File No. 100495 Committee Item No. 1
Board Item No. 5b

# COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

**Committee:** Land Use and Economic Development **Date** December 13, 2010

**Board of Supervisors Meeting** **Date** December 14, 2010

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**Completed by:** Alisa Somera **Date** December 9, 2010
**Completed by:** Alisa Somera **Date** December 13, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

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

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

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

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

SEC. 31.01. - AUTHORITY AND MANDATE.

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

(b) Any amendments to CEQA adopted subsequent to the effective date of this Chapter 31 shall not invalidate any provision of this Chapter 31. Any amendments to CEQA that may be inconsistent with this Chapter 31 shall govern until such time as this Chapter 31 may be amended to remove such inconsistency. *When state law is amended or the CEQA guidelines are modified in a manner that creates an inconsistency with Chapter 31, the City Attorney shall notify the Board of Supervisors within 30 days. Notwithstanding any other provision of law, the Clerk of the*

*Board of Supervisors shall schedule a hearing in the Land Use Committee, or its successor, within 90 days, to discuss whether to initiate amendments to this Chapter 31. The committee, or any other entity authorized by City Charter, may introduce legislation to reconcile Chapter 31 with new state law or the CEQA Guidelines.*

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

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

SEC. 31.02. - POLICIES AND OBJECTIVES.

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

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

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

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

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

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

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

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

*(h) Resolve appeals of decisions of nonelected decision-making bodies in a fair and timely manner.*

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

SEC. 31.04. - RESPONSIBILITY.

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

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

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

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

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

Section 4. The San Francisco Administrative Code is hereby amended by amending Section 31.10, to read as follows:

SEC. 31.10. INITIAL EVALUATION OF PROJECTS.

(a) Upon receiving an environmental evaluation application for a project, or upon referral of a project by the board, commission or department that is to carry out or approve the project, the Environmental Review Officer shall determine whether such project is exempt from environmental review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the level of environmental analysis required. In the event it is clear at the outset that an environmental impact report is required, the Environmental Review Officer may, with the consent of the applicant, make an immediate determination and dispense with the initial study. Each environmental evaluation application or referral shall include a project description using as its base the environmental information form set forth as Appendix H of the CEQA Guidelines, which form shall be supplemented to require additional data and information applicable to a project's effects, including consistency with the environmental issues included in the Eight Priority Policies set forth in Section 101.1 of the Planning Code and incorporated into the General Plan, shadow impacts, including the analysis set forth in Planning Code Section 295, and such other data and information specific to the urban

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

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

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

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

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

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

(f) Based on the analysis and conclusions in the initial study, the Environmental Review Officer shall determine, based on the requirements of CEQA, whether there is a "fair argument" that the project could have a significant effect on the environment and whether a negative declaration or environmental impact report shall be prepared.

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

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

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

(a) When *the Environmental Review Officer determines that a* ~~*any*~~ negative declaration is *the appropriate level of environmental review*, it shall be prepared by or at the direction of the Environmental Review Officer. The negative declaration shall describe the project proposed, include the location of the property, preferably shown on a map, and the name of the project proponent, state the proposed finding that the project could not have a significant effect on the environment, and have attached to it a copy of the initial study documenting reasons to

support that finding. The negative declaration shall also indicate mitigation measures, if any, included in the project to avoid potentially significant effects.

(b) The Environmental Review Officer shall first prepare a negative declaration on a preliminary basis, and shall post a copy of the proposed negative declaration in the offices of the Planning Department and mail notice thereof to the applicant and the board(s), commission(s) or department(s) that will carry out or approve the project. *In addition, the Environmental Review Officer shall refer all preliminary negative declarations for projects that may affect any historic resource, as defined by CEQA, to the Historic Preservation Commission for its review and comment, which the Environmental Review Officer shall consider as part of the completion of the negative declaration.*

(c) The Environmental Review Officer shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration by publication in a newspaper of general circulation in the City, by posting in the offices of the Planning Department and on the subject site, by mail to the owners of all real property within the area that is the subject of the negative declaration and within 300 feet of all exterior boundaries of such area, and by mail to all organizations and individuals who have previously requested such notice in writing, sufficiently prior to adoption of the negative declaration to allow the public and agencies a review period of not less than twenty (20) days, or thirty (30) days if *a 30-day circulation period is* required by CEQA. *In the case of City-sponsored projects that involve rezonings, area plans or General Plan amendments and are either citywide in scope or the total area of land that is part of the project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of the project area. In the event the project that is the subject of the proposed negative declaration may affect any historic resource as defined by CEQA, the Environmental Review Officer shall provide the notice of intent to the Historic Preservation Commission and shall schedule a public hearing on the*

*negative declaration before the Historic Preservation Commission, which hearing shall be held at least eight (8) days prior to approval of the negative declaration, in order to afford the Historic Preservation Commission an opportunity to review and comment on the negative declaration prior to its approval.*

(d) The notice of intent shall specify the period during which comments are to be received, the date, time and place of any public hearings on the project, a brief description of the project and its location, and the address where copies of the negative declaration and all documents referenced in the negative declaration are available for review.

(e) Within twenty (20) days, or thirty (30) days if *a 30-day circulation period is* required by CEQA, following the publication of such notice, any person may appeal the proposed negative declaration to the Planning Commission, specifying the grounds for such appeal. Any person may submit comments on the proposed negative declaration.

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

(g) After such hearing the Planning Commission shall affirm the proposed negative declaration *only* if it finds that the *record does not contain substantial evidence supporting a fair argument that the* project ~~*could not*~~ *may* have a significant effect on the environment. *If it finds that the record does support a fair argument, the Planning Commission shall make specific findings to,* ~~*may refer the proposed negative declaration back to the Planning Department for revisions, or shall overrule*~~ *overturn* the proposed negative declaration and order preparation of an environmental impact report ~~*if it finds that the project may have a significant effect on the environment*~~.

(h) If the proposed negative declaration is not appealed as provided herein, or if it is affirmed on appeal, the negative declaration shall be considered final, subject to any necessary modifications. Thereafter, the first City decision-making body to act on approval of the project shall review and consider the information contained in the final negative declaration, together with any comments received during the public review process, and, upon making the findings ~~*as provided in*~~ *required by* CEQA, shall adopt the negative declaration *or reject the negative declaration, in which case it may send it back for revisions, including proposed mitigation measures, or request the preparation of an EIR,* prior to approving the project. *In the event the first City decision-making body to act on approval of the project determines that the negative declaration does not provide adequate information for the project to be approved, the decision-making body shall make findings regarding such deficiencies and shall delay consideration of approval of the project pending receipt of additional environmental information, or may disapprove the project.* All decision-making bodies shall review and consider the negative declaration and make findings as required by CEQA prior to approving the project.

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

(j) After the City has decided to carry out or approve the *project subject to a final negative declaration*, the Environmental Review Officer may file a ~~*notice of determination*~~ *Notice of Determination* with the ~~*e*~~*C*ounty ~~*e*~~*C*lerk in the county or counties in which the project is to be located. If required by CEQA, the ~~*notice of determination*~~ *Notice of Determination* shall also be filed with the California Office of Planning and Research. *In the event the Environmental Review Officer files a Notice of Determination with the County Clerk and/or the California Office of Planning and Research, a copy of such notice shall also be posted in the offices of the Planning Department and*

*on the Planning Department website, and shall be mailed to any individuals or organizations who have previously requested such notice in writing. A Notice of Determination shall not be filed until the appeal period for the negative declaration has expired or an appeal has been finally resolved and adoption of the negative declaration becomes final.*

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

SEC. 31.13. - DRAFT ENVIRONMENTAL IMPACT REPORTS.

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

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

(c) During preparation of the draft EIR, the Environmental Review Officer may consult with any person having knowledge or interest concerning the project. If he/she has not already done so in accordance with Section 31.10 above, in cases in which the project is to be carried out or approved by more than one public agency, the Environmental Review Officer shall consult with all other public agencies that are to carry out or approve the project. *For projects that may affect an historic resource as defined by CEQA, or that may be subject to the*

*approval of the Historic Preservation Commission, the Environmental Review Officer shall consult with the Historic Preservation Commission.*

(d) When the draft EIR has been prepared, the Environmental Review Officer shall file a notice of completion of such draft as required by CEQA. A copy of such notice, or a separate notice containing the same information, shall thereupon be posted in the offices of the Planning Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individual or organization that has requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real property within the area that is the subject of the environmental impact report and within 300 feet of all exterior boundaries of such area. *In the case of City-sponsored projects that involve rezonings, area plans or General Plan amendments and are either citywide in scope or the total area of land that is part of the project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of the project area. ~~A~~ The Planning Department shall provide a* copy of the draft EIR ~~*shall be provided*~~ to the applicant and to such board(s), commission(s) or department(s) and to any individual or organization that has so requested.

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

SEC. 31.14. - CONSULTATIONS AND COMMENTS.

(a) Notice shall be sent to public agencies with jurisdiction by law, and persons with special expertise as follows: after filing a notice of completion as required by CEQA, the Environmental Review Officer shall send a copy of the draft EIR to any public agencies as required by CEQA, and may send copies to and consult with persons who have special expertise with respect to any environmental impact involved. *In the event the project which is the*

*subject of an EIR may affect any historic resource as defined by CEQA, the Environmental Review Officer shall send a copy of the draft EIR to the Historic Preservation Commission for review and comment, and shall schedule a public hearing before the Historic Preservation Commission to record the Historic Preservation Commission's comments, which hearing shall be held at least eight (8) days prior to the Planning Commission hearing on the draft EIR.*

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

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

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

(1) Public participation, both formal and informal, shall be encouraged at all stages of review, and written comments shall be accepted at any time up to the conclusion of the public comment period. The Environmental Review Officer may give public notice at any formal stage of the review process, beyond the notices required by this Chapter 31, in any manner it may deem appropriate, and may maintain a public log as the status of all projects

under formal review. Members of the general public shall be encouraged to submit their comments in writing as early as possible.

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

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

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

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

SEC. 31.15. - FINAL ENVIRONMENTAL IMPACT REPORTS.

(a) A final EIR shall be prepared by, or at the direction of, the Environmental Review Officer, based upon the draft EIR, the consultations and comments received during the review

process, and additional information that may become available. *The final EIR shall be made available to the public* and to the Historic Preservation Commission, if the project that is the subject of an EIR may affect any historic resource as defined by CEQA, *no less than fourteen (14) days prior to the Planning Commission hearing on the final EIR, to consider certification of the final EIR.*

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

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

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

(e) A Notice of Determination shall not be filed until the appeal period for the EIR has expired or an appeal has been finally resolved and the EIR becomes final and project approval becomes effective.

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

*SEC. 31.16. APPEAL OF ENVIRONMENTAL DOCUMENTS.*

*(a) In accordance with the provisions set forth in this Section 31.16, the following CEQA documents may be appealed to the Board of Supervisors (the "Board"): (1) Certification of a Final EIR by the Planning Commission; or (2) Adoption of a negative declaration or mitigated negative declaration (collectively referred to as a "negative declaration") by the first decision-making body.*

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

*(1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set forth in Subsections 31.16(c) or (d), as applicable. The letter of appeal shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section 31.22, payable to the San Francisco Planning Department. Appellants shall sign the letter of appeal, or may have an* authorized *agent ,* ~~authorized in writing,~~ *file an appeal on their behalf. Appellants shall submit with the appeal a copy of the CEQA decision that is being appealed. Appellants shall submit a copy of the letter of appeal and any written materials in support of the appeal to the Environmental Review Officer at the time appellants submit a letter of appeal to the Clerk of the Board. The Clerk of the Board may reject an appeal if Appellants fail to comply with this subsection 31.16(b)(1).*

*(2) After receipt of the letter of appeal, the Environmental Review Officer shall transmit copies of the environmental review documents not less than eleven (11) days prior to the scheduled hearing to the Clerk of the Board and make the administrative record available to the Board.*

*(3) While the appeal is pending, the City shall not consider the approval of, or issue any permits for, a project that is the subject of the appeal, provided that activities may be undertaken* only to the extent *that* they *are essential to abate hazards to the public health and safety, including abatement of hazards on a structure or site determined by the appropriate City official, including but not limited to the Director of Building Inspection, the Director of Public Works, the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency presenting an imminent*

*hazard to the public and requiring immediate action. In the event the Historic Preservation Commission is in the process of considering a nomination of the project, or an area that includes the project, as a landmark or historic district, the nomination and designation may proceed during the pendency of the appeal to the Board of Supervisors.*

*(4) The Clerk of the Board shall schedule a hearing on the appeal before the full Board, without regard to any rule or policy of the Board requiring a 30-day review period. The hearing shall be held no less than twenty (20) and no more than thirty (30) days following the date upon which the Clerk determines that the appeal is valid. If more than one person submits a letter of appeal on the same decision, the Board President may consolidate such appeals so that they are heard simultaneously, and up to three (3) individual appellants shall have his or her own time for testimony as if such appeals were not being heard simultaneously. Where the appeals are consolidated, the Board shall provide appellants the same total time for testimony at the public hearing as provided to the Applicant or Project Sponsor. The Board may coordinate its hearing on the CEQA appeal with other hearings on the project, provided that the CEQA appeal is heard prior to and separate from the other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and to all organizations and individuals who have previously requested such notice in writing, no less than ten (10) days prior to the date the appeal is scheduled to be heard by the Board. The Planning Department shall provide to the Clerk of the Board the list of individuals and organizations that have commented on the decision in a timely manner, no less than fifteen (15) days prior to the scheduled hearing.*

*(5) Appellants shall submit written materials pertaining to the appeal to the Board and the Environmental Review Officer no later than noon, fifteen (15) days prior to the scheduled hearing. The Planning Department shall submit a written response to the Board no later than noon, ten (10) days prior to the scheduled hearing. Additional written materials submitted no later than noon seven (7) days prior to the scheduled hearing by members of the public, real parties in interest or City agencies sponsoring the proposed project will be distributed to the Supervisors prior to the hearing as a part of*

*their hearing materials. Any written documents submitted after these deadlines and up to the close of the hearing will be part of the record but will not be able to be distributed to the Supervisors prior to the hearing as part of their hearing materials.*

*(6) The Board shall conduct its own independent review of the CEQA document including the correctness of the findings contained in the CEQA decision. The Board shall consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of the environmental review and the CEQA decision regarding such environmental review, including but not limited to the sufficiency of the CEQA document as an informational document and the correctness of its conclusions. The Board shall consider the record before the Planning Commission, the Environmental Review Officer or other City department, and shall also consider any new facts, evidence and/or issues presented to it prior to the close of the appeal hearing.*

*(7) The Board shall act on an appeal within thirty (30) days of the date set for the hearing, provided that if the full membership of the Board is not present on the last day on which said appeal is set or continued for hearing within such thirty days, the Board may postpone said hearing and decision thereon until, but not later than, the full membership of the Board is present; and provided further, if the Board of Supervisors does not conduct at least three regular Board meetings during such 30 day period, the Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon; and provided further that the latest date to which said hearing and decision may be so postponed shall be not more than ninety (90) days from the date of filing the appeal.*

*(8) The Board may affirm or reverse any CEQA decision by a vote of a majority of all members of the Board.* If the Board affirms the negative declaration or EIR, the negative declaration and EIR shall be final and may not be appealed again. *A tie vote shall be deemed to be disapproval of the CEQA decision; provided, however, that in the event of a tie vote the Board may continue its decision on the appeal to the next meeting at which the full Board will be present to consider the appeal. The Board shall act by motion. The Board shall adopt findings in support of its*

*decision, and may adopt or reject findings made by the Planning Commission, Environmental Review Officer or other City commission, agency, department or official authorized to act on the CEQA decision below. If the Board reverses the CEQA decision, the Board shall adopt specific findings setting forth the reasons for its decision to reverse the decision, which may include adoption and/or incorporation of the Appellant's written materials or proposed findings in whole or part.*

*(9) In the event the Board reverses the CEQA decision, the Board shall remand the decision to the Planning Commission or Planning Department. The Planning Commission or Planning Department shall take such action as may be required by the specific findings made by the Board and thereafter consider anew the remanded portions of its CEQA decision consistent with the Board's findings and the revised environmental documents. Any further appeal shall be limited to the issues or areas of the document that have been revised. The Board's subsequent review, if any, also shall be limited to the issues or areas of the document that have been revised by the Planning Commission or Planning Department. Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.*

*(10) The Board may reject an appeal if it finds the appeal fails to state proper grounds for appeal or fails to comply with this Section 31.16. The Board shall act by motion in rejecting an appeal.*

*(11) The date of the final EIR or the final negative declaration shall be the date upon which the Planning Commission, Planning Department or other authorized City department, as applicable, originally approved or adopted the environmental document if an appeal is filed and the Board affirms the action of the Planning Commission, Planning Department or other authorized City department, and the City approved the project prior to the filing of the appeal;* ~~provided that a Notice of Exemption or Notice of Determination shall not be filed or effective until the all appeal periods have has expired or any appeals have has been finally resolved and the exemption determination, negative declaration or EIR has become final and the project is approved~~. *If the City has not approved the project prior to the filing of an appeal of a negative declaration or an EIR, the date of the*

*negative declaration or EIR shall be the date upon which the Board acts to approve the negative declaration or EIR.*

*(12) If the Board reverses the CEQA decision, the prior decision, and approval actions for the project* taken in reliance on the reversed CEQA decision, *shall be deemed void.*

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

*(1) Appeal of a final EIR shall be by submission of a letter of appeal to the Clerk of the Board within twenty (20) days after the Planning Commission's certification of the EIR.*

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

*(3) The Board shall affirm the Planning Commission's certification of the final EIR only if the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct, and that the findings contained in the Planning Commission's certification motion are correct. If not, the Board shall reverse the Planning Commission's certification of the EIR. If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific finding as to the reasons that the final EIR is not adequate, accurate or objective and shall remand the final EIR to the Planning Commission for further action consistent with the Board's findings.*

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

*(1) Appeal of a negative declaration shall be by submission of a letter of appeal to the Clerk of the Board within twenty (20) days after the adoption of the negative declaration. The grounds for appeal of a negative declaration shall be limited to raising issues related to the adequacy and completeness of the Initial Study, the environmental analysis, the correctness of the finding that the*

*project could not have a significant effect on the environment, and the adequacy and feasibility of any proposed mitigation measures.*

*(2) When the Board makes its determination on the appeal of a negative declaration, the Board shall affirm a negative declaration only if it finds that the record does not contain substantial evidence supporting a fair argument that the project may have a significant effect on the environment. If it finds that the record does support a fair argument that the project may have a significant effect on the environment, the Board shall make specific findings to overturn the adoption of the negative declaration and remand the negative declaration to the Planning Department for further action consistent with the Board's findings.*

*(3)* ~~In the event a negative declaration is remanded to the Planning Department,~~ Following the Board's determination on the appeal of a negative declaration, if the Planning Department is required to prepare an EIR, it shall be prepared in accordance with the procedures and requirements set forth in this Administrative Code. If the Planning Department is not required to prepare an EIR, *the Environmental Review Officer shall take action consistent with the Board's direction. The Environmental Review Officer shall finalize the revised negative declaration and send notice to the public, as set forth in Section 31.11, of the availability of the revised negative declaration. No appeal to the Planning Commission of the revised negative declaration shall be required. In the event an organization or individual wishes to appeal the revised negative declaration, such appeal shall be made directly to the Board of Supervisors within twenty (20) days of publication of the revised negative declaration.*

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

By: _____
Kate Herrmann Stacy
Deputy City Attorney

FILE NO. 100495

# REVISED LEGISLATIVE DIGEST
(Revised in Committee: 12/13/2010)

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

**Ordinance amending Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of environmental documents under the California Environmental Quality Act, and providing public notice of such environmental documents.**

## Existing Law

Background:

Administrative Code Chapter 31 sets forth the procedures for implementing the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.* ("CEQA"). CEQA requires local agencies to allow an appeal of an environmental impact report ("EIR"), a negative declaration ("neg dec") or a determination of exemption to the elected decision-making body if a nonelected decision-making body certifies the EIR, approves a neg dec or makes a determination of exemption.

Current Chapter 31 Procedures:

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

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

1. Any person who has submitted written or oral comments on a draft EIR may appeal the Planning Commission's certification of the EIR to the Board.

2. A letter of appeal must be submitted to the Board within twenty calendar days after the Planning Commission's certification of the EIR. The letter must state the specific grounds for appeal, which are limited to the adequacy, accuracy and objectiveness of the final EIR, and the correctness of its conclusions. A fee must accompany the appeal letter, and may be waived or refunded under certain circumstances as set forth in Administrative Code Section 31.22.

3. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.

4. While the appeal is pending, the City may not carry out or consider approval of the project.

5. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. Multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project.

6. The Board must act on an appeal within 30 days of the appeal of the Planning Commission's certification of the EIR, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.

7. The Board conducts its own independent review of the EIR, and may consider anew the facts and evidence and may consider new evidence.

8. The Board must affirm the Planning Commission's certification of the EIR if it finds that the Planning Commission's findings are correct. If the Board reverses the Planning Commission's certification, it shall make specific findings and remand the final EIR to the Planning Commission for further action as directed by the Board. The Board may affirm or reverse the EIR but may not amend the EIR. The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal. The Board acts by a vote of a majority of all members of the Board.

9. If the Board remands an EIR to the Planning Commission, the Planning Commission must take such action as may be required by the Board's specific findings. In the event the Planning Commission re-certifies the EIR, only the new issues or the portions of the EIR that have been revised may be appealed again to the Board.

10. The date of certification of the EIR shall be the Planning Commission's date of certification if no appeal is filed or if the Board upholds the Planning Commission's certification.

Amendments to Current Law

Section 31.01 provides that the City Attorney will notify the Board of Supervisors when changes in the law may require amendments to Chapter 31. Section 31.04 also authorizes the Clerk of the Board to adopt procedures to perform administrative functions necessary to resolve any appeals to the Board of Supervisors.

Changes in Procedures for Negative Declarations

Section 31.11 requires that any preliminary negative declarations for projects that may affect any historic resource, as defined in CEQA, be provided to the Historic Preservation Commission for its review and comment.

Section 31.11 provides the procedure for the first City decision-making body to act on approval of a project that is the subject of a negative declaration. In the event that such body determines that the negative declaration does not provide adequate information for the project to be approved, the decision-making body shall make findings regarding such deficiencies and shall delay consideration of approval of the project pending receipt of additional

environmental information, or may disapprove the project. A Notice of Determination may be filed after the project has been approved and the appeal period for the negative declaration has expired or any appeal has been finally resolved and adoption of the negative declaration becomes final.

Changes in General Public Notice Requirements

Sections 31.11 and 31.13 have been amended to provide that City-sponsored projects involving rezonings, Area Plans or General Plan amendments and are either citywide in scope or the total area of land is 5 acres or more, shall not be required to provide mailed notice to owners within 300 feet of all exterior boundaries of the project area of (1) a notice of intent to adopt a neg dec, or (2) a notice of completion of a draft EIR.

Section 31.15 has been amended to require that a Final EIR be made available to the public 14 days prior to the Planning Commission's certification hearing. Section 31.15(e) clarifies that a notice of determination shall not be filed for project approval until the appeal period has expired or any appeal has been finally resolved and the project approval is effective.

Historic Preservation Commission Review

Section 31.13 has been amended to require the ERO to consult with the Historic Preservation Commission on a Draft EIR if the project may affect historic resources or will be subject to the approval of the Historic Preservation Commission. Section 31.14 has been amended to require the Historic Preservation Commission's review of a Draft EIR when a project may affect historic resources, as defined by CEQA. Such review shall take place at a public hearing at least eight (8) days prior to the Planning Commission's hearing on the Draft EIR.

Appeal Process

New Section 31.16 sets forth an appeal process for EIRs and negative declarations. Section 31.16 (b) includes procedures to be followed for all appeals. Section 31.16(c) includes procedures specific to EIRs, and Section 31.16(d) includes procedures specific for negative declarations.

Section 31.16(a) allows appeals to the Board of the certification of an EIR, or adoption of a negative declaration.

Procedures applicable to appeals of both negative declarations and EIRs:

A letter of appeal must be submitted to the Clerk of the Board, accompanied by the fee set forth in Administrative Code section 31.22 and a copy of the CEQA decision that is being appealed. The letter must state the specific grounds for appeal, which are limited to the adequacy of the environmental review, and the completeness of the environmental analysis. All appellants or their authorized agent(s) must sign the letter of appeal. A copy of the letter of

appeal must be submitted to the Environmental Review Officer ("ERO") at the same time it is submitted to the Clerk of the Board. The Clerk of the Board may reject an appeal if appellants fail to comply with these requirements.

The ERO shall transmit copies of the environmental documents to the Clerk of the Board no less than 11 days prior to the scheduled hearing on the appeal, and shall make the administrative record available to the Board.

While the appeal is pending, the City may not consider the approval of, or issue any permits for, the project that is the subject of the appeal unless and only the extent to which the activities must be undertaken immediately to abate a hazard or an emergency presenting an imminent hazard to the public and requiring immediate action. If the Historic Preservation Commission is considering a landmark or historic district nomination that includes the project, the nomination may proceed during the pendency of the appeal.

The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. The hearing must be held no less than 20 and no more than 30 days following the date the Clerk determines the appeal is valid. If more than one appeal is submitted, the Board President may consolidate such appeals, provided that up to 3 individual appellants will have his or her own time for testimony as if such appeals were not being heard simultaneously, and shall have the same total time for testimony at the public hearing as provided to the Project Sponsor. The CEQA appeal must be heard prior to and separate from other hearings on the project.

Notice of the appeal shall be provided by mail to the appellants and to organizations and individuals who have requested in writing such notice no less than 10 days prior to the date the appeal is scheduled to be heard. Appellants must submit written materials regarding the appeal 15 days in advance of the hearing, and the Planning Department must submit written materials 10 days in advance of the hearing. Any other materials submitted no later than noon 7 days prior to the hearing will be distributed to the Supervisors as part of their hearing materials.

The Board must act on an appeal within 30 days of the date set for the hearing, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal, and provided further that if the Board does not conduct at least 3 regular Board meetings during such 30 days, the Board must decide the appeal within 40 days of the time set for hearing.

This amendment deletes that requirement that an appellant shall have commented on an EIR to the Planning Department or Commission in order to be able to appeal the EIR to the Board, and does not require an appellant of a negative declaration to comment to the Planning Department, Planning Commission or any approving body prior to appealing to the Board.

The Board conducts its own independent review on appeal, may consider anew the facts and evidence and may consider new evidence.

The Board may affirm or reverse the environmental decision by majority vote of all members of the Board. A tie vote will be considered disapproval. The Board will adopt findings in support of its decision and will provide specific findings setting forth the reasons for a decision to reverse the environmental decision, which may include adoption or incorporation of the Appellant's written materials.

If the Board remands an environmental document to the Planning Commission or Department, which shall take such action as may be required by the Board's specific findings. Any further appeal shall be limited to the portions of the environmental document that have been revised.

The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal or fails to comply with Section 31.16.

The date of the environmental document shall be the date of the original approval of the document or determination if the Board affirms the document or determination and the City has approved the project prior to the filing of the appeal. If the City has not approved the project prior to filing the appeal, the date of the environmental document shall be the date upon which the Board approves the environmental document.

If the Board reverses the CEQA decision, the prior decision and any approval actions for the project in reliance on the reversed CEQA decision shall be deemed void.

Specific procedures for appeals of EIRs:

1. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's certification of the EIR.

2. Grounds for appeal, and the Board's decision, shall be limited to issues related to the adequacy, accuracy, objectiveness and correctness of the EIR.

Specific procedures for appeals of Neg Decs:

1. An appellant shall submit a letter of appeal to the Clerk of the Board within 20 days of the Planning Commission's adoption of the negative declaration.

2. The Board may affirm the negative declaration only if it finds that the record does not contain substantial evidence supporting a fair argument that the project could have a significant effect on the environment, or the Board may refer the neg dec back to the Planning Department for revisions. If the Board overrules the neg dec, it shall make specific findings upon remand to the Planning Department.

In the event a negative declaration is remanded to the Planning Department, the Environmental Review Office must take action consistent with the Board's direction. In the event the negative declaration is revised, the Environmental Review Officer shall finalize the revised negative declaration and send notice to the public of the availability of the revised negative declaration. No appeal to the Planning Commission of the revised negative declaration shall be required. In the event an organization or individual wishes to appeal the revised negative declaration, such appeal shall be made directly to the Board of Supervisors within twenty (20) days of publication of the revised negative declaration.

## Background Information

CEQA was amended to allow appeals of negative declarations and exemption determinations and this legislation implements local procedures to implement the appeal requirements for negative declarations.

100495

# CITY AND COUNTY OF SAN FRANCISCO
# BOARD OF SUPERVISORS
## BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102
(415) 552-9292 FAX (415) 252-0461

## LEGISLATIVE ANALYST REPORT

**To:** Supervisor Alioto-Pier
**From:** Budget and Legislative Analyst
**Date:** August 4, 2010
**Re:** **California Environmental Quality Act Appeals Processes in other California jurisdictions (Project 100150.2)**

### SUMMARY OF REQUESTED ACTION

Pursuant to your request, the following is the Budget and Legislative Analyst's survey of other California jurisdictions regarding their treatment of California Environmental Quality Act (CEQA) appeals, including appeals of Environmental Impact Reports (EIR's), Negative Declarations, and categorical and statutory exemptions.

### BUDGET AND LEGISLATIVE ANALYST SURVEY AND RESPONSES

Your office requested a survey of other California jurisdictions to provide answers to the following questions:

1. What are the deadlines for appeals of EIRs, Negative Declarations, and exemptions?
2. Are administrative appeals allowed before an item is appealed to elected officials? Must a person have previously participated in administrative appeals to appeal to the elected officials?
3. Does the jurisdiction have a special procedure for appeals involving historic resources?
4. Is there a fee for appeals? If so, how much?

In order to conduct the requested survey, the Budget and Legislative Analyst contacted five cities in California: Los Angeles, Sacramento, San Bernardino, San Diego, and San Jose. Staff at three of these cities – Los Angeles, San Diego and San Jose – responded to our questions. We did not get responses from the other two cities, even through multiple calls were made to appropriate staff at each city. A review of municipal codes and websites for the selected jurisdictions provided some of the requested information for the cities of Sacramento and San Bernardino, as well as supplementary information for San Jose, San Diego and Los Angeles.

The following information is based on the results of our survey.

## CEQA Statute Background

A report by the San Francisco Planning Department submitted to Supervisor Alioto-Pier states the following regarding current CEQA law and San Francisco's implementation of the law:

> "The California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body if a non-elected decision-making body approves the CEQA document. In San Francisco, this means when the Planning Department or the Planning Commission acts on an environmental impact report (EIR), a negative declaration (neg dec) or a determination of exemption, appeals must be granted before the elected Board of Supervisors."[1]

Since the State CEQA statute and related regulations do not specify a procedure for environmental determination appeals, some local jurisdictions have adopted their own procedures governing appeals timelines, fees, administrative appeal[2] requirements, and related matters.

San Francisco CEQA appeals procedures

Section 31.16 of the San Francisco Municipal Code establishes a timeline for filing of appeals of EIRs, stating that "A letter of appeal shall be submitted to the Clerk of the Board [of Supervisors] within twenty calendar days after the Planning Commission's certification of the EIR..." However, according to the report submitted by the Planning Department to Supervisor Alioto-Pier, as cited above, the San Francisco Municipal Code does not provide any procedures for appeals of Negative Declarations or categorical or statutory exemptions.

## Survey Results

In all jurisdictions, appeals generally move up the decision chain, so that an environmental determination made by a given jurisdiction's Planning staff or the Director of Planning may be appealed to that jurisdiction's Planning Commission, and environmental determinations made by a Planning Commission may be appealed to that jurisdiction's elected body. Several jurisdictions assess a filing fee for CEQA appeals.

**San Jose**

According to Mr. Darryl Boyd, Principal Planner with the City of San Jose, the CEQA provision that environmental determination decisions made by non-elected decision-making bodies are appealable to elected decision-making bodies has resulted in more CEQA appeals being heard by the San Jose City Council. However, Mr. Boyd states that the City does not receive many of these appeals; therefore the San Jose City Council does not hear many of these appeals as a result of the CEQA statute requirement.

According to Mr. Boyd, San Jose instituted changes to their CEQA appeals process in 2007 for Negative Declarations and EIRs. Title 21 of the San Jose Municipal Code establishes a "protest"

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[1] San Francisco Planning Department Report, Administrative Code Text Change: "Appeals of Certain Environmental Determinations and Providing Public Notice", Hearing Date: May 27, 2010.

[2] "Administrative appeals" are defined in this document as appeals of decisions by either Planning staff or the Director of Planning that are appealed to either the Director of Planning or the Planning Commission before reaching an elected body.

process for appeals of Negative Declarations and a limited timeframe for appeals of both Negative Declarations and EIRs, as discussed in greater detail below.[3] Title 21 does not include a process for appeals of projects determined to be exempt from environmental review.

According to Mr. Boyd, San Jose assesses a filing fee of $100 per protest/appeal of both Negative Declarations and EIR determinations. The City's Code of Ordinances permits environmental determinations by hearing officers, the Planning Director, or the Planning Commission to be appealable directly to the City Council or, as appropriate, to the board of directors of the redevelopment agency.

Negative Declaration Protest Procedure

Title 21 of the City of San Jose Municipal Code permits any person to file a written protest no later than 5:00 p.m. on the third business day following: (a) an adoption of a Negative Declaration as part of a noticed public hearing by either a City decision-making or advisory body or (b) commencement of a project if the project is undertaken without any public hearing. Subsequently, the Planning Commission holds a public hearing on the protest to the Negative Declaration. If the Planning Commission upholds the protest and finds that the applicant should prepare a more extensive EIR, then the filing fee is refunded to the protester. If the Planning Commission instead upholds the action of the Director of Planning and rejects the protest, then the Negative Declaration becomes final and the filing fee remains with the Planning Department. After this process is completed, decisions to approve Negative Declarations are appealable to the City Council.

Environmental Impact Report Appeals Procedure

Title 21 of the City of San Jose Municipal Code limits the timeline for appeal of the Planning Commission's final certification of an EIR to no later than 5:00 p.m. on the third business day following the EIR's certification. Title 21 requires that EIR appeal hearings will be conducted by the City Council when the City of San Jose is the lead agency. Mr. Boyd stated that the City does not get many EIR appeals and that the most recent EIR appeal was for the proposed Oakland Athletics baseball stadium, which was certified in 2007 by the San Jose Planning Commission[4] and approved in June of 2010 by the San Jose City Council.[5]

Historic Resources Appeal Procedure

According to Mr. Boyd, appeals of decisions on historic preservation permits are submitted directly to the City Council and do not go through the City's Planning Commission.

**Los Angeles**

The City of Los Angeles has no formal CEQA appeals process in place at this time. According to City of Los Angeles Deputy City Attorney Tim McWilliams, the City of Los Angeles is currently considering legislation that would make changes to CEQA appeals procedures to allow

[3] Title 21 of San Jose's Municipal Code is available online at http://www.sanjoseca.gov/planning/eir/envs_code.pdf

[4] San Jose Redevelopment Agency Memorandum to the City of San Jose Mayor and City Council, March 27, 2009. Available online at http://www.sjredevelopment.org/inforMemos/Athletics%20Stadium%20in%20SJ%203-27-09.pdf

[5] Tracy Seipel, "San Jose city council approves environmental impact report for proposed downtown baseball stadium," *San Jose Mercury News*, June 16, 2010. Available online at http://www.mercurynews.com/bay-area-news/ci_15306205?nclick_check=1

for, among other things, a limit on the number of days after a CEQA determination is made in which an appeal can be filed. Deputy City Attorney McWilliams advised that the legislation under consideration is subject to change as the drafting process for this legislation continues. Deputy City Attorney McWilliams further advised that the present Los Angeles CEQA appeals process is "ad hoc" and that the legislation under consideration will attempt to make changes that would formalize a more consistent appeals process, although what those changes will be is a subject of debate that does not yet have final agreement.

Historic Resources Appeal Procedure

With regard to historic resources, while Los Angeles has a Cultural Heritage Commission, Deputy City Attorney McWiliams advises that CEQA appeals that involve historic resources are treated in a similar fashion to all other CEQA appeals.

**San Diego**

According to Ms. Terri Bumgardner, Senior Planner with the San Diego Planning Department, and a review of the City's Municipal Code, the City of San Diego sets a deadline for filing appeals of Negative Declarations and EIRs approved by the Planning Commission at 10 calendar days from the date of environmental determination and 15 days for categorical and statutory exemptions or any other environmental determinations by staff. The project associated with the environmental determination must first have exhausted any appeals to lower level decision-makers before an environmental determination appeal may be filed to City Council. Appeals may be filed by any "interested party," as determined by the Planning Director based on information provided by the appellant. The City does not have a separate CEQA appeals process for historic resources, and there is $100 fee assessed for CEQA appeals.

**Other Jurisdictions Considered**

The Budget and Legislative Analyst made several attempts to contact appropriate staff in the cities of Sacramento and San Bernardino for this survey. While in-person responses were obtained from the cities of San Jose, San Diego and Los Angeles, the following information was found online.

Sacramento

It appears that the City of Sacramento Development Services Department assesses an environmental review appeal filing fee of $179.[6] In addition, the City's website provides a list of fees for appeals of planning, design review, and preservation review decisions, which vary from $0 to $500 for third-party appeals, dependent upon the City personnel or governing body whose decision is being appealed.[7]

San Bernardino

A review of the City of San Bernardino's municipal code on the City's website shows that San Bernardino provides a deadline of 15 calendar days from the date of an environmental decision to file an appeal. All decisions by the Director of Planning or the City's Development Review

[6] City of Sacramento Director of Planning decision appeals form is available online at http://www.cityofsacramento.org/dsd/forms/planning/documents/DSD-0107_Planning_Director_Appeal_Form.pdf

[7] City of Sacramento fee details chart is available online at http://maps.cityofsacramento.org/feetool/one-deets-std.jsp?id=122

Commission may be appealed first to the City Planning Commission, and decisions of the Planning Commission may be appealed to the City Council. It does not appear that San Bernardino charges a fee for CEQA appeals.[8]

The City does have a Historic Preservation Commission which implements the City's process for determining sites that have historic significance. This Commission is authorized to serve "in an *advisory capacity* regarding to the Planning Commission in making recommendations relating to the designation, preservation and protection of historical properties."[9] [emphasis ours]

cc: Clerk of the Board

[8] City of San Bernardino Municipal Code available online at http://www.ci.san-bernardino.ca.us/residents/municipal_code.asp

[9] City of San Bernardino Municipal Code establishing the Historic Preservation Code (Section 2.23) is available online at http://www.ci.san-bernardino.ca.us/civica/filebank/blobdload.asp?BlobID=2544

100495

BOARD of SUPERVISORS

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

# MEMORANDUM

TO: John Rahaim, Director
Planning Department

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

DATE: September 23, 2010

SUBJECT: LEGISLATION INTRODUCED

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On September 21, 2010, Supervisor Alioto-Pier introduced the following substitute legislation (version 3) that will be heard in the Land Use and Economic Development Committee on **Monday, September 27, 2010 at 1:00 p.m.** in Committee Room 263.

An environmental review determination has already been received from the Planning Department and the Planning Commission and the Historic Preservation Commission have submitted their recommendations on the first draft of the legislation.

**File No. 100495**

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

If you wish to submit any comments or reports please return this memorandum with your response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

cc: Bill Wycko, Environmental Review Officer
Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Tara Sullivan, Legislative Affairs
Kate Stacy, Deputy City Attorney

Not a project. Not subject to CEQA per CEQA Guidelines Section 15060 (c)(2).

Nannie R. Turrell
November 23, 2010

BOARD of SUPERVISORS

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

April 27, 2010

**File No. 100495**

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On April 20, 2010, Supervisor Alioto-Pier introduced the following proposed legislation:

**File No. 100495**

Ordinance amending Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and providing public notice of such decisions and environmental documents.

The legislation is being transmitted to you for the Planning Department's review.

Angela Calvillo, Clerk of the Board

Alisa Somera

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

cc: John Rahaim, Director of Planning
Larry Badiner, Zoning Administrator
Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Tara Sullivan, Legislative Affairs
Kate Stacy, Deputy City Attorney

Not a project per CEQA Guidelines Section 15060(c)(2)

Nannie R. Turrell
May 4, 2010

# SAN FRANCISCO
# PLANNING DEPARTMENT

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

Reception:
**415.558.6378**

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**415.558.6409**

Planning
Information:
**415.558.6377**

July 14, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Case Number 2010.0336U to the Board of Supervisors File No. 10-0495: Appeals of Certain Environmental Determinations and Providing Public Notice**

*Recommendation:* **BOTH THE PLANNING COMMISSION AND THE HISTORIC PRESERVATION COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT AMENDS ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

Dear Ms. Calvillo,

On June 24, 2010, the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance would amend Administrative Code Chapter 31 provisions for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amend the provisions for public notice of such decisions and determinations.

**At the June 24th hearing, the PC voted 6-1 to recommend that the Board of Supervisors (herinafter "The Board") adopt the Ordinance with ten proposed modifications.**

On July 7, 2010, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the same proposed Ordinance.

**At the July 7th hearing, the HPC voted 5-0 (2 absent) to recommend that The Board adopt the Ordinance with ten proposed modifications recommended by the PC and requested that four additional points of concern be addressed through additional modifications.**

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

John Rahaim
Director of Planning

Attachments (one copy of the following):
Planning Commission Resolution No. 18069
Historic Preservation Commission Resolution No. 649
Planning Department Executive Summary for Case No. 2010.0336U

SAN FRANCISCO
**PLANNING DEPARTMENT**

# Planning Commission Resolution No. 18116

## Administrative Code Text Change

**HEARING DATE: JUNE 24, 2010**

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

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**415.558.6378**

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| | |
|---|---|
| *Project Name:* | **Appeals of Certain Environmental Determinations and Providing Public Notice** |
| *Case Number:* | 2010.0336U [Board File No. 10-0495] |
| *Initiated by:* | Supervisor Alioto-Pier |
| *Introduced:* | April 20, 2010 |
| *Staff Contact:* | AnMarie Rodgers, Manager Legislative Affairs<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Reviewed by:* | **Bill Wycko, Chief Environmental Review Officer**<br>Bill.Wycko@sfgov.org, 415-575-9048 |
| *Recommendation:* | **Recommend Approval with Modifications** |

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

**PREAMBLE**

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

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

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

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

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

Whereas, the Commission has reviewed the proposed Ordinance; and

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

## FINDINGS

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

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

I. ENVIRONMENTAL PROTECTION ELEMENT

**OBJECTIVE 1**

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

**OBJECTIVE 1**

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

**OBJECTIVE 7**

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

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

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**
EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**
CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

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

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

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

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

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

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

*The proposed Ordinance not affect affordable housing supply..*

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

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

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

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

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

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

G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

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

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

7. The proposed Ordinance is exempt from CEQA per CEQA Guidelines Section 15060(c)(2).

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

**Recommended Modifications**

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

5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.

6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.

7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been "noticed". This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.

8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: "any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project." The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for "demolition". The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.

9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an "on-the-spot" decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.

10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for "notice of preparation" (NOP) and "initial study" (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

11. **Change "Approval" to "Adoption" as suggested by the City Attorney.** References to NegDec "approvals" by the Planning Commission should be changed to "adoption" throughout the proposed Ordinance to more accurately represent the action taken by the Commission.

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

Linda Avery
Commission Secretary

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

NAYS: Sugaya

ABSENT:

ADOPTED: June 24, 2010

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**PLANNING DEPARTMENT**

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

| | |
|---|---|
| *Project Name:* | **Appeals of Certain Environmental Determinations and Providing Public Notice** |
| *Case Number:* | 2010.0336U [Board File No. 10-0495] |
| *Initiated by:* | Supervisor Alioto-Pier |
| *Introduced:* | April 20, 2010 |
| *Staff Contact:* | AnMarie Rodgers, Manager Legislative Affairs<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Reviewed by:* | **Bill Wycko, Chief Environmental Review Officer**<br>Bill.Wycko@sfgov.org, 415-575-9048 |
| *Recommendation:* | **Recommend Approval with Modifications** |

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

**PREAMBLE**

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

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

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

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

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

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

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

Whereas, the HPC has reviewed the proposed Ordinance; and

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

## FINDINGS

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

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

I. ENVIRONMENTAL PROTECTION ELEMENT

**OBJECTIVE 1**
ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

**OBJECTIVE 1**
EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

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

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**
EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**
CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

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

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

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

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

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

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

*The proposed Ordinance not affect affordable housing supply..*

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

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

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

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

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

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

G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

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

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

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

**Recommended Modifications**

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

4. **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Commission would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.

5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Commission recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.

6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Commission suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Commission would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Board agrees with this recommendation, the Commission further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.

7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been "noticed". This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.

8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: "any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project." The Commission requests clarifications on the intent of this language. The Commission is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for "demolition". The Commission requests that this section apply to demolitions as defined by the Planning Code in Section 317.

9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Commission believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Commission would suggest that that appellants need only to raise the issue but not

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

10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for "notice of preparation" (NOP) and "initial study" (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.
11. **Change "Approval" to "Adoption" as suggested by the City Attorney.** References to NegDec "approvals" by the Planning Commission should be changed to "adoption" throughout the proposed Ordinance to more accurately represent the action taken by the Commission.

8. In addition, the Historic Preservation Commission further recommends **that the draft Ordinance be modified to address the following points of concern**:
   1) ensure fairness in any potential limiting of appellants to those who have been involved or commented at previous hearings and strike requirement for prior participation in categorical exemptions;
   2) add specificity about the role of the Historic Preservation Commission within the proposed process;
   3) increase notice of categorical exemptions and therefore increase capacity to secure early public involvement; and
   4) address the potential to limit future actions of the Historic Preservation Commission in the event of simultaneous approvals (especially potential district designation) where a CEQA appeal has been filed.

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

Linda Avery
Commission Secretary

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

NAYS: --

ABSENT: Chase and Damkroger

ADOPTED: July 7, 2010

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# Executive Summary
## Administrative Code Text Change
### HEARING DATE: MAY 27, 2010
### CONTINUED TO: JUNE 24, 2010

| | |
|---|---|
| *Project Name:* | **Appeals of Certain Environmental Determinations and Providing Public Notice** |
| *Case Number:* | 2010.0336U [Board File No. 10-0495] |
| *Initiated by:* | Supervisor Alioto-Pier |
| *Introduced:* | April 20, 2010 |
| *Staff Contact:* | AnMarie Rodgers, Manager Legislative Affairs<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Reviewed by:* | **Bill Wycko, Chief Environmental Review Officer**<br>Bill.Wycko@sfgov.org, 415-575-9048 |
| *Recommendation:* | **Recommend Approval with Modifications** |

## PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Alioto-Pier would amend Administrative Code Chapter 31 provisions for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amend the provisions for public notice of such decisions and determinations.

### The Way It Is Now Summary:

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

Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR[1], but does not provide procedures for an appeal of a neg dec or an exemption. To fill this void, the Clerk of the Board has provided procedures for an appeal of a neg dec and an exemption. Not only does Chapter 31 currently not provide for a process for an appeal of such determinations, but also Chapter 31 does not provide any time limits for filing appeals. On February 22, 2008, the City Attorney drafted a memorandum[2] explaining how the Amended CEQA

[1] The current procedures for appeal of an EIR are set forth in Administrative Code Section 31.16.

[2] The full title of the memorandum is "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations/Determining Whether Appeals Are Ripe for Review and Timely Filed".

Guidelines that became effective on July 27, 2007 should be used to establish if appeals were 1) "ripe" or ready for appeal and 2) "timely" meaning not too late. All of the existing regulations and procedures for appeals are summarized in the comparison chart (Exhibit A).

**The Way It Would Be Summary:**

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

**Detailed Description of Appeal Procedures:**

This document contains two summaries of appeal procedures that currently exist and those that are proposed in the Ordinance. The first summary is a comparison table. The second is a text description based upon the 2006 legislative digest that has been updated to reflect the current proposed Ordinance.

**Executive Summary**
**Planning Commission Hearing: May 27, 2010** Cont. to June 24, 2010
**Historic Preservation Commission Hearing: June 2, 2010** Continued to June 16 & July 7, 2010

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

**Comparison The Way It Is Now Table:**

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

**Comparison The Way It Would Be Table:** * Note: only procedures that would change are detailed below. grey box and red underlined text.

| Environmental Appeal Provisions – Proposed Ordinance* | | | | | |
|---|---|---|---|---|---|
| | **Exemption** | **Prelim. Neg Dec** | **Final Neg Dec** | **Draft EIR** | **Final EIR** |
| **Notice** | No change. | No change. | No change. | No change. | No change. |
| **Appeal to CPC** | No change. | No change. | No change. | No change. | No change. |
| **Appeal to BOS** | No change. | No change. | No change. | No change. | No change. |
| **Deadline for Filing Appeal to BOS** | 10 days after first project approval or permit issuance | No change. | 20 days after PC approval /adoption of FND. NOTE: This is not the intent of the Ordinance. CEQA requires adoption of neg dec for appeal. A neg dec is "adopted" after approval of the project. This will be corrected in a later version of the Ordinance. | No change. | No change. |
| **Who Can Appeal to BOS** | Any person, or any person who objected to exemption at hearing on related approval action, if applicable | No change. | Any person who appealed PND or commented at PND appeal hearing | No change. | No change. |
| **Deadline for BOS Appeal Hearing** | *Board decision within 45 days after appeal filing | No change. | Board decision within 45 days after appeal filing | No change. | No change. |

**Detailed Text Description:**

Current Chapter 31 Procedures:

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

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

1. Any person who has submitted written or oral comments on a draft EIR may appeal the Planning Commission's certification of the EIR to the Board.
2. A letter of appeal must be submitted to the Board within twenty calendar days after the Planning Commission's certification of the EIR. The letter must state the specific grounds for appeal, which are limited to the adequacy, accuracy and objectiveness of the final EIR, and the correctness of its conclusions. A fee must accompany the appeal letter, and may be waived or refunded under certain circumstances as set forth in Administrative Code Section 31.22.
3. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
4. While the appeal is pending, the City may not carry out or consider approval of the project.
5. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 3D-day review period multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project.
6. The Board must act on an appeal within 30 days of the appeal of the Planning Commission's certification of the EIR, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
7. The Board conducts its own independent review of the EIR, and may consider anew the facts and evidence and may consider new evidence.
8. The Board must affirm the Planning Commission's certification of the EIR if it finds that the Planning Commission's findings are correct. If the Board reverses the Planning Commission's certification, it shall make specific findings and remand the final EIR to the Planning Commission for further action as directed by the Board. The Board may affirm or reverse the EIR but may not amend the EIR. The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal. The Board acts by a vote of a majority of all members of the Board.
9. If the Board remands an EIR to the Planning Commission, the Planning Commission must take such action as may be required by the Board's specific findings. In the event the Planning Commission re-certifies the EIR, only the new issues or the portions of the EIR that have been revised may be appealed again to the Board.
10. The date of certification of the EIR shall be the Planning Commission's date of certification if no appeal is filed or if the Board upholds the Planning Commission's certification.

Proposed Amendments to Chapter 31

New Section 31.16 sets forth an appeal process for EIRs, neg decs and exemption determinations. Section 31.16 (b) includes procedures to be followed for all appeals. Section 31.16(c) includes procedures specific to EIRs, Section 31.16(d) includes procedures specific for neg decs and 31.16(e) provides procedures to be followed for statutory exclusions or exemptions, categorical exemptions and general rule exclusions (collectively, "exemptions"). Section 31.16(a) allows appeals to the Board of the following CEQA determinations: (1) certification of an EIR, (2) approval of a neg dec, (3) determination of categorical exemption, (4) a determination that a project is statutorily exempt or excluded from CEQA where the determination involves the discretionary application of factors set forth in CEQA, and (5) a general rule exclusion.

Proposed Procedures Applicable to All Appeals:

1. 15 copies of a letter of appeal must be submitted to the Clerk of the Board, accompanied by the fee set forth in Administrative Code section 31.22 and a copy of the CEQA document or CEQA decision that is being appealed. The letter must state the specific grounds for appeal, which are limited to the adequacy of the environmental review, the completeness of the environmental analysis or the correctness of the environmental determination. All appellants must sign the letter of appeal. A copy of the letter of appeal must be submitted to the Environmental Review Officer ("ERO") at the same time it is submitted to the Clerk of the Board. The Clerk of the Board may reject an appeal if appellants fail to comply with these requirements.
2. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
3. While the appeal is pending, the City may not carry out or consider the approval of the project that is the subject of the appeal unless the activities must be undertaken immediately to abate a hazard or an emergency presenting an imminent hazard to the public and requiring immediate action.
4. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. 15 days advance notice shall be mailed to appellants and anyone else who has requested such notice in writing. All written materials regarding the appeal must be submitted 7 days in advance of the hearing to the Clerk of the Board, the ERO and other involved agencies. Multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project. Where multiple appeals are consolidated, the Board will allot to appellants the same total time for testimony as the Board allots to the applicant.
5. The Board must act on an appeal within 45 days of the date of appeal, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
6. The Board conducts its own independent review on appeal, and may consider anew the facts and evidence and may consider new evidence.
7. The Board may affirm or reverse the environmental decision or determination by majority vote of all members of the Board. A tie vote will be considered disapproval. The Board will adopt findings in support of its decision and will provide specific findings setting forth the reasons for a decision to reverse the environmental decision or determination. The Board may also reject an appeal if it finds the appeal does not comply with the requirements of this section.

8. If the Board remands an environmental determination or document to the Planning Commission, the Planning Commission shall take such action as may be required by the Board's specific findings. Any further appeal shall be limited to the portions of the environmental document or determination that have been revised, and any appellant shall have commented on the revised environmental document or determination in order to appeal to the Board.
9. The date of the environmental document or determination shall be the date of the original approval of the document or determination if the Board affirms the document or determination and the City has approved the project prior to the filing of the appeal. If the City has not approved the project prior to filing an appeal of a neg dec or EIR the date of a neg dec or EIR shall be the date upon which the Board approves the environmental document.
10. If the Board reverses an environmental decision, the previous decision and approvals shall be void.

Proposed Procedures Specific to Appeals of EIRs:

1. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's certification of the EIR.
2. Grounds for appeal, and the Board's decision, shall be limited to issues related to the adequacy, accuracy, objectiveness and correctness of the EIR.

Proposed Procedures Specific to Appeals of Neg Decs:

1. An appellant shall submit a letter of appeal to the Clerk of the Board within 15 days of the Planning Commission's approval of the negative declaration. An appellant must have appealed the preliminary neg dec to the Planning Commission. If the preliminary neg dec is not appealed to the Planning Commission, the neg dec may not be appealed to the Board.
2. The Board may affirm the neg dec if it finds that the project could not have a significant effect on the environment, or may refer the neg dec back to the Planning Department for revisions. If the Board overrules the neg dec, it shall make specific findings upon remand to the Planning Commission.
3. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's approval of the neg dec.

Proposed Procedures Specific to Appeals of Exemptions:

1. Any person may appeal an exemption within 20 days of the first approval of the project or the first permit issued for the project.
2. If the Planning Department or other City department authorized to make an exemption determination provided public notice of the determination and the approving commission's or board's intent to rely upon the determination, any appellant must have objected to the determination before the commission or board considering the exemption and the project. Section 31.08(f) currently requires notice for a subset of exemptions (generally historic resources, demolitions, and Class 31 or 32 exemptions) that involve the majority of the exemption

determinations that are appealed to the Board[3]. If the public notice required by Section 31.08(f) is not provided, then the appellant is not required to object at any hearing before appealing the exemption to the Board. Section 31.08(f) requires the following public notice of an exemption determination:

When the Planning Department or other City department provides any public notice of a proposed approval action related to the project and advises the public of a scheduled public hearing or the opportunity to request a public hearing, before the Planning Commission the Zoning Administrator or other City board or commission, as applicable, the notice shall (1) inform the public of the written CEQA determination, and (2) advise the public that person who wishes to object to the CEQA determination must raise an objection the Planning Commission the Zoning Administrator, or other City board or commission, as applicable, in order to preserve the opportunity to appeal the determination to the Board of Supervisors as provided in Section 31.16.

3. The 20-day appeal period for an appeal to the Board shall not commence until the date of an approval action following the conclusion of any properly noticed public hearing before any board or commission considering the project and the exemption.

4. With respect to an exemption determination for an ordinance, the first approval shall be the Planning Commission's decision to recommend an ordinance. If the Planning Commission takes no action on an ordinance, then the Board shall consider, and affirm or reject, the Planning department's recommended CEQA exemption as the Board's CEQA determination when it considers the ordinance and no separate appeal of the exemption shall be required.

5. The Board may affirm the exemption if it finds that the project conforms to the requirements set forth in CEQA for the exemption. The Board may provide additional analysis of the exemption, provided that the ERG recommends such additional analysis and no additional public notice is required. The Board may refer the determination to the Planning Department for revisions or reconsideration, or may overrule the determination and request preparation of specified environmental documentation. Any exemption that the Board remands must be sent to the Planning department, and not the department making the original exemption.

Changes in Public Notice Requirements

Sections 31.11 and 31.13 have been amended to delete the requirement to mail notice to owners within 300 feet of all exterior boundaries of the project area of (1) a notice of intent to adopt a neg dec, or (2) a notice of completion of a draft EIR, for projects that either are citywide in scope or where the total area of land that is part of the project is 5 acres or more.. Section 31.15 has been amended to require that the final EIR shall be available to the public no less than 10 days before the Commission considers certification.

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[3] From Section 31.08 (f): "When the ERO . . . has determined that a project is excluded or categorically exempt from CEQA, notice to the public shall be provided for all such determinations involving the following types of projects: (1) any historical resources as defined in CEQA, including without limitation, any buildings and sites listed individually or located within districts listed (i) in Planning Code Articles 10 or 11, (ii) in City-recognized historical surveys, (iii) on the California Register, or (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3) any demolition of an existing structure; or, (4) any Class 32 categorical exemption.

## REQUIRED COMMISSION ACTION

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

## RECOMMENDATION

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

**Recommended Modifications**

- **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
- **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the "Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period". This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
- **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to the Planning Commission is that this number is subject to change over time. We recommend leaving this matter to the more malleable "Procedures of the Clerk" rather than to fixing the number through legislation.
- **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Department would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.
- **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
- **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the

Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.

- **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been "noticed". This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
- **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: "any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project." The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for "demolition". The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
- **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an "on-the-spot" decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
- **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for "notice of preparation" (NOP) and "initial study" (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

## BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with minor modifications. The Planning Commission considered a similar Ordinance in 2006. At that time, the Commission recommended approval with modification in Resolution Number 17335. (See Exhibit C) In the Fall of 2006, the Land Use Committee considered the Ordinance but continued it to the call of the chair. The revised Ordinance discussed in this report has incorporated the changes recommended by the Commission in 2006. Although the Administrative Code has not been amended the intervening years,

there have been changes and clarifications to the City's CEQA appeals process, including the City Attorney memorandum from February 22, 2008 and the 2007 Amended CEQA Guidelines.

While these changes have added some clarity to the process, there is still room for improvement. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies. Furthermore, the proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.

## ENVIRONMENTAL REVIEW

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

## PUBLIC COMMENT

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

| RECOMMENDATION: | **Recommendation of Approval with Modifications** |
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**Attachments:**

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| Exhibit A: | Draft Planning Commission Resolution |
| Exhibit B: | Board of Supervisors File No. 10-0495 |
| Exhibit C: | 2006 Planning Commission Resolution Number 17335 |