The substitute ordinance introduced on April 2, 2013, and heard in the Land Use Committee on April 8, 2013, differed from the proposed ordinance in these main respects:

Section 31.04.

- Section 31.04(g), did not contain an automatic opt-out provision from electronic notice for those receiving mailed notices now. Did not require Planning to establish the electronic notification system described in Section 31.04(g).
- Section 31.04(h) included a definition for EIR Approval Actions.
- A Section 31.04(i) required Planning to identify the Approval Action for each project for which it rendered a CEQA decision.

Section 31.05.

- Did not contain Section 31.05(l) pertaining to priority processing for affordable housing and bicycle and pedestrian safety projects.
- Did not require the Planning Department to prepare an annual report to the Planning Commission and the Board of Supervisors on appeals filed under Chapter 31.

Section 31.08.

- Did not require other departments that grant exemptions to provide specified information about the exemption to Planning or require Planning to post this information on its website.
- Section 31.08(e) did not require posting on Planning's website of certain information about each exemption, including those requiring multiple approval actions. Instead, required posting and mailed notice by written determination of specified types of exempt projects, which included projects involving historic resources, demolitions and in-fill exemptions, but not projects involving community plan exemptions.
- Section 31.08(h), did not require Planning to post notices of exemption on its website, in its offices or mail such notices to those requesting notice. Similarly, these requirements were not in the ordinance for notices of determination for negative declarations and EIRs in Sections 31.11(j) and 31.15(e).
- Section 31.08(i) specified that Planning may issue a new CEQA decision for a modified project, however, it did not contain detailed language defining a "substantial modification" that would trigger a new CEQA decision.

Section 31.10.

- Included language from CEQA Guidelines Section 15064(f) and 15070 instead of the language now found in this section:

Section 31.11.

- Required on-site posting, however, it did not require Planning to develop guidance for the size of on-site posters or require Planning to provide mailed notice to residents, and if practicable, occupants, or to provide mailed notice of a preliminary negative declaration within the project area for area plan projects of greater than 20 acres. Similarly, Section 31.14(a)(5) did not contain a comparable provision for EIR projects.

Sections 31.12 – 31.15.

- Did not require Planning to obtain comments from the Historic Preservation Commission on a draft EIR seven days before the Planning Commission hearing on the draft EIR.
- Did not require Planning to make the draft EIR available on its website in a text searchable form and did not require Planning to make the final EIR available to the public at least 10 days before the Planning Commission certification hearing.

Section 31.16.

- Defined the Board as the CEQA decision-maker for projects that the Board must approve and, in such cases, provided that the Board would not hold a separate appeal hearing, but instead, the Board would consider CEQA issues along with project approval items and approve Planning's CEQA decision before it approved the project.
- Provided for appeal of EIRs after certification and the first project approval action.
- Required all written materials in support of an appeal to be filed along with the appeal.
- Did not contain details about how the Clerk and Planning would determine the timeliness and adequacy of an appeal.
- Provided that project approvals could continue during the pendency of an appeal, except not any actions that would physically change the environment except for emergency actions.
- Provided for scheduling appeal hearings not less than 30, instead of not less than 20 days after the appeal period expired.
- Did not provide for appellant to submit a reply five days before the scheduled hearing to Planning's response to an appeal.
- Did not specify that materials submitted after specified deadlines would be excluded from the record unless approved by five Board members.

Section 31.19(b), Section 4, Section 6.

- Did not contain revisions to Section 31.19(b), the language in Section 4, or the language in Section 6, pertaining to an Operative Date.

The Land Use Committee amended the April 8, 2013 ordinance on April 22, 2013, to include these changes:

- Deleted language in Section 31.16 pertaining to the Board as the CEQA decision-maker and required all hearings on CEQA appeals to be heard before the full Board.
- In Section 31.16, minimized changes to the existing EIR appeal process.
- Clarified language in two places regarding the "fair argument" standard.
- Required Planning to identify the Approval Action for each project.

- Clarified actions that Planning should take when an exempt project is modified and clarified that when Planning determines a modified project is still within the scope of the original project, it should put a note in the file to that effect.
- Allowed exemption and negative declaration appeals to be filed in the window between the CEQA decision and within 30 days of the Approval Action, although provided that the Clerk would not schedule the appeals until the appeal period expired.
- Provided that anyone could request hard copies of notices in lieu of electronic copies, even where Planning had an electronic address.
- Provided that the ordinance would not be operative until an online notice system was up and running for all exemptions, even those issued over-the-counter.

The Land Use Committee further amended the ordinance on May 6, 2013, to include these changes:

- Clarified that when Planning identified the Approval Action for a CEQA decision it would post that information on its website, in addition to any other manner that Planning chose to make the information available.
- Provided that departments other than Planning that issue exemptions must inform Planning and provide Planning with copies and Planning must make the information about such exemptions available on its website to the same extent that it does for other exemptions.
- Clarified that if an exempt project was modified, an additional CEQA decision would be required if the modified project exceeded the scope of the original project for any aspect of the project regulated under the Planning Code or introduced a new use not previously included in the project.
- Added a requirement that Planning provide notice when it determined that a project modification was sufficiently minor not to trigger a new CEQA decision.
- Provided that Planning was not required to file a notice of determination until the Project Sponsor had paid any required fees for such filing.
- Provided that once the Clerk had scheduled an appeal for hearing, other City boards and commissions could not take action to carry out or approve the project.
- Required that Planning advise the Clerk on the timeliness of appeals within three working days of the date the appeal is filed; provided that the Clerk has seven days from the date the appeal is filed to determine if the appeal complies with the requirements in the ordinance for filing an appeal, including whether it is timely.

The Land Use Committee further amended this ordinance on May 13, 2013, to include this change:

- In Section 31.16, deleted a provision providing that materials submitted less than eight days before an appeal hearing would not be distributed. Replaced the provision with one that provides that materials submitted less than eight days before an appeal hearing other than Planning Department responses to an appeal will not be part of the record unless five members of the Board agree at the appeal hearing or before, subject to the Board's Rules of Order, to include such written materials in the record.

The Land Use Committee further amended this ordinance on May 20, 2013, to include this change:

- In Section 31.16, added various amendments requested by the Clerk's Office to clarify certain appeal procedures, including Planning's role in determining timeliness of appeals, the process for Board members to request late submittals be included in the record, and the schedule for the Clerk to set appeal hearings when the Board is in recess.