

1 [California Environmental Quality Act Appeals of Certain Environmental Determinations and  
2 Providing Public Notice]

3 **Ordinance amending Administrative Code Chapter 31 to provide for appeals to the**  
4 **Board of Supervisors of certain environmental documents and determinations under**  
5 **the California Environmental Quality Act, to clarify procedures and to provide public**  
6 **notice of environmental documents and determinations.**

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

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

11 Section 1. The San Francisco Administrative Code is hereby amended by amending  
12 Section 31.01, to read as follows:

13 SEC. 31.01. - AUTHORITY AND MANDATE.

14 (a) This Chapter is adopted pursuant to the California Environmental Quality Act, Public  
15 Resources Code Sections 21000 and following, as amended; and pursuant to the Guidelines  
16 for Implementation of the California Environmental Quality Act, as amended, appearing as  
17 Title 14, Division 6, Chapter 3 of the California Code of Regulations (hereinafter referred to  
18 collectively as CEQA). CEQA provides for the orderly evaluation of projects and preparation of  
19 environmental documents, and requires adoption of corresponding objectives, criteria and  
20 procedures by local agencies.

21 (b) Any amendments to CEQA adopted subsequent to the effective date of this Chapter  
22 31 shall not invalidate any provision of this Chapter 31. Any amendments to CEQA that may  
23 be inconsistent with this Chapter 31 shall govern until such time as this Chapter 31 may be  
24 amended to remove such inconsistency. When state law is amended or the CEQA guidelines are  
25 modified in a manner that creates an inconsistency with Chapter 31, the City Attorney shall notify the

1 Board of Supervisors within 30 days. Notwithstanding any other provision of law, the Clerk of the  
2 Board of Supervisors shall schedule a hearing in the Land Use Committee, or its successor, within 90  
3 days, to discuss whether to initiate amendments to this Chapter 31. The committee, or any other entity  
4 authorized by City Charter, may introduce legislation to reconcile Chapter 31 with new state law or  
5 CEQA guidelines.

6 (c) This Chapter shall govern in relation to all other ordinances of the City of San  
7 Francisco ("City") and rules and regulations pursuant thereto. In the event of any  
8 inconsistency concerning either public or private actions, the provisions of this Chapter shall  
9 prevail.

10 Section 2. The San Francisco Administrative Code is hereby amended by amending  
11 Section 31.02, to read as follows:

12 SEC. 31.02. - POLICIES AND OBJECTIVES.

13 The basic purposes of CEQA and this Chapter 31 are to:

14 (a) Provide decision makers and the public with meaningful information regarding the  
15 environmental consequences of proposed activities.

16 (b) Identify ways that environmental damage can be avoided or significantly reduced.

17 (c) Provide for public input in the environmental review process.

18 (d) Bring environmental considerations to bear at an early stage of the planning  
19 process, and to avoid unnecessary delays or undue complexity of review. Simplicity and  
20 directness are to be emphasized, with the type of review related to the depth and variety of  
21 environmental issues raised by a project, so that government and public concern may be  
22 focused upon environmental effects of true significance.

23 (e) Provide procedural direction on implementation of CEQA by the City.

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1 (f) Prevent significant avoidable damage to the environment by requiring changes in  
2 projects through the use of alternatives or mitigation measures when the government agency  
3 finds the changes to be feasible.

4 (g) Disclose to the public the reasons why a governmental agency approved the project  
5 in the manner the agency chose if significant environmental effects are involved.

6 (h) Resolve appeals of decisions of nonelected decision-making bodies in a fair and timely  
7 manner as close to the beginning of the entitlement process as practicable.

8 Section 3. The San Francisco Administrative Code is hereby amended by amending  
9 Section 31.04, to read as follows:

10 SEC. 31.04. - RESPONSIBILITY.

11 (a) The City and all its officials, boards, commissions, departments, bureaus and  
12 offices shall constitute a single “local agency,” “public agency” or “lead agency” as those  
13 terms are used in CEQA; except that the San Francisco Redevelopment Agency shall be a  
14 separate “local agency” or “public agency” as specified in CEQA. With regard to establishment  
15 of any redevelopment area, the City shall be the “lead agency.”

16 (b) The administrative actions required by CEQA with respect to the preparation of  
17 environmental documents, giving of notice and other activities, as specified in this Chapter,  
18 shall be performed by the San Francisco Planning Department as provided herein, acting for  
19 the City. For appeals to the Board of Supervisors, the Clerk of the Board of Supervisors shall perform  
20 any administrative functions necessary for resolution of the appeal. The Historic Preservation  
21 Commission shall have the authority to review and comment on all environmental documents and  
22 determinations.

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

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

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

9 Section 4. The San Francisco Administrative Code is hereby amended by amending  
10 Section 31.08, to read as follows:

11 SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.

12 (a) CEQA provides that certain kinds of projects are statutorily excluded from  
13 CEQA, that certain classes of projects generally do not have a significant effect on the  
14 environment and therefore are categorically exempt from CEQA, that a Community Plan  
15 Exemption applies, and that a common sense exemption applies under the general rule that only  
16 projects with the potential for causing a significant effect on the environment are subject to CEQA  
17 (referred to in this section as the "General Rule Exclusion"). For categorical exemptions, each public  
18 agency must list the specific activities that fall within each such class, subject to the  
19 qualification that these lists must be consistent with both the letter and the intent of the  
20 classes set forth in CEQA. ~~Except as provided in this section 31.08, projects that are categorically~~  
21 ~~exempt are not subject to the requirements of this Chapter 31.~~

22 (b) The Environmental Review Officer shall maintain the required list of types  
23 of projects which are categorically exempt, and such list shall be kept posted in the offices of  
24 the Planning Department. Such list shall be kept up to date in accordance with any changes  
25 in CEQA and any changes in the status of local projects. The initial list and any additions,

1 deletions and modifications thereto shall be adopted as administrative regulations by  
2 resolution of the Planning Commission after public hearing, according to the procedure set  
3 forth in Section 31.04(c) of this Chapter.

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

9 (d) The Environmental Review Officer may adopt necessary forms, checklists  
10 and processing guidelines to aid the Planning Department and other departments in  
11 determining that a project may be statutorily excluded, categorically exempt or subject to a  
12 Community Plan Exemption or General Rule Exclusion, in accordance with the letter and the intent  
13 expressed in ~~the classes of categorical exemptions specified in~~ CEQA and with the administrative  
14 regulations adopted by the Planning Commission.

15 (e) The Environmental Review Officer shall advise other departments of the  
16 Community Plan Exemption, statutory exclusions, categorical exemptions and General Rule  
17 Exclusions. The Environmental Review Officer may delegate the determination whether a  
18 project is subject to a Community Plan Exemption or General Rule Exclusion, statutorily excluded or  
19 categorically exempt from CEQA to other departments, provided that other departments shall  
20 consult with the Environmental Review Officer regarding the application of the Community Plan  
21 Exemption, General Rule Exclusion, statutory exclusions and categorical exemptions, and provided  
22 further that the Environmental Review Officer shall be responsible for all determinations so  
23 delegated to other departments. When the Planning Department or other City department  
24 determines that a project is statutorily excluded from CEQA, categorically exempt from CEQA, subject  
25 to a Community Plan Exemption, or covered by the General Rule Exclusion (referred to in this Chapter

1 31 as the "exemption determination") the issuance of the exemption determination shall be considered  
2 an exemption determination by the Planning Department.

3 (f) When the Environmental Review Officer, or any other department to  
4 which the Environmental Review Officer has delegated responsibility pursuant to Section  
5 31.08(e) above, has determined that a project is excluded or categorically exempt from  
6 CEQA, notice to the public shall be provided for all such determinations involving the following  
7 types of projects: (1) any historical resources as defined in CEQA, including without limitation,  
8 any buildings and sites listed individually or located within districts listed (i) in Planning Code  
9 Articles 10 or 11, (ii) in City-recognized historical surveys, (iii) on the California Register, or  
10 (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3)  
11 any demolition, as defined in Planning Code Section 317, of an existing structure; or, (4) any  
12 Class 32 categorical exemption.. Written determinations of categorical exemptions for these  
13 types of projects shall be posted in the offices of the Planning Department and on the Planning  
14 Department's website, and shall be mailed to any individuals or organizations that have  
15 previously requested such notice in writing. In addition, when the Planning Department or other  
16 City department provides any public notice of a proposed approval action related to the project and  
17 advises the public of a scheduled public hearing, or the opportunity to request a public hearing, before  
18 the Planning Commission, the Zoning Administrator or other City board or commission, as applicable,  
19 the notice shall: (1) inform the public of the written CEQA determination, and (2) advise the public that  
20 any person who wishes to object to the CEQA determination shall raise such objection before the  
21 Planning Commission, the Zoning Administrator, or other City board or commission, as applicable, in  
22 order to preserve the opportunity to appeal the determination to the Board of Supervisors as provided  
23 in Section 31.16.

24 (g) When the Environmental Review Officer, or any other department to  
25 which the Environmental Review Officer has delegated responsibility pursuant to Section

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

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

10 Section 5. The San Francisco Administrative Code is hereby amended by amending  
11 Section 31.11, to read as follows:

12 SEC. 31.11. - NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE  
13 DECLARATIONS.

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

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

25

1 (c) The Environmental Review Officer shall provide a notice of intent to adopt a  
2 negative declaration or mitigated negative declaration by publication in a newspaper of  
3 general circulation in the City, by posting in the offices of the Planning Department and on the  
4 subject site, by mail to the owners of all real property within the area that is the subject of the  
5 negative declaration and within 300 feet of all exterior boundaries of such area, and by mail to  
6 all organizations and individuals who have previously requested such notice in writing,  
7 sufficiently prior to adoption of the negative declaration to allow the public and agencies a  
8 review period of not less than twenty (20) days, or thirty (30) days if a 30-day circulation period  
9 is required by CEQA. In the case of City-sponsored projects that involve rezonings, Area Plans or  
10 General Plan amendments and are either citywide in scope or the total area of land that is part of the  
11 project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review  
12 Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of  
13 the project area. In the event the proposed negative declaration discusses historic resources, the  
14 Environmental Review Officer shall provide the notice of intent to the Historic Preservation  
15 Commission in order to afford the Historic Preservation Commission an opportunity to review and  
16 comment on the negative declaration.

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, a brief description of  
19 the project and its location, and the address where copies of the negative declaration and all  
20 documents referenced in the negative declaration are available for review.

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

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

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

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

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

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

5 Section 6. The San Francisco Administrative Code is hereby amended by amending  
6 Section 31.13, to read as follows:

7 SEC. 31.13. - DRAFT ENVIRONMENTAL IMPACT REPORTS.

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

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

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

24 (d) When the draft EIR has been prepared, the Environmental Review Officer shall file  
25 a notice of completion of such draft as required by CEQA. A copy of such notice, or a

1 separate notice containing the same information, shall thereupon be posted in the offices of  
2 the Planning Department and on the subject site, and mailed to the applicant, the board(s),  
3 commission(s) or department(s) that will carry out or approve the project, and to any individual  
4 or organization that has requested such notice in writing. The notice of completion shall be  
5 sent by mail to the owners of all real property within the area that is the subject of the  
6 environmental impact report and within 300 feet of all exterior boundaries of such area. In the  
7 case of City-sponsored projects that involve rezonings, Area Plans or General Plan amendments and  
8 are either citywide in scope or the total area of land that is part of the project, excluding the area of  
9 public streets and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to  
10 mail notice to the owners within 300 feet of all exterior boundaries of the project area. A copy of the  
11 draft EIR shall be provided to the applicant and to such board(s), commission(s) or  
12 department(s) and to any individual or organization that has so requested.

13 Section 7. The San Francisco Administrative Code is hereby amended by amending  
14 Section 31.14, to read as follows:

15 SEC. 31.14. - CONSULTATIONS AND COMMENTS.

16 (a) Notice shall be sent to public agencies with jurisdiction by law, and persons with  
17 special expertise as follows: after filing a notice of completion as required by CEQA, the  
18 Environmental Review Officer shall send a copy of the draft EIR to any public agencies as  
19 required by CEQA, and may send copies to and consult with persons who have special  
20 expertise with respect to any environmental impact involved. In the event an EIR discusses  
21 historic resource impacts, the Environmental Review Officer shall send a copy of the draft EIR to the  
22 Historic Preservation Commission for review and comment, and shall schedule a public hearing before  
23 the Historic Preservation Commission to record the Historic Preservation Commission's comments.

24 (b) In sending such copies, the Environmental Review Officer shall request comments  
25 on the draft EIR from such agencies and persons, with particular focus upon the sufficiency of

1 the draft EIR in discussing possible effects on the environment, ways in which adverse effects  
2 may be minimized, and alternatives to the project.

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

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

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

21 (2) The draft EIR shall be available to the general public upon filing of the notice of  
22 completion.

23 (3) The Planning Commission shall hold a public hearing on every draft EIR, with such  
24 hearing combined as much as possible with other activities of the Planning Commission. The  
25 Environmental Review Officer may, upon delegation by the Planning Commission, take

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

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

14 Section 8. The San Francisco Administrative Code is hereby amended by amending  
15 Section 31.15, to read as follows:

16 SEC. 31.15. - FINAL ENVIRONMENTAL IMPACT REPORTS.

17 (a) A final EIR shall be prepared by, or at the direction of, the Environmental Review  
18 Officer, based upon the draft EIR, the consultations and comments received during the review  
19 process, and additional information that may become available. The final EIR shall be made  
20 available to the public no less than fourteen (14) days prior to the Planning Commission hearing to  
21 consider certification of the final EIR.

22 (b) The final EIR shall include a list of agencies and persons consulted, the comments  
23 received, either verbatim or in summary, and a response to any comments that raise  
24 significant points concerning effects on the environment. The response to comments may take  
25

1 the form of revisions within the draft EIR, or by adding a separate section in the final EIR, or  
2 by providing an explanation in response to the comment.

3 (c) A public record shall be kept of each case in which an EIR is prepared, including all  
4 comments received in writing in addition to a record of the public hearing. The final EIR shall  
5 indicate the location of such record. The Environmental Review Officer shall cause the hearing  
6 record to be transcribed and retained as part of the hearing record.

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

12 Section 9. The San Francisco Administrative Code is hereby amended by deleting  
13 Section 31.16 in its entirety and adding new Section 31.16, to read as follows:

14 SEC. 31.16. APPEAL OF CERTAIN ENVIRONMENTAL DETERMINATIONS.

15 (a) In accordance with the provisions set forth in this Section 31.16, the following  
16 determinations may be appealed to the Board of Supervisors (the "Board"): (1) Certification of a  
17 Final EIR by the Planning Commission; (2) Adoption of a negative declaration or mitigated negative  
18 declaration (collectively referred to as a "negative declaration") by the Planning Commission; (3)  
19 Determination by the Planning Department or any other authorized City department that a project is  
20 categorically exempt from the California Environmental Quality Act ("CEQA"); (4) Determination by  
21 the Planning Department that a project is statutorily exempt or excluded from CEQA where such  
22 determination involves the discretionary application of factors set forth in CEQA; (5) that a  
23 Community Plan Exemption applies to a project; and (6) Determination by the Planning Department  
24 that a General Rule Exclusion applies to a project, as set forth in CEQA Guidelines Section  
25 15061(b)(3).

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

3           (1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set  
4 forth in Subsections 31.16(c), (d) or (e), as applicable. The letter of appeal shall state the specific  
5 grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section  
6 31.22, payable to the Clerk of the Board. Appellants shall sign the letter of appeal, or may have an  
7 agent, authorized in writing, file an appeal on their behalf.. Appellants shall submit with the appeal a  
8 copy of the CEQA determination or CEQA decision that is being appealed. The grounds for appeal  
9 shall be limited to issues related to the adequacy of the environmental review, the completeness of the  
10 environmental analysis or the correctness of the determination being appealed as further set forth in  
11 subsections 31.16 (c), (d) or (e). The appellant shall submit a copy of the letter of appeal and all  
12 written materials in support of the appeal to the Environmental Review Officer at the time appellant  
13 submits a letter of appeal to the Clerk of the Board. The Clerk of the Board may reject an appeal if  
14 Appellant fails to comply with this subsection 31.16(b)(1).

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

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

1 includes the project, as a landmark or historic district, the nomination and designation shall not be  
2 stayed during the pendency of the appeal to the Board of Supervisors..

3 (4) The Clerk of the Board shall promptly schedule a hearing on the appeal before the full  
4 Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more  
5 than one person submits a letter of appeal on the same decision or determination, the Board President  
6 may consolidate such appeals so that they are heard simultaneously. Where the appeals are  
7 consolidated, the Board shall provide appellants the same total time for testimony at the public hearing  
8 as provided to the Applicant or Project Sponsor. The Board may consolidate or coordinate its hearing  
9 on the appeal with other hearings on the project. Notice of the appeal shall be provided by mail to the  
10 appellants and to all organizations and individuals who have previously requested such notice in  
11 writing, no less than fifteen (15) days prior to the date the appeal is scheduled to be heard by the  
12 Board. The Planning Department shall provide to the Clerk of the Board the list of individuals and  
13 organizations that have commented on the decision or determination.

14 (5) Appellants shall submit written materials pertaining to the appeal to the Board and the  
15 Environmental Review Officer no later than noon, fifteen (15) days prior to the scheduled hearing. The  
16 Planning Department shall submit a written response to the Board no later than noon, ten (10) days  
17 prior to the scheduled hearing. Members of the public, real parties in interest or City agencies  
18 sponsoring the proposed project may submit written materials no later than noon, ten (10) days prior to  
19 the scheduled hearing. Any written document submitted after these deadlines shall not be distributed to  
20 the Supervisors as part of their hearing materials. (6) The Board shall conduct its own  
21 independent review of the CEQA determination. The Board shall consider anew all facts, evidence  
22 and/or issues related to the adequacy, accuracy and objectiveness of the environmental review and the  
23 CEQA determination and decision regarding such environmental review, including but not limited to  
24 the sufficiency of the information and the correctness of the conclusions of the Planning Commission,  
25 the Environmental Review Officer or the authorized City department. The Board shall consider the



1 record before the Planning Commission, the Environmental Review Officer or other City department,  
2 and may, at its discretion, consider new facts, evidence and/or issues that were not introduced before  
3 the Planning Commission, the Environmental Review Officer, or other City department authorized to  
4 make environmental determinations.

5 (7) The Board shall act on an appeal within forty-five (45) days of the date the Clerk  
6 determines the appeal is valid, provided that if the full membership of the Board is not present on the  
7 last day on which said appeal is set or continued for hearing within such 45 days, the Board may  
8 postpone said hearing and decision thereon until, but not later than, the full membership of the Board  
9 is present; provided further, that the latest date to which said hearing and decision may be so  
10 postponed shall be not more than ninety (90) days from the date of filing the appeal.

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

21 (9) In the event the Board reverses the environmental determination, the Board shall  
22 remand the environmental determination or decision to the Planning Commission or Planning  
23 Department. The Planning Commission or Planning Department shall take such action as may be  
24 required by the specific findings made by the Board and consider anew the remanded portions of its  
25 environmental determination. Any further appeal shall be limited only to the portions of the

1 environmental decision or determination that have been revised. Appellant shall have commented on the  
2 revised environmental decision or determination to the Planning Commission or Environmental Review  
3 Officer. The Board's subsequent review, if any, also shall be so limited to the portions of the  
4 environmental decision or determination that have been revised by the Planning Commission or  
5 Planning Department. Any additional appeals to the Board shall comply with the procedures set forth  
6 in this Section 31.16.

7 (10) The Board may reject an appeal if it finds the appeal fails to comply with this Section  
8 31.16. The Board shall act by motion in rejecting an appeal.

9 (11) The date of the final EIR, the final negative declaration, the statutory exclusion,  
10 category exemption, Community Plan Exemption, or General Rule Exclusion shall be the date upon  
11 which the Planning Commission, Planning Department or other authorized City department, as  
12 applicable, originally approved the environmental document or issued the determination if an appeal is  
13 filed and the Board affirms the action of the Planning Commission, Planning Department or other  
14 authorized City department, and the City approved the project prior to the filing of the appeal. If the  
15 City has not approved the project prior to the filing of an appeal of a negative declaration or an EIR,  
16 the date of the negative declaration or EIR shall be the date upon which the Board acts to approve the  
17 negative declaration or EIR.

18 (12) If the Board reverses the environmental decision or determination, the prior  
19 environmental decision or determination, and approval actions for the project, shall be deemed void.

20 (c) In addition to those requirements set forth in Section 31.16(b) above, the following  
21 requirements shall apply only to appeals of EIRs.

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

1           (2) Appellant of a final EIR shall submit a letter of appeal to the Clerk of the Board within  
2 twenty (20) days after the Planning Commission's certification of the EIR.

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

7           (4) The Board shall affirm the Planning Commission's certification of the final EIR if the  
8 Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct, and  
9 that the findings contained in the Planning Commission's certification are correct. The Board may  
10 reverse the Planning Commission's certification of the EIR. If the Board reverses the Planning  
11 Commission's certification of the final EIR, it shall make specific findings and remand the final EIR to  
12 the Planning Commission for further action consistent with the Board's findings.

13           (d) In addition to those requirements set forth in Section 31.16(b) above, the following  
14 requirements shall apply only to appeals of negative declarations.

15           (1) In order to appeal the adoption of a negative declaration to the Board, any Appellant  
16 shall have appealed the preliminary negative declaration to the Planning Commission. In the event a  
17 preliminary negative declaration is not appealed to the Planning Commission, the negative declaration  
18 may not be appealed to the Board.

19           (2) Appellant of a negative declaration shall submit a letter of appeal to the Clerk of the  
20 Board within twenty (20) days after the adoption of the negative declaration. The grounds for appeal  
21 of a negative declaration shall be limited to raising issues related to the adequacy of the analysis, the  
22 Planning Commission's finding that the project could not have a significant effect on the environment,  
23 including in the case of a mitigated negative declaration, the adequacy and feasibility of the mitigation  
24 measures.

1           (3) When the Board makes its determination on the appeal of a negative declaration, the  
2 Board shall affirm a negative declaration if it finds that the project could not have a significant effect  
3 on the environment. The Board may overturn the adoption of the negative declaration and make  
4 specific findings and remand the negative declaration to the Planning Commission for further action  
5 consistent with the Board's findings.

6           (4) In the event a negative declaration is remanded to the Planning Department, the  
7 Environmental Review Officer shall take action consistent with the Board's direction. The  
8 Environmental Review Officer shall finalize the revised negative declaration and send notice to the  
9 public, as set forth in Section 31.11, of the availability of the revised negative declaration. No appeal  
10 to the Planning Commission of the revised negative declaration shall be required. In the event an  
11 organization or individual wishes to appeal the revised negative declaration, such appeal shall be  
12 made directly to the Board of Supervisors within twenty (20) days of publication of the revised negative  
13 declaration.

14           (e) In addition to those requirements set forth in Section 31.16(b) above, the following  
15 requirements shall apply to appeals of statutory exclusions or exemptions, categorical exemptions,  
16 Community Plan Exemptions or a General Rule Exclusion.

17           (1) Any person or entity may appeal the determination by the Planning Department or other  
18 authorized City department that a statutory exclusion from CEQA applies, that the project is  
19 categorically exempt from CEQA, that a Community Plan Exemption applies, or that a General Rule  
20 Exclusion as set forth in CEQA Guidelines Section 15061(b)(3) applies. Any appeal shall be made within  
21 twenty (20) days of the date the first permit for the project is issued or the first approval of the project  
22 is granted, provided, however, in no event shall such twenty (20) days commence to run before the date  
23 of an approval action following the conclusion of any public hearing before the Planning Commission,  
24 Zoning Administrator or other City commission or board for which the Planning Department or other  
25 City department provided a public notice of an intent to rely on the CEQA determination for the project

1 approval action and advised the public of an opportunity for a public hearing on the determination in  
2 accordance with the requirements of Section 31.08(f). For purposes of a determination made with  
3 respect to an ordinance, the Board shall consider, and affirm or reject, the Planning Department's  
4 recommended CEQA determination as the Board's CEQA determination as part of its consideration of  
5 the ordinance and no separate appeal shall be required.

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

18 (3) In the event the Board reverses the environmental determination of any City department  
19 other than the Planning Department, the environmental determination shall be remanded to the  
20 Planning Department, and not the City department making the original environmental determination,  
21 for consideration of the environmental determination in accordance with the Board's directions.

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

24 By: KATE HERRMANN STACY  
25 Deputy City Attorney