File No. 130248 Committee Item No. 3
Board Item No. 26

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** June 17, 2013

Board of Supervisors Meeting **Date** June 25, 2013

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Completed by: Alisa Miller **Date** June 13, 2013
Completed by: _____ **Date** _____

FILE NO. 130248

AMENDED IN COMMITTEE
6/17/2013

ORDINANCE NO.

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

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

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:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 130248 and is incorporated herein by reference.

Section 2. The San Francisco Administrative Code is hereby amended by amending Sections 31.02, 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, 31.15 and 31.19 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) When an environmental impact report is required by CEQA, consider a reasonable range of substantially less damaging alternatives that feasibly attain most of a project's objectives.

~~(f)~~(g) 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)~~(h) 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.

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

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. *When CEQA requires posting of a notice by the county clerk of the county in which the project will be located, the Planning Department shall transmit the required notice to the applicable county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the posting shall commence.*

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

(d) The Historic Preservation Commission shall have the authority to review and comment on all environmental documents and determinations for projects that may have an impact on historic or cultural resources.

~~*(c)*~~*(e)* Where adoption of administrative regulations by resolution of the Planning Commission after public hearing is specified herein, *the Planning Department shall provide the Historic Preservation Commission with an opportunity to review and comment on the proposed administrative regulations concerning historic or cultural resources issues. The Planning Department, with the agreement of the Historic Preservation Commission, shall schedule public hearings at the Historic Preservation Commission and the Planning Commission, which hearings* ~~*there*~~ shall be

noticed *at least 20 days prior to each scheduled hearing* 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 *and on the Planning Department website*, 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 Planning Department shall provide any comments of the Historic Preservation Commission to the Planning Commission in writing in advance of the Planning Commission's hearing on the proposed administrative regulations. The Planning Commission may adopt, modify or disapprove the administrative regulations, taking into consideration the comments of the Historic Preservation Commission.* The decision of the *Planning* Commission in adopting administrative regulations shall be final.

~~*(d)*~~*(f)* 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.

(g) Notwithstanding Administrative Code Section 8.12.5, all notices required by this Chapter shall be provided by mail in hard copy form unless an individual or organization has requested notice in electronic form. Electronic notification shall not be used when CEQA requires mailed notice by the United States Postal Service in hard copy form. All notices required by this Chapter 31 to be posted in the Planning Department shall also be posted on the Planning Department's website.

(h) Electronic Notifications.

(1) The Environmental Review Officer shall implement an electronic notification system for the notification requirements in this Chapter 31. The Environmental Review Officer shall offer interested persons and organizations the opportunity to subscribe to an automated electronic mail notification system. The system shall distribute all notifications required by this Chapter to subscribers.

Subscribers shall have the option to receive electronic mail regarding all CEQA notifications or all CEQA notifications for: (A) a specific project; (B) a specific neighborhood; (C) designated historic districts; (D) parks; (E) exemption determinations; (F) negative declarations; and (G) environmental impact reports.

(2) The electronic notification system shall not be used in lieu of notifications by mail in hard copy form as required by this Chapter 31 unless: (A) a subscriber affirmatively opts-out of notice in such form; and (B) no other provision of law requires notice in such form.

SEC. 31.05. OFFICE OF ENVIRONMENTAL REVIEW.

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

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

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

(d) The Environmental Review Officer shall also take such measures, within his or her powers, as may be necessary to assure compliance with this Chapter 31 by persons, *and officials, boards, commissions, departments or agencies* outside the Planning Department, and

shall periodically review the effectiveness and workability of the provisions of this Chapter 31 and recommend any refinements or changes that he or she may deem appropriate for improvement of such provisions.

(e) All projects that are not ~~*excluded or categorically*~~ exempt from CEQA *as defined in Section 31.08(a) of this Chapter* shall be referred to the Environmental Review Officer *for environmental review*. All other officials, boards, commissions, departments, bureaus and offices of the City shall cooperate with the Environmental Review Officer in the exercise of his/her responsibilities, and shall supply necessary information, consultations and comments.

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

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

(h) Adoption and/or revision of administrative regulations to implement CEQA shall be by resolution of the Planning Commission after ~~*a*~~ *the* public hearing*s held according to Section 31.04(e) of this Chapter 31*. The Environmental Review Officer may adopt necessary forms, checklists and processing guidelines to implement CEQA and this Chapter 31 without a public hearing.

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

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

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

(l) The Environmental Review Officer shall process applications for environmental review in accordance with the requirements for equal treatment of permit applicants, unless there is a written finding of a public policy basis for not doing so, as set forth in Campaign and Governmental Conduct Code Section 3.400 and the written guidelines adopted by the Planning Department as required by Section 3.400. For purposes of Section 3.400, this Section of Chapter 31, and any corresponding written guidelines of the Planning Department, the Board finds that expediting environmental review out of order, on a priority basis for the purpose of expediting permit processing shall qualify as a public policy basis for projects consisting of publicly funded affordable housing projects that provide new affordable housing in 100 percent of the on-site dwelling units (where such units are rented or sold at the economic levels defined in Planning Code Section 415). The Planning Department shall evaluate its written guidelines, and, if necessary, revise them to provide for a process that informs applicants of these projects within 60 days of the submittal of a preliminary project assessment request as to whether the project is exempt from CEQA. In the case where the Environmental Review Officer is unable to reasonably complete this determination within 60 days of the request due to reliance on external technical analyses either being conducted or that will need to be conducted, the project

sponsor shall be notified and given a precise timeline for receiving the determination, and in no case longer than 120 days from the request.

SEC. 31.06. COVERAGE OF STATE LAW.

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

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

(a) CEQA provides that certain classes of projects *are exempt from CEQA because: (1) the project is exempt by statute ("statutory exemption"); (2) the project falls within certain classes of projects that* generally do not have a significant effect on the environment and therefore are categorically exempt from CEQA *in accordance with the letter and the intent expressed in the classes of categorical exemptions specified in CEQA ("categorical exemption"); (3) the activity is covered under the general rule that CEQA applies only to projects with the potential for causing a significant effect on the environment, thus, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA ("general rule exclusion"); or (4) in certain cases, CEQA streamlining procedures may allow reliance on a prior environmental document prepared on a zoning or planning level decision, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site ("community plan exemption"). Unless otherwise*

specifically stated, reference in this Chapter 31 to "exemptions" or "exempt from CEQA" or an "exemption determination" shall collectively refer to statutory exemptions, categorical exemptions, general rule exclusions, and community plan exemptions.

(b) For categorical exemptions:

(1) CEQA requires that public agencies create and maintain a ~~*Each public agency must*~~ list ~~*the*~~ *of* specific activities that fall within each *categorical exemption* ~~*such*~~ class, ~~*subject to the qualification that these lists must be*~~ consistent with ~~*both*~~ the letter and the intent of the classes set forth in CEQA. ~~*Except as provided in this section 31.08, projects that are categorically exempt are not subject to the requirements of this Chapter 31. (b)*~~ The Environmental Review Officer shall maintain the required list ~~*of types of projects which are categorically exempt, and such list and shall be kept posted*~~*post it* in the offices of the Planning Department *and on the Planning Department website and shall provide it to all City departments*. ~~*Such*~~*The* list shall be kept up to date ~~*in accordance with any*~~ *to implement* changes in CEQA and ~~*any*~~ changes in the status of local projects. The initial list and any additions, deletions and modifications ~~*thereto*~~ shall be adopted as administrative regulations by resolution of the Planning Commission after public ~~*hearing,*~~ *hearings thereon held,* according to the procedure set forth in Section 31.04~~*(c)*~~*(e)* of this Chapter.

~~*(c)*~~ ~~*(2)*~~ CEQA ~~*provides for*~~ *allows* public agencies to request *that the Secretary of the Resources Agency make* additions, deletions and modifications to the classes of projects listed as categorically exempt in CEQA. The Planning Commission *or the Historic Preservation Commission* shall make any such requests, after ~~*a*~~*the* public hearing*s* thereon held according to the procedure specified in Section 31.04~~*(c)*~~*(e)* of this Chapter *31* for adoption of administrative regulations.

~~*(d)*~~*(c)* The Environmental Review Officer may *create* ~~*adopt necessary*~~ forms, checklists and processing guidelines to aid the Planning Department and other departments in

determining ~~*that*~~ *whether* a project may be ~~*categorically*~~ exempt *from CEQA* in accordance with ~~*the letter and the intent expressed in the classes of categorical exemptions specified in*~~ CEQA and with the administrative regulations adopted by the Planning Commission.

~~*(e)*~~*(d)* The Environmental Review Officer shall *be responsible for determining whether a project is exempt from CEQA. The Environmental Review Officer shall* advise other departments of the ~~*categorical exemptions. The Environmental Review Officer*~~ *requirements of CEQA for determining whether a project is exempt from environmental review and* may delegate the ~~*determination*~~*authority to determine* whether a project is ~~*categorically*~~ exempt from CEQA to other departments, provided that other departments shall consult with the Environmental Review Officer regarding the application of the categorical exemptions. *Further, at the time of each exemption determination, such other departments shall inform the Planning Department in writing as to the nature of the project and the exemption granted*, and provided further that the Environmental Review Officer shall be responsible for all determinations so delegated to other departments. *When the Planning Department or other City department determines that a project is exempt from CEQA, the issuance of the exemption determination shall be considered an exemption determination by the Planning Department. The Environmental Review Officer shall provide for noticing and posting of exemption determinations issued by other City Departments in the same manner as it provides for exemption determinations issued by the Planning Department.*

~~*(f)*~~*(e)* ***Public Notice of Certain Exemptions.*** When the Environmental Review Officer~~*, or any other department to which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above,*~~ has determined that a project is ~~*excluded or categorically*~~ exempt from CEQA, *the Environmental Review Officer shall post its determinations in the offices of the Planning Department and on the Planning Department website, and mail notice of its determinations to any individuals or organizations that have previously requested such* notice ~~*to the public shall be provided*~~

for all ~~such~~ *exemption* determinations involving*:* ~~*the following types of projects: (1) any historical resources as defined in CEQA, including without limitation,*~~

(1) any buildings and sites listed individually or located within districts listed ~~*(i)*~~*(A)* in Planning Code Articles 10 or 11, ~~*(ii)*~~*(B)* in ~~*City-recognized*~~ *any* historical *resource* surveys *that have been adopted by or officially recognized by the City, or* ~~*(iii)*~~*(C)* ~~*on*~~ *in* the California Register *or determined to be eligible for listing in the California Register by the State Historical Resources Commission, including, without limitation, any location listed or determined eligible for*~~*; or (iv) on*~~ the National Register of Historic Places*;*

(2) any other resource for which substantial evidence supports a finding of historic significance, including, but not limited to, compliance with the criteria of Public Resources Code Section 5024.1;

~~*(2)*~~*(3)* any Class 31 categorical exemption;

~~*(3)*~~*(4)* any demolition *as defined in Planning Code Section 1005(f)* of an existing structure; ~~*or,*~~

~~*(4)*~~*(5) any alteration to a building 50 years or older that changes the roof, adds a garage, modifies the front facade except for replacements in kind, or expands the occupied square footage of the building, excluding square footage below grade;*

(6) any demolition as defined in Planning Code Section 317, of an existing structure;

(7) any Class 32 categorical exemption*;*

(8) any project within or affecting a park or open space under the jurisdiction of or designated for acquisition by the Recreation and Park Commission, or any project on land formally designated by ordinance as a park or is subject to the Park Code and under the jurisdiction of any other City department, board or commission; and

(9) any community plan exemption.

~~*Written determinations of categorical exemptions for these types of projects shall be posted in the offices of the Planning Department and shall be mailed to any individuals or organizations that have previously requested such notice in writing.*~~

~~*(g)(f)*~~ ***Identification of Final Discretionary Approval Action.***

(1) The Planning Department or other City department as authorized by Section 31.08(d), when rendering an exemption determination, shall identify the final discretionary approval action for the project. The final discretionary approval action for the project is the issuance of a discretionary permit or other discretionary approval action that the City needs to take to authorize the project sponsor, in the case of a private project, or, the City, in the case of a public project, to begin to carry out the project activities or actions that the Environmental Review Officer described and analyzed in the exemption determination.

(2) For private projects, the final discretionary approval action most typically will include, without limitation, a conditional use permit if one is required; or, if not, a building permit as defined in the Building Code Section 106A, including without limitation, a site permit as defined in Building Code Section 106A.3.4.2; or a tentative subdivision map or parcel map.

(3) The Planning Department, or other City department that issues an exemption determination, shall identify the final discretionary approval action for the project, along with a short project description, and provide that information to the public prior to or at the time of project approval. The information shall be posted on the Planning Department's website and also may be provided in a written exemption determination, if any, or in information posted by the Planning Department at its office or in a notice about the project or the CEQA decision provided to the public by the Planning Department or other City department.

(g) ***Certificates of Exemption.*** When the Environmental Review Officer, ~~*or any other department to which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above,*~~ has determined that a project is ~~*excluded or categorically*~~ exempt from CEQA,

the Environmental Review Officer may, *but is not required to, prepare and* issue a *written* Certificate of Exemption from Environmental Review by posting a copy thereof in the offices of the Planning Department *and on the Planning Department website*, and by mailing copies thereof to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations who have previously requested such notice in writing.

(h) ***Testimony on Exemption Determination at Planning Commission.***

(1) The Planning Department's determination that a project is exempt from CEQA shall be final unless ~~*The*~~ *the* Planning Commission *as provided for in this Section 31.08(h) directs the Planning Department to reevaluate the exemption determination.* ~~*may take*~~ *The Planning Commission shall allow* testimony on any ~~*categorical*~~ exemption *determination of the Planning Department prior to project approval* at the public hearing, if any, in connection with the Planning Commission's consideration of the project that is the subject of the ~~*categorical*~~ exemption. *If the Planning Commission finds that the Planning Department's exemption determination does not conform to the requirements of CEQA for an exemption, it shall direct the Planning Department to reevaluate the exemption determination or to take such further action as it determines is required by CEQA before it approves the project.*

(2) When the Planning Department provides public notice of the public hearing at the Planning Commission to consider the project approval for the exempt project, the notice shall: (A) describe the exemption determination; (B) explain how to obtain a copy of the exemption determination; and (C) explain that any person may raise objections to the exemption determination at or before the public hearing at the Planning Commission on the project.

(i) ***Public Notice of Project Approval.*** *After an exemption determination is final as provided in Section 31.08(h) of this Chapter, when any other City department provides public notice of any project approval for the exempt project to be considered at a public hearing, the notice shall: (1)*

describe the exemption determination; (2) explain how to obtain a copy of the exemption determination; (3) explain that any person may raise objections to the exemption determination at or before the public hearing on the project; and (4) explain that any person may appeal the exemption determination to the Board of Supervisors as provided for in Section 31.16 of this Chapter.

*(j) **Filing of Notices of Exemption.** After the City has decided to carry out or approve the project and the project is considered finally approved as provided for in Section 31.16(b)(11), the Environmental Review Officer may file a Notice of Exemption with the county clerk in the county or counties in which the project is to be located. The Planning Department shall also post any such Notice of Exemption in the offices of the Planning Department and on the Planning Department website, and mailed such Notice of Exemption to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations that have previously requested such notice in writing.*

*(k) **Modification of Exempt Project.** Where a modification occurs to a project that the Planning Department has determined to be exempt, prior to any subsequent approval actions, the Environmental Review Officer shall determine whether the modification requires a new CEQA decision. For purposes of exempt projects, a modification requiring reevaluation under Section 31.19(b) shall mean that the Planning Department is presented with a change in the scope of a project as described in the original application upon which Planning based the exemption determination, or the Planning Department is presented with new information regarding the environmental impacts of the project. If the Environmental Review Officer determines that the project requires reevaluation as provided for in Section 31.19(b), the new CEQA decision rendered by the Planning Department or Planning Commission, may be appealed to the Board of Supervisors as provided for in Section 31.16.*

SEC. 31.09 DETERMINATION OF NEED FOR EVALUATION

All projects that are not statutorily excluded or categorically exempt from CEQA shall be referred to the Environmental Review Officer, prior to the decision as to whether to carry

out or approve the project, for an initial study to establish whether a negative declaration or an environmental impact report is required. By law, the City is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the Environmental Review Officer should be alert for environmental issues that might require preparation of an environmental impact report or that may require additional explanation by the applicant. As provided for in CEQA Sections 21080.1 and 21080.2, in the case of a project that involves an application for a permit or other entitlement for use, the Environmental Review Officer shall determine, within 30 days from the date on which an application for the project is accepted as complete, whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for the project. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in CEQA Section 21167.

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 *substantial evidence to support* a "fair argument" that the project ~~*could*~~ *may* have a significant effect on the environment *and an environmental impact report is required*, ~~*and*~~*or* whether *a project could not have a significant effect on the environment and* a negative declaration ~~*or environmental impact report shall be prepared*~~*is required*.

~~*(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.*~~

SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE DECLARATIONS.

(a) When *the Environmental Review Officer determines that a* ~~*any*~~ negative declaration *or a mitigated negative declaration* is *the appropriate level of environmental review* required *by CEQA for the project*, ~~*it*~~ *such determination* shall be prepared by or at the direction of the Environmental Review Officer. *Unless otherwise specifically stated, reference in this Chapter 31 to "negative declaration" shall collectively refer to a negative declaration and a mitigated negative declaration.* The negative declaration shall *include the information required by CEQA and in each instance 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*~~ *A mitigated* 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 on the Planning Department website* and mail notice thereof to the applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.

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

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

(2) ~~*by publication*~~ *Publication* in a newspaper of general circulation in the City,

(3) ~~*by posting*~~*Posting* in the offices of the Planning Department and on *the Planning Department website.*

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

(5) ~~*by mail*~~*Mail* to the owners*, and, to the extent practical, the residential occupants,* 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 20 acres or more, the Environmental Review Officer shall only be required to mail notice to the owners or occupants within the exterior boundaries of the project area, and to all organizations and individuals who previously requested such notice in writing.

(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 *when known to the Planning Department at the time of the notice*, 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*~~ *the* notice *of intent*, any person may appeal the proposed negative declaration to the Planning Commission, specifying the grounds for such appeal*, or. ~~Any person~~* may submit comments on the proposed negative declaration.

(f) The Planning Commission shall ~~*hold*~~*schedule* 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 on the Planning Department website*, 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*(s)* or organization*(s)* that ~~*has*~~ *have previously* requested such notice in writing.

(g) After *holding* such hearing the Planning Commission shall*: (1)* affirm the proposed negative declaration if it finds that the project could not ~~*may*~~ have a significant effect on the environment~~,~~*: (2)* may refer the proposed negative declaration back to the Planning Department for *specified* revisions *in accordance with CEQA requirements*~~,~~*;* or *(3)* ~~*shall*~~ overrule

the proposed negative declaration and order preparation of an environmental impact report if ~~it~~*the Commission* finds that *substantial evidence supports a fair argument 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, prior to approving 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. *The decision-making body that adopts the negative declaration shall promptly so advise the Environmental Review Officer.*

(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 and the project is considered finally approved as provided for in Section 31.16(b)(11), and upon the payment of required fees by the project sponsor*, the Environmental Review Officer ~~*may*~~ *shall* file a notice of determination with the county clerk in the county or counties in which the project is to be located. If required by CEQA, the notice of determination shall also be filed with the California Office of Planning and Research. *When the Environmental Review Officer files a notice of determination with the county clerk, the California Office of Planning and Research, or both, the Planning Department shall also post a copy of the notice of determination in*

the offices of the Planning Department and on the Planning Department website, and mail a copy of the notice of determination to any individuals or organizations who have previously requested such notice in writing.

SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE REQUIRED.

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

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.

(d) When the draft EIR has been prepared, the Environmental Review Officer shall:

(1) File~~file~~ a notice of completion of such draft *with the California Office of Planning and Research* as required by CEQA *and make the draft EIR available through the State Clearinghouse if and as required by the California Office of Planning and Research*.

(2) ~~A~~ Post 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 Planning Department website,* and on the subject site*.~~, and~~ The Planning Department shall develop guidance on the requirements for posting on the subject site to assure that posters are visible from the closest public street or other public space.*

(3) ~~mailed~~ Mail such notice 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 *previously* requested such notice in writing.

(4) Mail the ~~The~~ notice ~~*of completion shall be sent by mail*~~ to the owners*, and, to the extent practical, the residential occupants,* 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 20 acres or more, the Environmental Review Officer shall only be required to mail notice to the owners or occupants within the exterior boundaries of the project area.

(5) A 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.

SEC. 31.14. CONSULTATIONS AND COMMENTS.

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

(1) ~~*sent*~~ *Send the notice* to public agencies with jurisdiction by law, and persons with special expertise as follows: ~~*after filing a notice of completion as required by CEQA,*~~

(A) ~~*t*~~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.

~~*(b)*~~*(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) For the types of projects set forth in Section 31.08(e)(1) through (4) of this Chapter and for any other projects that may be subject to the approval of the Historic Preservation

Commission, the Environmental Review Officer shall send a copy of the draft EIR to the Historic Preservation Commission and obtain any comments that the Historic Preservation Commission has on the draft EIR at a noticed public meeting scheduled at least seven days prior to any Planning Commission hearing on the draft EIR.

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

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

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

(5) Mail the notice to the owners and, to the extent practical, the residential occupants, 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 20 acres or more, the Environmental Review Officer shall only be required to mail notice to the owners or occupants within the exterior boundaries of the project area.

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

~~*(c)(1) Each notice and request for comments shall state*~~ *State the starting and ending dates for the draft EIR review period during which the Environmental Review Officer will receive comments* ~~*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 *that requires a written response in the EIR*. The ~~*time limit shall normally be thirty (30) days, or forty-five (45) days if required by CEQA.*~~ *public review period shall be*

not less than 30 days nor more than 60 days except under unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse. 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, *commission* 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.

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

(c) The Planning Department shall make the draft EIR available to the public upon the date of the notice of availability. The Planning Department shall post a copy of the draft EIR on the Planning Department website and provide a copy of the draft EIR in electronic form on a text searchable digital storage device or by text searchable electronic mail transmission when an email address is provided, unless the draft EIR in printed hard copy form is specifically requested, to the applicant and to such board(s), commission(s) or department(s) and to any individuals or organizations that previously have requested a copy in writing.

(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 *that require a written response in the EIR* 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 *and CEQA*, in any manner it may deem appropriate, and ~~*may maintain a public log as*~~ *shall post on the Planning Department website* the *current* 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)*~~*(e)* The Planning Commission shall hold a public hearing on every draft EIR *during the public comment period*, 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)*~~*(f)* 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.

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. *No less than 10 days prior to the Planning Commission hearing to consider certification of the final EIR, the final EIR shall be made*

available to the public and to any board(s), commission(s) or department(s) that will carry out or approve the project.

(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*~~ *An administrative* 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 *or hearings*. The final EIR shall indicate the location of such record. ~~*Any transcription of a hearing record shall be at the expense of the person requesting such transcription.*~~ *The Environmental Review Officer shall cause the draft EIR hearing record to be transcribed and retained as part of the administrative 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) All decision-making bodies shall review and consider the EIR and make findings as required by CEQA prior to approving the project. The first decision-making body to approve the project shall promptly so advise the Environmental Review Officer.

(f) After the City has decided to carry out or approve the project subject to a final EIR, and the project is considered finally approved as provided for in Section 31.16(b)(1), in accordance with CEQA procedures, and upon the payment of required fees by the project sponsor, the Environmental Review Officer shall file a notice of determination with the county clerk in the county or counties in

which the project is to be located. If required by CEQA, the notice of determination shall also be filed with the California Office of Planning and Research. The Environmental Review Officer shall also post the notice of determination in the offices of the Planning Department and on the Planning Department website, and mail a copy of the notice of determination to any individuals or organizations who have previously requested such notice in writing.

SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.

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

(b) Where ~~such~~ a modification *as defined in Section 31.08(k)* occurs as to a project that has been determined to be ~~excluded or categorically~~ exempt pursuant to this Chapter, a new determination shall be made as provided in this Chapter.

(1) If *the Environmental Review Officer* ~~the project is~~ again *determines* ~~d~~ *the project* to be ~~excluded or categorically~~ exempt, ~~no further evaluation shall be required by this Chapter.~~ *the Environmental Review Officer shall note the determination and the reasons therefore in the case record, post a notice of the determination in the offices of the Planning Department and on the Planning Department website, and mail such notice to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations that have previously requested such notice in writing.*

(2) If the project is determined not to be ~~excluded or categorically~~ exempt, an initial study shall be conducted as provided in this Chapter.

(c) Where such a modification occurs as to a project for which a negative declaration has been adopted or a final EIR has been certified, the Environmental Review Officer shall reevaluate the proposed project in relation to such modification.

(1) If, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefor shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter. Notice of any such written determination and the reasons therefor shall be posted in the Planning Department, and shall be mailed to the applicant, the board, commission or department that will carry out or approve the project, to any individual or organization that has commented on the environmental document, and to any other individual or organization requesting such notice in writing.

(2) If, on the basis of such reevaluation, the Environmental Review Officer determines that additional environmental review is necessary, the project shall be considered a new project for purposes of environmental review pursuant to this Chapter. In that event, a new evaluation shall be completed prior to the decision by the City as to whether to carry out or approve the project as modified. CEQA sets forth specific requirements for the determination of whether a supplemental or subsequent EIR is necessary, as well as the process therefor.

Section 3. The 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 FINAL ENVIRONMENTAL IMPACT REPORTS***~~

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

~~*(1) A letter of appeal shall be submitted to the Clerk of the Board within twenty (20) calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the*~~

~~*Board. The grounds for appeal 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. The appellant shall submit a copy of the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal to the Clerk of the Board.*~~

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

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

~~*(b) The Clerk of the Board shall promptly 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. If more than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal with 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, not less than ten (10) days prior to the date of the hearing.*~~

~~*(c) The Board shall conduct its own independent review of the final EIR. The Board shall consider anew all facts, evidence and/or 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 Planning Commission's certification of the EIR. The Board may consider new facts, evidence and/or issues that were not introduced before the Planning Commission or the Environmental Review Officer.*~~

~~*(d) 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 are correct. The Board may affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific findings and remand the final EIR to the Planning Commission for further action consistent with the Board's findings. The Board shall act by motion in affirming or reversing the Planning Commission's certification of the final EIR.*~~

~~*(e) The Board shall act on an appeal within thirty (30) days of appeal of the Planning Commission's certification of the EIR, 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 30 days, the Board may postpone said hearing and decision thereon until, but not later than, the full membership of the Board is present; 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. The date of certification of the final EIR shall be the date upon which the Planning Commission originally certified the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's certification of the final EIR is affirmed by action of the Board.*~~

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

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

SEC. 31.16. APPEAL OF CEQA DECISIONS

*(a) **Decisions Subject to Appeal**. The following CEQA decisions made by any City commission, department, agency or official may be appealed to the Board: (1) Certification of a final EIR by the Planning Commission; (2) Adoption of a negative declaration by a City decision-maker; (3) Determination by the Planning Commission or Planning Department that a project is exempt from CEQA; and (4) Determination by the Environmental Review Officer that no additional environmental review is required for a modification to a project that was the subject of a prior EIR, negative declaration or exemption determination.*

*(b) **Appeal Procedures**. In addition to the applicable requirements of Section 31.16(c) pertaining to EIRs, Section 31.16(d) pertaining to negative declarations, Section 31.16(e) pertaining to exemption determinations or Section 31.16(f) pertaining to determinations on modified projects, the following requirements shall apply to an appeal of any of the decisions listed in Section 31.16(a) of this Chapter:*

(1) The appellant shall submit a letter of appeal to the Clerk of the Board within the time frames set forth in Sections 31.16(c), (d), (e) or (f), as applicable. The letter must state the specific grounds for appeal and must be accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San Francisco Planning Department. The appellant must sign the letter of appeal or may have an agent or attorney file and sign the letter on its behalf. The appellant must also submit with the appeal a copy of the CEQA decision being appealed, if available, and otherwise shall submit it when available. Appellant shall concurrently submit a copy of the letter of appeal to the Environmental Review Officer. The submission to the Environmental Review Officer may be made by electronic means. An appeal shall be accepted by the Clerk of the Board with notice given to the appellant that the acceptance is conditioned upon the Planning Department determining that the appeal of the CEQA decision, whether rendered by the Planning Department or another City commission, department, agency or official, has been filed in a timely manner, and the Clerk

otherwise determining that the appeal complies with the requirements of this section. The Planning Department shall make such determination within three working days of receiving the Clerk's request for review. Within seven working days of the filing of the appeal, the Clerk shall mail notice to the appellants of the acceptance or rejection of the appeal. *The Clerk may reject a letter of appeal that does not comply with the requirements of this subpart.*

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

(3) After the Clerk has accepted the letter of appeal and scheduled the appeal for hearing, all project approvals shall be suspended and the City shall not carry out or consider further the approval of the project that is the subject of the appeal while the appeal is pending, except that project-related activities may be undertaken if and only to the extent they are essential to abate hazards to the public health and safety, including abatement of hazards on a structure or site as determined by a qualified 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 requiring immediate corrective action.

(4) The Clerk of the Board shall schedule the appeal for hearing before the full Board, without regard to any rule or policy of the Board, no less than 30 and no more than 45 days following the date that the Clerk has accepted the letter of appeal and: (A) for exemption determinations, the City has taken an action as described in Section 31.16(e) to approve the project in reliance on the exemption determination; and (B) for EIRs, negative declarations and determinations on modified projects, the applicable time period for filing an appeal as set forth in Sections 31.16(c), 31.16(d) or 31.16(f) has expired. The Planning Department shall assist the Clerk in determining whether the City has approved an exempt project and when the time period for filing an appeal of a particular project has expired. No less than 20 days prior to the scheduled hearing date, the Planning

Department shall provide to the Clerk of the Board a list of all individuals and organizations that have previously requested notice in writing or have commented on the decision of determination on appeal. No less than 14 days prior to the scheduled hearing date, the Clerk of the Board shall provide notice of the appeal by mail to the appellant or appellants and to all organizations and individuals on the list provided by the Planning Department.

(5) If more than one person submits a letter of appeal on a final EIR, the Board shall consider all such appeals in a single hearing. The Board may coordinate its hearing on the CEQA appeal with other hearings on the project, provided that the CEQA appeal shall be heard prior to and separate from any other hearings or decisions on the project.

(6) Appellants shall submit all written materials pertaining to the appeal to the Board and the Environmental Review Officer no later than noon, 11 days prior to the scheduled hearing. The Planning Department shall submit a written response to the Board no later than noon, eight days prior to the scheduled hearing. Appellants, members of the public, real parties in interest or City agencies sponsoring the proposed project may also submit a written response to the Board no later than noon, eight days prior to the scheduled hearing. The Clerk will distribute any written documents submitted by these deadlines to the Board through the Board's normal distribution procedures and such written materials will be part of the record. Written materials submitted later than noon, eight days prior to the scheduled hearing, except for Planning Department responses to the appeal submitted up to three days before the hearing, will not be considered part of the record unless a member of the Board of Supervisors submits a formal request in writing, to the Clerk of the Board, on official letterhead, with the Board member's original signature, *before or at the appeal hearing, subject to the Board Rules of Order, to include such written materials in the* official file and considered as part of the *record.*

(7) The Board shall conduct its own independent review of the CEQA decision including the correctness of any supporting findings contained in the record. The Board shall consider

anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions. The Board shall consider the written record before it, the Planning Commission, the Environmental Review Officer or other City department, and shall also consider any additional new facts, evidence or issues presented in testimony prior to the close of the appeal hearing.

(8) The Board shall act on an appeal within 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 for hearing within such 30 days, the Board may postpone the hearing and decision until the full membership of the Board is present. If the Board does not conduct at least three regular Board meetings during such 30 day period, the Board shall decide such appeal within 40 days of the date set for the hearing or at the next regularly scheduled Board meeting should such deadline fall within a Board recess*; and provided further that the latest date to which the hearing and decision may be so postponed under this Section shall not be more than 90 days from the date the Clerk schedules the appeal for hearing as provided for in Section 31.16(b)(4).*

(9) The Board may affirm or reverse any CEQA decision by motion adopted by a vote of a majority of all members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board shall adopt findings in support of its decision to affirm or reverse the CEQA decision based on the record.

(10) If the Board reverses the CEQA decision, the Board shall remand the matter to the Planning Commission or Planning Department with directions to take further action consistent with the Board's findings.

(11) If the Board affirms the CEQA decision, the date of the final EIR, the final negative declaration, exemption determination, or determination of modification, shall be the date upon which the environmental document was originally approved or the exemption determination or

determination of modification was issued and any decisions made prior to the date that the Clerk determined the appeal qualified for hearing shall be deemed valid.

(12) If the Board reverses the CEQA decision, the prior CEQA decision and any actions approving the project in reliance on the reversed CEQA decision shall be deemed void.

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

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

(1) Any person or entity may appeal a final EIR by submitting a letter of appeal to the Clerk of the Board after the Planning Commission's certification of the final EIR as complete and no later than 30 days after a City decision-maker first approves the project in reliance on the EIR.

(2) The grounds for appeal of an EIR shall be limited to issues related to whether the final EIR complies with the requirements of CEQA, is adequate, accurate and objective, reflects the independent judgment and analysis of the City, and the EIR conclusions and the findings contained in the Planning Commission's certification of the EIR are correct.

(3) The Board shall affirm the Planning Commission's certification of the final EIR if the Board finds that the final EIR complies with the requirements of CEQA, it is adequate, accurate and objective and reflects the independent judgment and analysis of the City, and its conclusions and the findings contained in the Planning Commission's certification motion are correct.

(4) The Board shall reverse the Planning Commission's certification of the EIR if the Board finds that the final EIR does not comply with the requirements of CEQA, it is not adequate, accurate and objective, it does not reflect the independent judgment and analysis of the City, or its conclusions or the findings contained in the Planning Commission's certification motion are incorrect. If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific

findings as to the reasons for its action and remand the final EIR to the Planning Commission for further action consistent with the Board's findings.

*(d) **Appeal of Negative Declarations.** 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) Any person or entity may appeal a negative declaration by submitting a letter of appeal to the Clerk of the Board after the Planning Commission has affirmed the negative declaration on appeal, or, if no one appealed the negative declaration to the Planning Commission, after the Planning Department has issued a final negative declaration and no later than 30 days after a City decision-maker adopts the final negative declaration.

(2) The grounds for appeal of a negative declaration shall be limited to raising issues related to whether the negative declaration conforms to the requirements of CEQA, the correctness of the finding that the project could not have a significant effect on the environment and that there is no substantial evidence to support a fair argument that the project may have a significant impact on the environment, and the adequacy and feasibility of any proposed mitigation measures.

(3) The Board shall affirm the approval of a negative declaration if it finds that the negative declaration conforms to the requirements of CEQA and that the record does not include substantial evidence to support a fair argument that the project may have a significant effect on the environment.

(4) The Board shall reverse the approval of the negative declaration if it finds that the record includes substantial evidence to support a fair argument that the project may have a significant effect on the environment, or that the negative declaration does not otherwise comply with the requirements of CEQA. If the Board reverses the negative declaration, the Board shall make specific findings as to the reasons for its action and remand the negative declaration to the Planning Department for further action consistent with the Board's findings.

(5) If the Board requires the Planning Department to prepare an EIR, it shall be prepared in accordance with the procedures and requirements set forth in this Chapter 31. If the Board requires the negative declaration to be revised, including the addition or revision of mitigation measures in the project to avoid potentially significant effects, the Environmental Review Officer shall finalize the revised negative declaration consistent with the Board's direction and send notice to the public, as set forth in Section 31.11 of this Chapter 31, of the availability of the revised negative declaration. In the event any organization or individual wishes to appeal the revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30 days of publication of the revised negative declaration in accordance with the procedures and requirements set forth in this Section 31.16 of this Chapter.

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

(1) Any person or entity may appeal a final exemption determination for a project by submitting a letter of appeal to the Clerk of the Board within the following time periods:

(A) As to any exemption determination for a project for which the Environmental Review Officer or any other City department has provided public notice of the exemption determination as provided for in Section 31.08(e), Section 31.08(f), Section 31.08(g), Section 31.08(h), Section 31.08(i), or Section 31.19(b)(1), after the Environmental Review Office or any other City department has provided public notice of the exemption determination and no later than 30 days after the issuance of the discretionary permit or other project-related approval action. In the case of projects involving multiple approval actions, the appeal shall be filed no later than 30 days after a City decision-maker takes the final discretionary approval action identified by the Environmental Review Officer in the exemption determination, as provided for in Section 31.08(f); further, for such projects,

the Clerk shall reject any appeal if at the time of the appeal the Board has already considered and upheld the same exemption determination following an earlier appeal.

(B) As to any exemption determination for a project for which neither the Environmental Review Officer nor any other City department has provided public notice of the exemption determination as provided for in Section 31.08(e), Section 31.08(f), Section 31.08(g), Section 31.08(h), Section 31.08(i) or Section 31.19(b)(1), an appeal may be filed at any time following the appellant's discovery of the exemption determination, provided that such appeal shall be filed no later than 60 days after the issuance of the discretionary permit or other project-related approval action.

(C) The appeal periods in this Section 31.16(e) shall apply even if the conclusion of any appeal period for the discretionary permit or permits or project approval or approvals is less than the appeal period for the exemption determination. Departments that issue discretionary permits or other project approvals that are subject to separate, shorter appeal periods for the permits or other project approvals than provided for in this Chapter 31 for the appeal of an exemption determination, shall take steps as they determine appropriate to advise applicants seeking permits or other appealable project approvals of the longer appeal period for exemption determinations provided for in this Chapter 31.

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

(3) The Board shall affirm the exemption determination if it finds that the project conforms to the requirements of CEQA for an exemption.

(4) The Board shall reverse the exemption determination if it finds that the project does not conform to the requirements of CEQA for an exemption. If the Board finds that the project does not conform to the requirements of CEQA for an exemption, the Board may remand the exemption determination to the Environmental Review Officer for revisions or reconsideration, or may reverse the determination and require preparation of an appropriate environmental document. If the Board

reverses the exemption determination, the Board shall make specific findings as to the reasons for its action and shall remand the matter to the Planning Department for the preparation of a negative declaration or an EIR, as appropriate.

*(f) **Appeal of Determinations on Modified Projects.***

(1) In addition to those requirements set forth in Section 31.16(b) of this Chapter, any person or entity may appeal the Environmental Review Officer's determination in Section 31.19~~(c)~~(b)(1) of this Chapter that no additional environmental review is necessary for modifications to a project that was the subject of a prior EIR or negative declaration, following the written notice given by the Environmental Review Officer pursuant to Section 31.19~~(c)~~(b)(1) of this Chapter and for up to 30 days following the notice.

(2) The grounds for appeal under this Section 31.16(f) shall be limited to whether the project modification requires additional environmental review.

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

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

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

By: Elaine Warren
ELAINE WARREN
Deputy City Attorney

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FILE NO. 130248

REVISED LEGISLATIVE DIGEST

(5/20/2013, Amended in Committee)

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

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental finding.

Existing Law

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

Amendments to Current Law

The proposed ordinance clarifies and updates procedures in San Francisco Administrative Code Chapter 31 to reflect revisions to CEQA and the CEQA Guidelines, to provide for appeals to the Board of Supervisors of various CEQA decisions, to update and expand noticing and to expand the role of the Historic Preservation Commission in CEQA reviews. The primary updates to Chapter 31 are as follows:

- Section 31.02.
    - States a purpose of the ordinance is that EIRs consider a reasonable range of alternatives.
    - States a purpose of the ordinance is to resolve appeals to the Board in a fair and timely manner.

- Section 31.04.
    - Deletes a no longer relevant reference to the San Francisco Redevelopment Agency.
    - Clarifies certain administrative functions of entities within the City and County to reflect actual practice and changes in local law, including activities of the Clerk of the Board and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk.
    - Provides that the Historic Preservation Commission has authority to review all environmental documents for projects that may have an impact on historic or cultural resources.
    - Provides for the Historic Preservation Commission to hold a hearing and comment on Planning's proposed administrative regulations if they concern historic or cultural resources issues.
    - Requires all notices provided for under Chapter 31 to be provided in hard copy unless some one specifically requests electronic copies.
    - Requires the Planning Department to establish an electronic notification system for all notices provided under Chapter 31 that allows persons to pick different specified categories of projects or different types of CEQA documents for which they would like to receive electronic notice.
- Section 31.05.
    - Provides for the Historic Preservation Commission to hold public hearings on any proposed administrative regulations of the Planning Department related to CEQA that concern historic or cultural resources issues.
    - Adds a new finding by the Board that expediting environmental review for publicly funded affordable housing projects for purposes of expediting permit processing qualifies as a public policy basis. It then directs Planning to evaluate its written guidance required by Campaign and Governmental Conduct Code Section 3.400, and if necessary, to revise it to provide a process for informing an applicant of an affordable housing project, within 60 days of the submittal of a preliminary project assessment request, as to whether the project is exempt from CEQA, or, if technical studies are needed before making such a determination, in no more than 120 days from the request.

- Section 31.08. Revises how Planning makes and notices exemption determinations.
    - Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for exempt projects to all types of exemptions - statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
    - Requires the Planning Department to post on it website and provide to city departments a list of the types of projects in the city that Planning has identified as categorically exempt.
    - Provides that when other City departments grant exemption determinations that they inform Planning of the exemption determination and requires Planning to make the information available to the public as it does for its own exemption determinations.
    - **Public notices of exemptions.** Requires Planning to post and mail notices of exemption determinations for these specified projects:
        - Projects involving historic resources, which are defined as those that include sites or districts listed on the California Register, listed in Planning Code Articles 10 or 11, listed on an historic resource survey that has been adopted or officially recognized by the City, and any other resource for which substantial evidence supports a findings of historic significance under CEQA criteria.
        - Projects involving demolition, as defined in Planning Code Section 317.
        - Projects involving demolition, as defined in Planning Code Section 1005(f).
        - Alterations to buildings 50 years old or older that change the roof, add a garage, modify the front facade except for replacements in kind, or expand the occupied square footage of the building.
        - Any project in or affecting a park or open space under the jurisdiction of or planned for acquisition by the Recreation and Parks Commission, or any project on land formally designated by ordinance as a park or is subject to the Park Code and under the jurisdiction of another city department.

- Projects relying on a community plan exemption.
- Any project that qualifies for a Class 31 exemption.
- Any project that qualifies for a Class 32 exemption.

- **Final Discretionary Approval.** Requires Planning to identify the final discretionary approval action for exempt projects and to post that information on its website. For private projects, this approval will usually be the building permit, conditional use permit, or subdivision approval for the project.

- **Certificates of exemption.** Allows but does not require use of written Certificates of Exemption; if prepared, Planning must post and mail notices of the certificate.

- **Testimony on exemption determination.** Provides that the Planning Department's issuance of an exemption determination is final unless the Planning Commission directs staff to reevaluate the exemption. This section requires the Commission to allow testimony on the exemption prior to action on a project that relies on an exemption.

- **Project approval noticing.** Requires any city department that holds a public hearing to approve an exempt project to provide notice of the exemption determination and advise of the right of appeal to the Board.

- **Notices of exemption.** Specifies that notices of exemption, which CEQA provides may be filed with the County Clerk to start the running of a statute of limitation, may be filed only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.

- **Modification to exempt project.** Requires reevaluation of an exemption and issuance of a new CEQA decision if the scope of a project changes or if Planning is presented with new information regarding the environmental impacts of the project.

- Sections 31.10 and 31.11.

- Clarifies in Section 31.10(f) as to when a negative declaration or an environmental impact report is required by CEQA.

- Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.

- Provides in Section 31.11(c)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to adopt a negative declaration to each property owner within 300 feet of the exterior boundaries of the project area.

- Provides in Section 31.11(h) that the decision-making body that adopts the negative declaration shall so advise the ERO.

- Specifies in Section 31.11(j) that CEQA-required notices of determination shall be filed with the County Clerk to start the running of a statute of limitation, only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.

- Sections 31.12 – 31.15.

  - Provides in Section 31.14(a)(1) that the Planning Department shall obtain comments from the Historic Preservation Commission on a draft EIR for any projects that may impact historic or cultural resources. Planning shall obtain any comments seven days before the Planning Commission holds a public hearing on the draft EIR.

  - Provides in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of a draft EIR to each property owner within 300 feet of the exterior boundaries of the project area.

  - Requires in Section 31.14(c) that Planning make the draft EIR available on Planning's website and provide a copy in electronic form on a text searchable digital storage device or by text searchable electronic mail transmission to anyone who requests a copy and provides an email address, unless they request a hard copy.

- Requires in Section 31.15(a) that Planning make a final EIR available to the public no less than 10 days before the Planning Commission hearing to consider certification of the final EIR.

- Provides in Section 31.15(c) that the ERO must have the draft EIR hearing record transcribed as part of the administrative record.

- Requires the first decision-making body to approve the project to so advise the ERO.

- In section 31.15(f) contains the same provision regarding the filing of notices of determination for EIRs as found in Section 31.11(j) for negative declarations.

- Section 31.19. Provides in section 31.19(b) that when an exempt project is modified, as defined in Section 31.08(k), and again determined to be exempt, Planning must post the determination on its website, and mail notice to all approving entities and all entities requesting notice.

- Section 31.16. Deletes existing Section 31.16 pertaining to appeals of final EIRs and proposes a new Section 31.16 to address appeals of exemption determinations, negative declarations, environmental impact reports, and determinations that no additional environmental review is required for modified projects requiring subsequent approvals that previously relied on an EIR or negative declaration for approval. The key provisions of the new section include:

  - To file an appeal, one must pay a fee, file the appeal within the time frames specified in the ordinance and state the specific grounds for appeal.

  - The time frames for filing appeals are:

    - For an EIR, after EIR certification and no later than 30 days after the first approval of the project in reliance on the EIR.

    - For a negative declaration, after the Planning Commission affirms a negative declaration on appeal, or, if no appeal is filed, after the Planning Department issues a final negative declaration, and no later than 30 days after the first decision-making body to consider the project adopts the negative declaration.

    - For an exemption determination that is noticed, after notice of the exemption determination and no later than 30 days after issuance of any permit or other project approval for the project. For projects involving multiple approval actions, the appeal must be filed no later than 30 days

after the final discretionary approval. Once the Board has heard and upheld an appeal of the same determination for the same project, the Clerk will reject subsequent appeals.

- For an exemption determination that is not noticed, whenever the exemption determination is discovered, but no later than 60 days after the project is approved.

- For determinations that modified projects for which EIRs or negative declarations were prepared, within 30 days of notice of the determination that no further environmental review is required.

- The ordinance specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with lists of interested parties.

- The Clerk is directed to schedule the appeal hearing before the full Board without regard to any rule or policy of the Board, no less than 30 or more than 45 days following the date the Clerk has accepted the letter of appeal and: (1) for exemption determinations, the City has taken an action to approve the project; and (2) for EIRs, negative declarations, and determinations on modified projects, the time for filing the appeal has expired.

- For projects that require multiple approvals, once the appeal is scheduled for hearing by the Clerk, other City agencies and officials may not approve the project, except City departments can take essential actions to abate hazards to public health and safety.

- The Board is required to consider all appeals on a project in a single hearing and may coordinate the appeal hearing with hearings on the project.

- Appellants must submit written materials pertaining to the appeal 11 days before the scheduled hearing. The Planning Department and anyone else may submit written responses to the Board within 8 days before the hearing. Materials submitted 8 days before the scheduled hearing will be distributed through the Board's normal distribution procedures and will be part of the record. Later submitted materials will not be part of the record, except materials from Planning submitted 3 days before the hearing, unless a member of the Board submits a formal written request for the Board to include such written materials in the record.

- The Board shall act within 30 days of the scheduled hearing date but may extend this date to not more than 90 days from the date that the Clerk schedules the appeal hearing.

- The ordinance specifies the actions that the Board may take for each kind of appeal and the process for then completing the CEQA document in the event the Board reverses the decision of the Planning Commission or Planning Department. If the Board upholds the CEQA decision, prior approval actions are valid. If the Board reverses the CEQA decision, prior approval actions are void.

- In the case of a negative declaration, if the Board reverses Planning's approval, the Board may remand the negative declaration to Planning for revision and if so, further appeals of the revised negative declaration are appealable directly to the Board.

Background Information

The ordinance is proposed to revise the City's existing CEQA procedures so that they conform to current provisions of CEQA and CEQA Guidelines, provide codified procedures for appealing negative declarations, exemption determinations and determinations regarding whether additional environmental review is required for modified projects. The provisions concerning appeals to the Board of EIRs, negative declarations, and determinations of exemption are intended to respond to requirements in the CEQA statute that if the Board, as the elected body of the City, does not make the final decision regarding a CEQA determination, and instead, such decisions are made by the Planning Commission or Planning Department, the public has the right to appeal those decisions of Planning to the elected Board.

The ordinance also contains provision that are not required by CEQA, including, for example, a provision for appeal of determinations regarding whether additional environmental review is required for modified projects and Planning Department noticing and posting requirements for notices of exemption and notices of determination.

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

A substitute ordinance introduced on May 14, 2013, amended the original ordinance introduced on April 8, 2013, in the following primary ways:

Section 31.04(h). Electronic notifications. Revised the types of notifications that subscribers can request.

Section 31.05(l). Priority projects. Added a new finding by the Board that expediting environmental review for affordable housing projects for purposes of expediting permit processing qualifies as a public policy basis. It directs Planning to evaluate its written guidance required by Campaign and Governmental Conduct Code Section 3.400, and if necessary, to revise it to provide for a preliminary project assessment process, which within 60 days of the completed assessment request, would inform these projects as to whether the project is exempt from CEQA, or, if due to the need for technical studies before making such a determination, a precise timeline for informing the projects as to whether they are exempt, but in no event more than 120 days from the completed request.

Section 31.08(d). Allowing delegation of exemptions. Deleted prohibition on delegating exemption determinations to other departments.

Section 31.08(e). Clarifying notice, exempt projects involving 50 year or older buildings and parks. Revised the requirement to provide mailed and posted notices of exemptions for all projects that alter buildings 50 years or older by limiting the types of building for which notice is required.

Section 31.08(f). Defining final approval for exempt projects; deleting written exemptions for multiple-approval projects. Deleted the requirement that written determinations are required for projects involving multiple approval actions. Instead, Planning is required to identify the final discretionary approval for an exempt project and post that information on its website, along with a short project description.

Section 31.08(h). Testimony required but not Commission approval of exemptions. Deleted the requirement that the Planning Commission approve an exemption if it approves the project and instead requires the Commission to allow testimony on the exemption prior to action on a project that relies on an exemption and allows the Commission to request reevaluation of an exemption.

Section 31.14(a)(1)(C). HPC comments 7 not 10 days before draft EIR hearing. Revised from 10 days prior to 7 days prior to the Planning Commission hearing on a draft EIR, the requirement to have a public meeting at the Historic Preservation Commission to obtain its comments on the draft EIR.

Section 31.15(a). Final EIR available 10, not 14 days before certification. Revised from 14 days to 10 days the requirement to make a the final EIR available to the public prior to the certification hearing.

Section 31.16(b)(3). No landmarking, during pendency of appeal. Deleted the provision that provided for landmarking while a CEQA appeal is pending at the Board.

Section 31.16(b)(5). Consolidated appeals. Deleted the provision providing for procedures for the Board to consolidate up to three appeals and instead, the Board is required to consider all appeals in a single hearing and may coordinate the appeal hearing with hearings on the project. Ordinance does not dictate procedures for how the Board will conduct the hearings.

Section 31.16(b)(6). Planning responses to appeal. Provides that Planning may submit responses to an appeal up to three days before a hearing. Documents submitted by others later than noon, eight days before a hearing will not be considered part of the record unless one member of the Board submits a formal request in writing before or at the appeal hearing, to include such written materials in the record. Previously, the ordinance provided for a majority vote to include such materials in the record.

Section 31.16(e)(1)(A). Final approval ends appeal period – exemptions. Regarding exemption appeals, clarifies that if the exemption is noticed, the appeal must be filed no later than 30 days after the final discretionary approval, if the project involves multiple approval actions.

The Land Use Committee amended the ordinance introduced on May 20, 2013, in the following ways:

Section 31.09. Added amendments to this section to state, as required by CEQA Sections 21080.1 and 21080.2 that Planning shall advise applicants for permits or entitlements, within 30 days of determining an application is complete, whether the project requires an EIR or a negative declaration or mitigated negative declaration.

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

BOARD of SUPERVISORS

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TDD/TTY No. 554-5227

April 12, 2013

File No. 130248-2

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

Dear Ms. Jones:

On April 9, 2013, Supervisor Kim introduced the following proposed legislation:

File No. 130248-2

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board
Alisa Miller
By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

NON-PHYSICAL EXEMPTION
PURSUANT TO CEQA SECTION
15060(c)(2). 4/17/13
JOY NAVARRETE

SFMTA
Municipal Transportation Agency

MEMORANDUM

DATE: April 22, 2013

FROM: Jerry Robbins and Rana Ahmadi

TO: AnMarie Rogers, San Francisco Planning Department

RE: Preliminary Analysis of Supervisor Kim's proposed Chapter 31 Amendments

We concur with all of the comments made in the Planning Department's staff report dated April 9, 2013 regarding Case Number 13.0463U (Board File 13-0248) regarding proposed changes to California Environmental Quality Act (CEQA) Procedures, Appeals and Public Notice.

We are providing further comments on two proposals that would severely affect time sensitive SFMTA projects, some of which involve safety.

Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)). SFMTA receives categorical exemption determinations under CEQA for a large number of its public projects needing to be processed and implemented quickly. The majority of SFMTA projects receiving categorical exemption determination are public projects, some of which deal with safety improvements, seismic upgrades, transit, bicycle, pedestrian and traffic improvements.

This proposed legislation would lengthen the CEQA clearance process for SFMTA projects and would require increased review time for the staff of the Planning Department to process SFMTA's applications. This would also result in increased costs for SFMTA to receive CEQA clearance for its projects. This proposal would delay the implementation of SFMTA projects, some of which deal with public safety and transportation improvement issues, and would increase the cost for our agency to implement its projects.

Sec 31.08(d): The proposed legislation would eliminate the delegation authority that the Planning Department has granted to the SFMTA and the PUC for issuing "in-house" exemptions for routine legislation such as the establishment of yellow, blue, white and red zones, minor traffic changes such as corner bulbouts, bus stop changes, stop signs, and turn restrictions. SFMTA handles several hundred such small-scale traffic, bicycle, parking and transit changes every year. Without the authority to issue these exemptions, SFMTA would need to have the Planning Department review these items for possible environmental impacts, adding another layer of review to an already cumbersome process. This would greatly slow down

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the process of legislating and implementing these changes that are essential to responding to the constant changes that take place in the City's streets at a rapid pace. SFMTA has issued CEQA exemptions for over ten years without any issues or problems. We feel this program is working well and see no reason for modifying it. Elimination of this delegation would also result in financial impacts to our projects as it would increase review time for Planning Department staff, which SFMTA needs to cover. SFMTA strongly opposes this amendment to the ordinance.

In conclusion, th is amendment would result in delay of the implementation of SFMTA projects dealing with public safety and transportation improvements and would result in financial impacts and time delays for SFMTA to legislate changes.

Board File 13-0428 comments

File No. 130248
5/20/13 Received in Committee

SAN FRANCISCO
PLANNING DEPARTMENT

MEMO

DATE: May 20, 2013

TO: Honorable Members of the Land Use Committee of the San Francisco Board of Supervisors

FROM: Sarah Jones, Acting Environmental Review Officer and John Rahaim, Director of Planning

RE: Discussion of topics per Planning Commission Resolution Number 18852

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On April 25, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance that would establish the amend the Administrative Code, Chapter 31. This ordinance is titled "California Environmental Quality Act Procedures, Appeals, and Public Notice" [Board File No. 13-0248]. There are two versions of amendments to Chapter 31 currently under review; the version considered by the Planning Commission (and, more recently, the Historic Preservation Commission) was introduced by Supervisor Kim. At the hearing, the Planning Commission recommended that the Board of Supervisors approve of certain portions, disapprove of certain portions and conduct further review and analysis of the following topics:

1. notification feasibility and "searchability" of catex determinations,
2. further project approvals while an appeal is pending,
3. prioritization of affordable housing projects.

1. Discussion of Notification Feasibility and "search-ability" of CEQA determinations

Summary: The Planning Department is already creating a map-based system for posting of categorical exemptions (catexes) that will provide substantially better information about the issuance of these CEQA determinations. The Department does not favor the proposed subscription-based email notification requirement as an additional level of notification about catexes. The technology to support such a system is not available to the Department at this time. Since such capabilities can change greatly over time, a more general provision regarding email notification that can best be accommodated by the technology available to the Planning Department for such purpose is more appropriate than the very specific direction proposed in Supervisor Kim's ordinance. A searchable map of catex issuance and the inclusion of Approval Action and appeal rights on project notifications would be adequate to provide notice about catex issuance and recourse mechanisms.

Detailed Response: Although there are two types of posting of categorical exemptions under discussion--a geographically searchable map of catexes provided on the Planning Department website and subscription-based email notification—it is helpful to see broadly how the department has tried to disseminate information projects to the public.

The Department has made substantial progress on the geographically searchable map, and it is something that should be added to the website to replace the current catex postings regardless of

the outcome of the Chapter 31 amendments. Although staff time is required to develop the system, in the longer term converting to an electronic checklist will be a much more efficient use of staff time than the current system of scanning forms filled out by hand, and the map would have substantial benefits as a public service. It is staff's belief that this system will make information about catex issuance readily accessible to the public, and will allow members of the public to obtain easily whatever information they desire about catexes.

In addition to the improvements provided by the map-based catex posting, some members of the Planning Commission and Board of Supervisors are seeking information regarding a subscription-based electronic mail system that would inform requestors of the issuance of environmental documents according to the following categories: (A) a specific project; (B) a specific park, historic district, historic property, neighborhood, or geographic area; (C) exemption determinations; (D) negative declarations; and (E) environmental impact reports.

The Department's capabilities for disseminating project information are summarized below.

Services Currently in Place

Emailed notice for specific environmental reviews--For EIRs, Neg Decs and all exemptions other than Class 1 or 3, a neighborhood notice is distributed at the start of the environmental review process and members of the public may request to be included on all project mailing lists.
Paper notice for environmental reviews involving historic resources—Any environmental review that involves a property in a historic district or is individually rated that requires more than the basic CEQA checklist will lead to mailed notification to a list of individuals concerned with historic preservation. This list can, of course, be expanded to more people.
CEQA Exemptions—Found at http://sfplanning.org/index.aspx?page=2412. This compilation of categorical exemptions by week issued includes links to the actual documents, but is not readily searchable. We plan to replace this page with a searchable map to be in place by July 1.
Negative Declarations & EIRs—Found at http://sfplanning.org/index.aspx?page=1828, this listing of EIRs and Negative Declarations in reverse chronological order also includes links to the actual documents. Because of the sheer size of many of these documents, this site requires manual maintenance whereby large documents are broken up into separate pdf files by logical sections.
Block Book Notations--If members of the public are interested in activities on particular sites, they may request (and pay for) a Block Book Notation, and receive notification of all activity they specify associated with particular parcels. Unfortunately, BBNs tend to bog down the permit process, because staff must wait for any comments from the BBN subscribers before moving the applications along.
Active Permits in My Neighborhood—This is a Google map application, located at http://sfplanning.org/index.aspx?page=2575, that displays a dot for every active building permit and Planning application. Clicking on a dot will pop up a brief description of the application, with a hyperlink to more detailed information from DBI or Planning. Information on any building permit application can be up to a month old, however, so we intend to escalate to a nightly update of this data. The nightly update of permitting data will be used both on this site and the new page that will show recently issued catexes.
Property Information Map—Found at http://propertymap.sfplanning.org, this site allows the public to search for properties or projects either by entering a parcel number, street address or

case number, or by honing in on a site on a map. All information related to parcels and projects are provided in a tabbed interface, along with document links.

Services projected to be in place by July 1, 2013

CEQA Exemptions Version 2—The current compilation of catexes by street address will be replaced with a map application showing dots for each catex hyperlinked to a pdf of the CEQA document. This map can be configured to distinguish catexes issued recently enough to be appealable from older ones. The timely uploading of catex documents to the internet will be made possible by replacing CEQA checklists filled in by hand and scanned with fillable pdf forms that can be saved to a directory. An automated task will upload files from this directory to the internet every night. In addition, catexes for environmental reviews of non-parcel based projects (such as legislation) will be listed on the page.

Active Permits in My Neighborhood Version 2—This version of the map application will include building permit applications updated on a nightly basis, rather than monthly.

Services projected to be in place by October 1, 2013

Subscription Emailed Notice of CATEXes by Location—Once the citywide GovDelivery email system is in place, we can send weekly email notices about issued catexes. The public can choose to affiliate with one or more neighborhoods (as defined in the Planning Department's Geographic Information System) and receive notification of catexes for those neighborhoods. This will be possible because each catex will linked to parcels. Since our database has each parcel linked to a Planning neighborhood (30+), a Supervisorial district (11), and a CP quadrant (4) we could send out a weekly email based on these geographic categories. The email itself would need to be prepared and sent manually, but the categorization of the catexes would be automatic. Distribution of emails by these geographic cateogies might require 0.1FTE (assuming one half-day per week of staff time).

Accela Project and Permit Tracking System projected to go live late 2013

With the roll-out of this new system linking Planning applications with DBI building permit applications, the Department is committing to providing an enhanced level of information dissemination. The Accela Citizen Access portal will provide the public direct and complete access to project information, including processing status and related documents all in one place.

We will be working the vendor to define requirements for enhanced notification by type of project and geographic area. We would seek the vendor's recommendation for the best vehicle for delivering email notification—whether completely within the Accela product or by some web service connection with GovDelivery.

We expect that the capabilities of the new system will become apparent when it is being used on a daily basis, and could provide better means of obtaining or posting information about catex issuance. Therefore, it is not efficient to build a new automated notification system based on our current case and permit tracking databases when these databases will be migrated to Accela.

2. **Further project approvals while an appeal is pending.**

On May 15, 2013, the Historic Preservation Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider this same proposed Ordinance. At this hearing, the

Historic Preservation Commission passed resolution number 706. This resolution addressed this question by stating "The Legislation should allow entitlements, including landmark designation, be allowed to move forward while the appeal is pending." The Department concurs with this statement. The Department recommends opposing the singling out of landmarking as the only approval that could occur during the appeal period. Why should this action be able to proceed, but not others? Furthermore, one issue in the appeal could be the historic status of the building, so landmarking might constitute action on an issue under dispute. There are other approvals that are just as important and time-sensitive as landmarking, so calling this one out does not seem equitable.

The Department would like to take this opportunity to respond to a point that has been raised in comments regarding both Supervisor Wiener and Supervisor Kim's CEQA ordinances. There is a concern that allowing approvals to go forward while an appeal is pending, or requiring that a project be approved before an appeal of a Negative Declaration or EIR may be heard, could prejudice the Board of Supervisors in their deliberation on the adequacy of a CEQA document through the momentum that a project may gain in the approval process. However, under the current and proposed systems, a project may well have all of its approvals in place at the time that the Board hears a CEQA appeal, because project approvals can and do go forward during the project's appeal filing period. Many (perhaps most) projects reach the Board with all approval actions taken, and this status should not and does not, on the basis of experience, change Board deliberations regarding the CEQA analysis. Unless the Board is prepared to require that all project approvals be held until the CEQA appeal period has elapsed, suspending approvals once a CEQA appeal has been filed would not, in itself, fully addressing any real concerns about project approval status affecting the Board.

The discussion about landmarking consideration proceeding when a CEQA appeal is pending indicates that there may be a policy basis for the Board to consider what, if any, types of approval considerations may be desirable and appropriate after the filing of a CEQA appeal. The Department suggests that approvals for projects that have been suggested for prioritization in the CEQA process (see below) be allowed to proceed while a CEQA appeal is pending; this would be a meaningful and effective mechanism for supporting efficient review of such projects.

3. **Prioritization of affordable housing and other specified types of projects**

Various advocates have proposed that any amendments to Chapter 31 establish priority for certain types of projects (affordable housing, bike and pedestrian improvements, and social service projects). The Department agrees that certain types of projects have great merit and are important to help achieve specific citywide and/or General Plan goals and policies. It is also the Department's belief that, if priority is to be given to specific types of projects in Chapter 31, this should be subject to broader policy discussion at the Board.

Under current practice and as directed by the Campaign and Governmental Conduct Code, the Department maintains a list of types of priority projects, which may be updated over time, and which provides for prioritization of projects in all aspects of the Department's work (including but not

limited to environmental review). Codifying prioritization of specified types of projects in Chapter 31 would provide these types of projects with priority status for environmental review only, until such time as the Administrative Code is amended by a vote of the Board of Supervisors.

If such an approach is desired by the Board, the Department feels strongly that such priority should be directed in a manner that is consistent with the requirements of CEQA, effective throughout the environmental review process, and does not result in inappropriate decision-making regarding necessary levels of environmental review. Every project is different, making it impracticable to dictate specific timelines for decision-making. Moreover, limiting the Department's ability to change its determination of the necessary level of environmental review during the processing of a project would not be consistent with CEQA, which directs that the environmental review document must be based on the analysis conducted during the environmental review process. Therefore, it is the Department's belief that the most effective way to direct treatment of priority projects in the environmental review process is to state that at all stages of environmental review submittals for these types of projects will take precedence. This is more effective and meaningful than other approaches, and also not contrary to the requirements of CEQA.

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Resolution No. 706
Historic Preservation Commission
Administrative Code Text Change
HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013

Project Name:	California Environmental Quality Act Procedures, Appeals, and Public Notice
Case Number:	2013.0463U [Board File No. 13-0248]
Initiated by:	Supervisor Kim
Introduced:	April 9, 2013
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	Sarah Jones, Acting Environmental Review Officer sarah.b.jones@sfgov.org, 415-575-9034

Recommendation: Approval of certain portions, disapproval of certain portions, supporting the Planning Commission recommendations; and

1. planning staff shall provide the HPC with an analysis that clarifies the differences between Supervisor Kim and Supervisor Wiener's Legislation regarding when an exemption appeal period ends, i.e. the difference between first approval and last approval;
2. the Legislation should allow Landmark designation to move forward while the appeal is pending; and
3. the Legislation should clarify the role of the HPC in the appeals process.

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE OF CERTAIN PORTIONS, DISAPPROVE OF CERTAIN PORTIONS OF THE PROPOSED ORDINANCE, NOTING THAT THIS COMMISSION SUPPORTS THE PLANNING COMMISSION RECOMMENDATION AND RECOMMENDING THAT 1. PLANNING STAFF SHALL PROVIDE THE HPC WITH AN ANALYSIS THAT CLARIFIES THE DIFFERENCES BETWEEN SUPERVISOR KIM AND SUPERVISOR WIENER'S LEGISLATION REGARDING WHEN AN EXEMPTION APPEAL PERIOD ENDS, I.E. THE DIFFERENCE BETWEEN FIRST APPROVAL AND LAST APPROVAL; 2. THE LEGISLATION SHOULD ALLOW LANDMARK DESIGNATION TO MOVE FORWARD WHILE THE APPEAL IS PENDING; AND 3. THE LEGISLATION SHOULD CLARIFY THE ROLE OF THE HPC IN THE APPEALS PROCESS. THE PROPOSED ORDINANCE WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEALS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL IMPACT REPORTS, NEGATIVE DECLARATIONS, EXEMPTION DETERMINATIONS, AND DETERMINATIONS ON MODIFIED PROJECTS; TO CLARIFY AND UPDATE EXISTING CHAPTER 31 PROCEDURES, INCLUDING WITHOUT LIMITATION: TO PROVIDE FOR THE PLANNING DEPARTMENT OR PLANNING COMMISSION TO APPROVE ALL EXEMPTION

DETERMINATIONS; TO REQUIRE THE PLANNING DEPARTMENT TO ESTABLISH AN ELECTRONIC NOTIFICATION SYSTEM; TO EXPAND NOTICING OF EXEMPT PROJECTS; TO REQUIRE NEW NOTICING WHEN FILING NOTICES OF EXEMPTION AND NOTICES OF DETERMINATION; TO REVISE NOTICING OF NEGATIVE DECLARATIONS AND ENVIRONMENTAL IMPACT REPORTS FOR PLANS OF 20 ACRES OR MORE; TO PROVIDE AN EXPANDED ROLE FOR THE HISTORIC PRESERVATION COMMISSION; AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on October 16, 2012, Supervisor Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1019 which would to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations.

Whereas, on November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted to make advisory recommendations to Supervisor Wiener concerning the proposal; and

Whereas, the HPC's recommendations are recorded in Resolution Number 694; and

Whereas, on November 29, 2012, the Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning Commission's recommendations are recorded in Resolution Number 18754; and

Whereas, on March 14, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on March 20, 2013, the HPC conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019; and

Whereas, at these March 2013 hearings, Commissions recommended approval of the Ordinance with two modifications in HPC Resolution No. 704 and PC Resolution No. 18826; and

Whereas, Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks to April 22, 2013; and

Whereas, at the April 8 2013 Land Use Committee hearing Supervisor Kim announced that she would be introducing an alternative proposal; and

Whereas on April 9, 2013 Supervisor Kim introduced an ordinance titled "Administrative Code-California Environmental Quality Act Procedures, Appeals and Public Notice [BF 130248]; and

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

Whereas on April 25, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas on May 15, 2013, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Historic Preservation 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

Therefore be it resolved that, the Historic Preservation Commission has reviewed the proposed Ordinance;

Be it further resolved that in March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826) and **MOVED, in light of that recommendation, the Historic Preservation Commission recommends that the Board approve of certain portions, disapprove of certain portions of the proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation, noting that this commission supports the Planning Commission recommendation and recommending that** and 1. Planning staff shall provide the HPC with an analysis that clarifies the differences between Supervisor Kim and Supervisor Wiener's Legislation regarding when an exemption appeal period ends, i.e. the difference between first approval and last approval; 2. the Legislation should allow Landmark designation to move forward while the appeal is pending; and 3. the Legislation should clarify the role of the HPC in the appeals process.

Be it further **MOVED, that in general, this Commission recommends the following by subject area:**

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the

ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.

- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

And, be it further MOVED, that the Historic Preservation Commission concurs with the more detailed recommendations as described in the attached Executive Summary from the Department.

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. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.
3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.

7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.
9. The Commission reaffirms their earlier decision to approve Board File Number 121019 CEQA Procedures and recommends forwarding certain portions of this proposal with a positive recommendation to the Board.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on May 15, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Hasz, Wolfram, Hyland, Johnck, Johns, Matsuda, and Pearlman

NAYS: none

ABSENT: none

ADOPTED: May 15, 2013

Attachment: Executive Summary (While the Executive Summary is cited in this resolution and is therefore attached here. The attachments to the original Executive Summary are not cited nor attached. These additional documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco.

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: APRIL 25, 2013
HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013
PUBLISH DATE OF THIS REPORT: APRIL 18, 2013

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NOTE: ATTACHED TO THIS DOCUMENT IS A SUPPLEMENTAL MEMO WHICH WAS PUBLISHED ON APRIL 29, 2013.

Project Name:	**California Environmental Quality Act Procedures, Appeals, and Public Notice**
Case Number:	2013.0463U [Board File No. 13-0248]
Initiated by:	Supervisor Kim
Introduced:	April 9, 2013
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	**Sarah Jones, Acting Environmental Review Officer** **sarah.b.jones@sfgov.org, 415-575-9034**
Recommendation:	**Approval of Certain Portions, Disapproval of Certain Portions**

ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Kim would amend the Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Background:

On November 7, 2012; December 5, 2012; and March 20, 2013, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019. On November 29, 2012 and March 14, 2013, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted duly noticed public hearings to consider the same proposed Ordinance. At each of the hearings, each Commission passed a resolution with advisory recommendations. At the most recent hearings, in March of this year, both Commissions recommended approval of the Ordinance with two modifications. Supervisor Wiener has subsequently modified the proposal in response to these resolutions (HPC Resolution No. 704 and PC

Resolution No. 18826). Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks.

On March 12, 2013 Supervisor Kim introduced an alternative proposal that would also amend Administrative Code Chapter 31 to address San Francisco's local administration of CEQA and appeal procedures. As this proposed ordinance was introduced shortly before the Commissions' hearings on Supervisor Wiener's proposal and as it was not yet signed to form, the Commissions briefly discussed this proposal but did not consider the content. On April 9, 2013, Supervisor Kim introduced the version described in this case report.

The Way It Is Now Summary:

In San Francisco, the Board of Supervisors considers appeals because 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. Since the Planning Commission and Planning Department are not elected bodies, CEQA provides that CEQA documents approved by the Commission and Department are appealable to the Board. CEQA Guidelines clarify that such appeal is allowed after the project is approved. Case law has clarified that where the elected decision-making body approves the CEQA document itself, no appeal is required.

The appeal right derives from state law and the ordinance under consideration would not change or abrogate that right.

State CEQA law leaves establishment of the appeal process (and other provisions) to local bodies. In San Francisco, Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR certification[1] to the Board, 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 interim 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 Chapter 31 does not provide specified time limits for filing appeals. The Clerk has addressed this problem by referring every appeal to the City Attorney's Office for advice on whether an appeal is timely. On February 22, 2008, the City Attorney drafted a memorandum[2] explaining general guidelines for determining if appeals of private projects were 1) "ripe" or ready for appeal and 2) "timely" meaning not too late. This memo provides general guidance whereby appeals could be filed prior to the expiration of the appeal period for the final administrative approval. For private projects, the time in which an appeal can be filed depends on the entitlements needed for a project. The Clerk continues to refer each appeal to the City Attorney's Office for a case by case determination. In practice, it is difficult for the public to understand when the filing of a CEQA appeal is appropriate.

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[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". It is posted on the Clerk's web page.

The Way It Would Be Summary:

The proposed Ordinance would establish new controls in the following categories:

1. procedural requirements for the Planning Commission, Historic Resource Commission, and the Environmental Review Officer (ERO),
2. substantial increases in notification requirements,
3. specific controls for projects with multiple approvals,
4. regulations concerning modifications of projects previously determined to be exempt from CEQA,
5. delegation of ERO's authority to the SFPUC and SFMTA,
6. procedures specific to appeal of CEQA documents to the Board of Supervisors.

The Way It Would Be: Details and Analysis

Below is an examination of the six types of changes contained in the proposed Ordinance and the Department's analysis of these changes.

1. THE LEGISLATION CONTAINS MULTIPLE AMENDMENTS ESTABLISHING NEW PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW. SPECIFICALLY, THE CHANGES WOULD AFFECT THE PLANNING COMMISSION, HISTORIC RESOURCE COMMISSION, AND THE ENVIRONMENTAL REVIEW OFFICER (ERO).

   Sec 31.04(d): "The Historic Preservation Commission shall have the authority to review and comment on all environmental documents and determinations for projects that may have an impact on historic or cultural resources."

   Analysis: This language is in the Planning Code and Charter, and does not appear to have any further implications.

   Recommendation: The Department has no recommendation on this language.

   Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)).

   Analysis: This would transfer responsibility for the administrative action of determining if a project qualifies for exemption from the ERO to the Planning Commission approval. For an exemption, the question at hand is whether there are unusual circumstances that disqualify a project that otherwise fits into the exemption category. If a project is exempt from CEQA, it means it is not subject to CEQA review and therefore there is no CEQA finding for the Commission to approve. The Commission's role in the exemption process is the adoption of policies and procedures (e.g. the list of project types that qualify for exemptions), rather than individual determinations regarding exempt projects.

   There are staff time impacts of both this section, and Section 31.08(i)(3), in that Environmental Planning (hereinafter "EP") staff would be required to attend every project approval hearing before the Planning Commission or other boards and commissions in case of public testimony or questions on the environmental

determination. The estimated staff time impact could be up to 3 Full-Time Employees given the uncertainty of Commission hearing length.
Recommendation: The Department recommends opposing the changes contained in Sec 31.08(h)(1) and Sec 31.08(i)(3).

Sec 31.11(j) and 31.15(f): The legislation proposes amending the statement that the ERO "may" file a Notice of Determination (NOD) to state that the ERO "shall" file the NOD.

Analysis: In practice, since this notice requires payment of fees to the County Clerk by the project sponsor, it is subject to the sponsor's discretion to pay the fee and file this notice. The fee can exceed $3,000. The incentive to the sponsor to file a NOD is a shortening of the time in which a lawsuit may be filed. As it now stands, the sponsor may choose whether or not to assume the risk of not filing an NOD, and if it is not filed there is more opportunity for the public to challenge a project.
Recommendation: There is no apparent reason to make the proposed change. Compliance is uncertain since it would be in the project sponsor's control. Therefore, the language should be modified to state that the ERO shall file an NOD upon payment of required fees by the project sponsor. With this modification, the Department could recommend support this provision.

Sec 31.12: The legislation requires public scoping meetings for every EIR.

Analysis: These meetings are required during the scoping process for certain types of projects as specified in CEQA, including some General Plan amendments, residential development exceeding 500 units, office development exceeding 250,000 square feet, and projects located in the California Coastal Zone/Bay Conservation and Development Commission jurisdiction (CEQA Guidelines Sec 15206 and 15082(c)). Requiring scoping meetings for every EIR would require expenditure of cost and time associated with venue fees, materials, court reporter, and meeting attendance.
Recommendation: The Department recommends that the Commissions oppose this proposed amendment.

Sec 31.14(a)(1)(c): This provision would require that any Draft EIR addressing alterations to a structure more than 50 years old be referred to the HPC for comment at a noticed public meeting, scheduled at least 10 days before the Planning Commission hearing on the DEIR.

Analysis: There are two aspects of this provision that are problematic. First, not every structure more than 50 years old is a historic resource under CEQA. If the structure has been determined not to be a historic resource, then there is no basis for review of the EIR by the HPC. Requiring this additional hearing for buildings that are not historic resources is unduly burdensome for staff, the HPC, the project sponsor, and the public, and is beyond the responsibilities of the HPC.

Second, given the biweekly schedule of the HPC, the requirement that hearings occur 10 days prior to the Planning Commission could serve to delay the Planning Commission hearing and lengthen the comment period. Planning and/or HPC resolution would be an appropriate mechanism for defining a preferred time lapse between hearings.

Recommendation: The Department recommends opposing the inclusion of all buildings over 50 years old in the list of projects that would require a hearing before the HPC. The Department recommends opposing any codified requirement regarding the amount of time between hearings.

Sec 31.14(c): This provision allows for distribution of EIRs in electronic form unless hard copy is requested.

Analysis: Any reduction in the number of EIRs that must be printed would reduce cost and resource use.
Recommendation: The Department recommends strongly supporting this provision.

Sec 31.15(a): The legislation states that Response to Comments documents shall be distributed no less than 14 days prior to the Planning Commission's consideration of certification.

Analysis: The requirement under CEQA is 10 days. While Response to Comments documents are usually distributed 14 days ahead of the hearing, anything longer than what CEQA requires should not be defined by ordinance.
Recommendation. The Department should oppose codification of this provision.

2. THE PROPOSED ORDINANCE CONTAINS SUBSTANTIAL INCREASES IN NOTIFICATION REQUIREMENTS.

General Analysis of Increased Notification: The ordinance requires a substantial increase in mailed and electronic notification. The result of these requirements would be substantial additional staff time devoted to notification, and possible delays in otherwise over-the-counter permits. Conversely, adding notification of CEQA actions for permits that are not issued over the counter would involve minor additional time and cost. There is already extensive notification and review associated with these permits, and the review process provides adequate time for notification. The Department could combine CEQA notification with other notification that already occurs (e.g. Section 311/213, See Exhibit D).

The increased notification would be unduly burdensome for both staff and project sponsors when it comes to over-the-counter permits. These permits are only issued for the very smallest of projects, those that result in no increase in intensity of use, dwelling units, or building envelope. In short, **they are permits that have no potential to result in significant environmental impacts.** The Department is committed to developing a web-based map of exemptions issued, on which these minor exemptions would be visible and

searchable, a substantial improvement over our existing system. Beyond web posting, notification of these exemptions, which number in the hundreds per month, would not have sufficient benefit to justify the substantial time and cost.

The various aspects of the increased notification requirements are described below.

Sec 31.04(h): A subscription-based electronic notification system is required. As defined it would have to allow subscribers to receive notifications tailored to their subscription, e.g. notification about a specific property, neighborhood, or type of CEQA determination.

Analysis: As proposed, this system would be extremely cumbersome. It means that for every CEQA determination there would need to be a decision made as to which list of subscribers should be notified. It would add staff time to every determination and it would create a lot of potential for error. Also, it would be impossible to offer a choice of mailing list that is tailor-made for every possible preference; it is not equitable notification to meet some people's requests and not others.

A distinction has to be made here for electronic notification lists based on document type, in contrast to electronic notification list based on project attribute. For types of determinations that are already notified, it would be a simple addition to add an email notification for anyone who had indicated a desire to receive that kind of document – that is to say, if someone wants a notification every time a Neg Dec is issued, or a catex is issued for a permit that is not issued over the counter, that would be a simple additional step. Even for catexes issued over the counter, we could consider design of a system that could summarize the week's catexes and notify the interested list. The salient point is that document type-based mailing list distinctions do not require individual, project-by-project consideration for inclusion on different mailing lists, and therefore can be administered automatically. Administration of such a system would potentially require up to 1 FTE.

Recommendation: Mailing list subscriptions based on project attributes (such as location, size, site ownership, historic status, etc.) would be extremely problematic to administer. For each CEQA determination, staff would need to analyze and consider which list should be included in the notification; this means that the process could not be completed automatically. The additional time and potential for error would be substantial, potentially requiring up to an estimated five (5) Full-Time Employees. It is questionable whether the benefit of an attribute-based notification service would exceed these costs. The Department recommends opposing this aspect of the ordinance.

Sec 31.08(d): As it currently exists in Chapter 31, this section requires the mailed notification of Class 31 and Class 32 exemptions, exemptions for projects that are historic resources as defined by CEQA, and any demolition of a structure. The exemption

determinations for projects in these categories are mailed to a list of individuals and organizations who have requested such notice.

The amendments add the following categories of projects to the notice requirement: alteration of a building 50 years or older, "demolition" of a residential building under Planning Code Section 317 (which includes major alterations), "demolition" of an existing structure as defined in Section 1005(f) of the Planning Code (it is unclear if this is intended to include any structure or only structures subject to Article 10 of the Code), projects within or affecting any park or open space under the jurisdiction of the Recreation and Park Commission or any other City board or commission, and any community plan exemption.

Analysis: These changes would substantially increase the number of catexes requiring mailed notice. Most notably, the requirement for mailed notice of a catex determination for any alteration to a building 50 years or older could apply to a very large number of projects and permits. This would involve mailed notice of an estimated 15 determinations per day beyond those already noticed. Up to three (3) Full-Time Employees might be necessary to meet this requirement, in addition to materials and postage costs. The ordinance would also require posting on the Department website of all exemption determinations associated with these projects.

Mailed notice is already provided for exemptions associated with historical resources under CEQA and for other types of projects that have potential impacts (such as demolition of a structure). A further category of projects are subject to 311/312 notification. The remaining projects that have no notification of exemption determinations at this stage constitute those very minor projects that have no potential to significantly impact the environment. Moreover, the Department completes a CEQA Categorical Exemption Determination checklist for each catex, which identifies projects that may have unusual circumstances (such as steep slopes or historical resources) and requires further environmental review prior to permit issuance (see Exhibit C). The costs of mailed notice for the projects that do not already qualify for notice and/or further environmental review would far exceed any benefits.

That said, while there is no added benefit to a CEQA-specific notification it should be noted that most of the projects described above would benefit from mailed public notification of the project *and* that the Commissions' and the Department have proposed such project notification also include public notification of the CEQA determination. Mailed project notification is currently required for demolitions and defacto demolitions as defined under Planning Code Section 317. The Building Department also provides notification of demolition as defined in the Building Code. Mailed public notice is required for major permit to alter in relation to Conservation Districts as described in Planning Code Section 1110.

Mailed public notification is required for Certificate of Appropriateness as described in Planning Code Section 1006.

Recommendation: While the Department recommends opposing the expanded requirements for mailed notice, the proposed requirements for web posting would provide great public benefit and should be supported. Independent of any requirement to provide additional online notice, the Department is already pursuing vastly improved posting of all exemptions, in a system searchable by location with filtering by date of issuance.

Sec 31.11(c)(5), 31.13(d)(4): This section calls for mailed notice to residential occupants within 300 feet, to the extent practical.

Analysis: Since mailing labels are generated through property tax and ownership records, it is substantially more complex to provide mailed notice to occupants (i.e. renters).

Recommendation: The mailed notices to which these sections refer are replicated on the Department's website, in a newspaper of general circulation, and through posting at the project site. The notice is adequate, and the Department recommends opposing the addition of residential occupants to the notice requirements even with the caveat regarding practicality.

3. THE PROPOSED ORDINANCE SPECIFIES CONTROLS FOR PROJECTS WITH MULTIPLE APPROVALS. Sec 31.08(f) requires "written determinations" for projects with multiple permits or other approvals that describe and evaluate the whole of the project and list all approval actions necessary.

Analysis: Any project reviewed by Planning, whether over-the-counter or otherwise, could involve multiple permits or approvals.

It is unclear what constitutes a "written determination", since the next section (31.08(g)) discusses Certificates of Exemption. Depending on the intent and interpretation, this requirement could be onerous if it would constitute a greater effort than our current catex checklist. (See Exhibit C which is the four-page thorough checklist.) Currently, approximately 300 exemptions per year that are taken in by Planning staff for review and receive an exemption without a certificate of determination. Literally thousands more exemptions per year are issued over-the-counter. Requiring some additional written determination beyond the chceklist for these would represent an estimated 50% increase in the time required to grant each and every exemption.

The ordinance would require that the written determination identify all discretionary approvals needed to implement the project. Since most of these approvals are granted by other agencies, further staff time would be required to coordinate with the agencies, and there is no guarantee that such a list would be accurate over time. Furthermore, it should be noted that CEQA always requires

analysis of the whole of the action for which approval is sought in its very definition of the term "project", and specifically states that the project may be subject to several discretionary approvals (CEQA Guidelines Sec 15378).

Recommendation: The concept of an "approval" as it is defined in CEQA and in the existing provision of Chapter 31 is discussed below under Appeals. The Department recommends supporting the concept of identifying the "approval" in the CEQA determination, and recommends opposing the other aspects of this provision.

4. THE PROPOSED ORDINANCE INCREASES REGULATIONS CONCERNING MODIFICATIONS OF PROJECTS PREVIOUSLY DETERMINED TO BE EXEMPT FROM CEQA.

Analysis: The legislation defines "modifications" as follows: "a modification requiring re-evaluation under Section 31.19 shall mean a change in the scope of a project as described in the original application upon which Planning based the exemption determination." (Sec 31.08(k)) Under CEQA, a change to the scope of the project as described will necessarily require issuance of a new exemption, as there is no mechanism for amending a catex. There is no description or definition in the ordinance to guide the determination of whether there has been a "change to the scope of the project."

Recommendation: Re-evaluation of changed projects is an appropriate and necessary component of CEQA, and is one that is done now by the ERO. The concept of codified assurance that modified projects will be referred to the ERO is one that the Commissions should support. However, the language as proposed does not provide sufficient clarity around the salient determination that a project has changed. The issue addressed in this Section 31.08(k) should be that, when a project is referred to Planning regarding a modification in an aspect of the project regulated under the Planning Code (such as height, setbacks, or uses) the application shall be referred to the ERO for consideration of its consistency with the project as described in the original exemption. If the ERO determines that the project description no longer fits within the previous project description, a new determination shall be issued. The Department recommends supporting language to this effect.

While a new exemption associated with an altered project should always be appealable, the Commissions should oppose legislation that makes appealable the determination of a modified project's consistency with the original project description. This is a ministerial decision involving use of fixed measurements that requires little to no application of judgment on the part of the ERO. Ministerial decisions are not subject to CEQA.

5. THE PROPOSED ORDINANCE AMENDS THE ERO'S DELEGATION OF ERO'S AUTHORITY TO OTHER CITY DEPARTMENTS.

ANALYSIS: The ERO currently has delegation agreements with SFPUC and SFMTA for issuance of exemptions, as provided for under Chapter 31. These agencies may prepare exemptions that are affirmed by the ERO and posted by the Planning Department along with other exemptions. The Department's analysis shows that together these agencies issue approximately 100 exemptions per year; in some cases an exemption will cover multiple exempt activities such as no parking zones, stop signs, sewer repair affecting less than one mile of linear feet, etc.

Recommendation: There has been no indication or evidence that these delegation agreements have resulted in problematic circumstances for the public. However, the ordinance amendments would eliminate these agreements (Sec 31.08(d)). Elimination of the agreements would require additional staff time at the Planning Department for completion of these exemptions (estimated increase of one to two Full-Time Employees), and would likely be highly burdensome to the agencies' efforts to complete minor projects that are clearly exempt from CEQA. The Department recommends opposing this aspect of the ordinance.

6. PROCEDURES SPECIFIC TO APPEAL OF CEQA DOCUMENTS TO THE BOARD OF SUPERVISORS.

ANALYSIS: The aspect of the legislation concerning the timing of appeal of exemption determinations is a critical issue for the Department. The legislation proposes an appeal window extending from the time that the exemption determination is noticed (which could occur many months prior to project approval) until 30 days following the issuance of any discretionary permit or any other approval action for the project (Sec 31.16(e)(1)(A)) – therefore, 30 days beyond the last permit issued. This lengthens the appeal window on the front end of a project; on the back end, it is substantially identical to our current system. For an exemption that was not noticed, the appeal window would extend to 60 days beyond the discretionary action.

Recommendation: The Department recommends **strongly opposing** codification of the appeal window in this manner. Both CEQA and Chapter 31 are very clear on the question of the relationship of CEQA to multiple discretionary approvals. Section 15352 of the CEQA Guidelines defines "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person,", and makes it clear that a single "project" may be subject to multiple discretionary approvals. Section 31.20 of Chapter 31 applies this definition in the context of multiple approvals, specifying that *"For purposes of determining the appropriate time for evaluation of projects and preparation of EIRs pursuant to this Chapter,* there shall be only one relevant decision by the City to carry out or approve, or not to carry out or approve, a project. *However for other purposes there may be more than one determination* by the same or separate boards, commissions and departments of the

City, either discretionary or ministerial, affecting the carrying out or approval of the project."[emphasis added] (Sec 31.20(d)).

Appeals of exemptions are allowed under Section 15061(e) of the CEQA Guidelines, which states that "when a nonelected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt from CEQA may be appealed..." Since both "project" and "approval" are defined in CEQA, the apparent intent of this section of the Guidelines is that the exemption determination be appealable after the approval, that is, after that single "decision by a public agency to which commits the agency to a definite course of action in regard to a project."

The Department believes that just as CEQA review for any project must consider the entirety of the project regardless of the number of discretionary approvals involved, so too should the CEQA determination only be appealable in association with that single approval defined in the CEQA Guidelines and in Administrative Code Section 31.20.

In the interest of maximum clarity, the Department should clearly identify the "approval" as defined by CEQA associated with each project on that project's environmental determination. The Department recommends supporting a requirement that the approval be identified on each CEQA determination.

Other Appeals-Related Issues

Sec 31.16(b)(4): This provision would allow consideration of landmarking to continue while an appeal to the Board of Supervisors is pending, but other actions could not be considered.

Analysis: Why should this action be able to proceed, but not others? Furthermore, one issue in the appeal could be the historic status of the building, so landmarking might constitute action on an issue under dispute. There are other approvals that are just as important and time-sensitive as landmarking, so calling this one out does not seem equitable.

Recommendation: The Department recommends opposing the singling out of landmarking as the only approval that could occur during the appeal period.

31.16(b)(5): This section provides that if multiple appellants file an appeal, each individual appellant shall be granted the full amount of time that would be granted to a single appellant.

Analysis: The granting of equal time for testimony to up to 3 appellants could create an incentive for multiple appeals to be filed in order for appellants to gain more presentation time. Currently, both the lead appellant and the project sponsor are each granted 10 minutes to present with an allowance for individual speakers to present a lesser amount (typically 2-3 minutes apiece) in either support or opposition to the appeal. If there were three appeallants and if all

parties were granted the 10 minutes that are currently allocated for presentations, there could be up to 90 minutes for the primary presentations in addition to any public comment.

Recommendation: The Department recommends opposing this provision.

31.16(b)(6): This provision establishes timeframes for submittal of material to the Board and would guard against "data dumping" in the appeals process.

Analysis: The Department recommends supporting this provision with a modification.

Recommendation: The recommended modification would be to revise as follows: "Written materials submitted later than noon, eight days prior to the scheduled hearing, other than Planning Department responses to the appeal, will not be considered part of the record unless the Board affirmatively votes to include such written materials in the record."

31.16(d)(1): This provision allows appeals of Negative Declarations to the Board without an appeal to the Planning Commission.

Analysis: The public comment and appeal opportunity on Negative Declarations to the Planning Commission is widely noticed and is an integral part of the Neg Dec process under CEQA. It is consistent with the purpose and spirit of CEQA, which is to encourage public participation in the assessment of environmental impacts so as to allow for improvements to projects as proposed for approval. Further, per City Attorney advice, appellants may unwittingly weaken their own prospects in litigation before the courts if they do not partake in the appeal opportunity at the Planning Commission. It is also unfair to project sponsors who have fully submitted to the CEQA process to allow later appeal of the environmental review if this critical opportunity for input was ignored.

Recommendation: Because application of this provision may impact both appellants and project sponsors, the Department recommends opposing this provision.

POTENTIAL COMMISSION ACTION

The proposed Ordinance is before both the Planning Commission and the Historic Preservation Commission so that each may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department strongly recommends that both the Historic Preservation Commission and the Planning Commission recommend *approval of some portions* of the proposed Ordinance and disapproval of other portions and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

In March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826). In light of that recommendation, the Department recommends that the Commission approve some portions of this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation.

While the detailed recommendations were reviewed section by section in the earlier portion of this report, overall the Department recommends that the Commissions' position on the major aspects of the Chapter 31 amendments proposed by Supervisor Kim should be as follows:

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

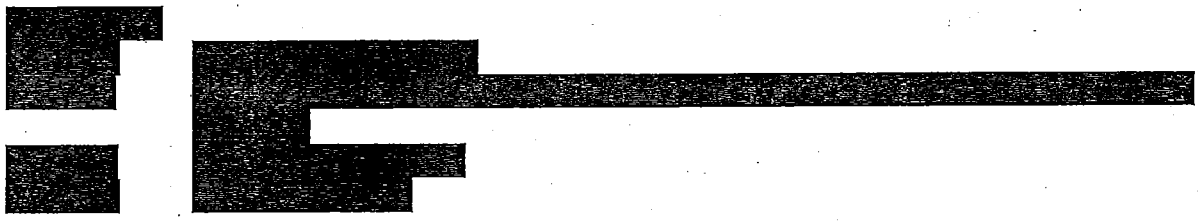
ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

The Planning Department has not received communication specific to Supervisor Kim's proposal since the March 2013 hearings on Supervisor Wiener's proposal. In March 2013, the Department received multiple letters that have previously been submitted to the Commissions.

RECOMMENDATION:	Approval of Certain Portions and Disapproval of Certain Portions



NOTE: This document is the Executive Summary as presented to the HPC on May 15, 2013 as it provides guidance as to which portions the HPC would support and which portions the HPC would recommend for disapproval. While the Executive Summary is cited in the Commission's Resolution No. 706, the attachments to the original Executive Summary are not cited nor attached. These additional documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco.

Miller, Alisa

From:	Rodgers, AnMarie
Sent:	Monday, April 29, 2013 11:08 AM
To:	Kim, Jane; Calvillo, Angela
Cc:	Avalos, John; Campos, David; Mar, Eric (BOS); Givner, Jon; Warren, Elaine; Pollock, Jeremy; Ronen, Hillary; Pagoulatos, Nickolas; Miller, Alisa; Jones, Sarah; Yadegar, Danny
Subject:	Planning Transmittal to BoS BF 130248 CEQA Procedures
Attachments:	Planning Transmittal to BoS BF 130248 Kim CEQA Procedures.pdf

Dear Clerk Calvillo and Honorable Supervisor Kim,

On April 25, 2013, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance that would establish the amend the Administrative Code, Chapter 31.

At the hearing, the Planning Commission recommended that the Board of Supervisors approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics related to the proposed ordinance:

1. notification feasibility,
2. further project approvals while an appeal is pending,
3. "search-ability" of CEQA determinations, and
4. prioritization of affordable housing projects.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. If you have any questions or require further information please do not hesitate to contact me.

AnMarie Rodgers
Manager of Legislative Affairs
SF Planning Department
1650 Mission Street, #400
San Francisco, CA 94103
415-558-6395

Public access to property information and permit history is just a click away:
http://propertymap.sfplanning.org

SAN FRANCISCO
PLANNING DEPARTMENT

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April 29, 2013

Ms. Angela Calvillo, Clerk
Honorable Supervisor Kim
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 Commission Recommendation**
California Environmental Quality Act Procedures, Appeals, and Public Notice
Case Number: 2013.0463U [Board File No. 13-0248]
Planning Commission Recommendation: *Approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects.*

Dear Clerk Calvillo and Honorable Supervisor Kim,

On April 25, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance that would establish the amend the Administrative Code, Chapter 31. At the hearing, the Planning Commission recommended that the Board of Supervisors approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects.

On April 17, 2013, the Department determined that the proposal ordinance would result in no physical impact on the environment. The Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the General Rule Exclusion (CEQA Guidelines Section 15060(c)(2)) as described in the determination contained in the Planning Department files for this Project.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commissions. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Digitally signed by anmarie rodgers
DN: dc=org, dc=sfgov, dc=cityplanning, ou=CityPlanning, ou=Directors Office, cn=anmarie rodgers, email=anmarie.rodgers@sfgov.org
Date: 2013.04.29 11:00:47 -07'00'

AnMarie Rodgers
Manager of Legislative Affairs

cc:
Co-Sponsor, Honorable Supervisor Avalos
Co-Sponsor, Honorable Supervisor Campos
Co-Sponsor, Honorable Supervisor Mar
Jon Givner, Deputy City Attorney
Elaine Warren, Deputy City Attorney
Jeremy Pollock, Aide to Supervisor Avalos
Hillary Ronen, Aide to Supervisor Campos
Nickolas Pagoulatos, Aide to Supervisor Mar
Alisa Miller, Office of the Clerk of the Board

Attachments
Planning Commission Resolution
Planning Department Executive Summary

SAN FRANCISCO
PLANNING DEPARTMENT

Planning Commission Resolution No. 18852

Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: APRIL 25, 2013

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Information:
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Project Name:	California Environmental Quality Act Procedures, Appeals, and Public Notice
Case Number:	2013.0463U [Board File No. 13-0248]
Initiated by:	Supervisor Kim
Introduced:	April 9, 2013
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	Sarah Jones, Acting Environmental Review Officer sarah.b.jones@sfgov.org, 415-575-9034
Recommendation:	Approve of certain portions, disapprove of certain portions and conduct further review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects.

RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE OF CERTAIN PORTIONS, DISAPPROVE OF CERTAIN PORTIONS AND CONDUCT FURTHER REVIEW AND ANALYSIS OF FOUR TOPICS: NOTIFICATION FEASIBILITY, FURTHER PROJECT APPROVALS WHILE AN APPEAL IS PENDING, "SEARCH-ABILITY" OF CEQA DETERMINATIONS, AND PRIORITIZATION OF AFFORDABLE HOUSING PROJECTS RELATED TO THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO PROVIDE FOR APPEALS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL IMPACT REPORTS, NEGATIVE DECLARATIONS, EXEMPTION DETERMINATIONS, AND DETERMINATIONS ON MODIFIED PROJECTS; TO CLARIFY AND UPDATE EXISTING CHAPTER 31 PROCEDURES, INCLUDING WITHOUT LIMITATION: TO PROVIDE FOR THE PLANNING DEPARTMENT OR PLANNING COMMISSION TO APPROVE ALL EXEMPTION DETERMINATIONS; TO REQUIRE THE PLANNING DEPARTMENT TO ESTABLISH AN ELECTRONIC NOTIFICATION SYSTEM; TO EXPAND NOTICING OF EXEMPT PROJECTS; TO REQUIRE NEW NOTICING WHEN FILING NOTICES OF EXEMPTION AND NOTICES OF DETERMINATION; TO REVISE NOTICING OF NEGATIVE DECLARATIONS AND ENVIRONMENTAL IMPACT REPORTS FOR PLANS OF 20 ACRES OR MORE; TO PROVIDE AN EXPANDED ROLE FOR THE HISTORIC PRESERVATION COMMISSION; AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on October 16, 2012, Supervisor Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1019 which would to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations.

Whereas, on November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted to make advisory recommendations to Supervisor Wiener concerning the proposal; and

Whereas, the HPC's recommendations are recorded in Resolution Number 694; and

Whereas, on November 29, 2012, the Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning Commission's recommendations are recorded in Resolution Number 18754; and

Whereas, on March 14, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on March 20, 2013, the HPC conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019; and

Whereas, at these March 2013 hearings, Commissions recommended approval of the Ordinance with two modifications in HPC Resolution No. 704 and PC Resolution No. 18826; and

Whereas, Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks to April 22, 2013; and

Whereas, at the April 8 2013 Land Use Committee hearing Supervisor Kim announced that she would be introducing an alternative proposal; and

Whereas on April 9, 2013 Supervisor Kim introduced an ordinance titled "Administrative Code-California Environmental Quality Act Procedures, Appeals and Public Notice [BF 130248]; and

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

Whereas on April 25, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas on May 15, 2013, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the Planning 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

Therefore be it resolved that, the Planning Commission has reviewed the proposed Ordinance;

Be it further resolved that in March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826) and **MOVED, in light of that recommendation, Commission recommends that the Board approve of certain portions, disapprove of certain portions and conduct review and analysis of four topics: notification feasibility, further project approvals while an appeal is pending, "search-ability" of CEQA determinations, and prioritization of affordable housing projects** in regard to this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation; and

Be it further **MOVED, that in general, this Commission recommends the following by subject area:**

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.

- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

And, be it further MOVED, that the Commission concurs with the more detailed recommendations as described in the attached Executive Summary from the Department.

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. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.
3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.
7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.
9. The Commission reaffirms their earlier decision to approve Board File Number 121019 CEQA Procedures and recommends forwarding certain portions of this proposal with a positive recommendation to the Board.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on April 25, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Fong, Wu, Antonini, Hillis, and Moore

NAYS: none

ABSENT: Borden and Sugaya

ADOPTED: April 25, 2013

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Executive Summary
Administrative Code Text Change
PLANNING COMMISSION HEARING DATE: APRIL 25, 2013
HISTORIC PRESERVATION COMMISSION HEARING DATE: MAY 15, 2013

Project Name:	**California Environmental Quality Act Procedures, Appeals, and Public Notice**
Case Number:	2013.0463U [Board File No. 13-0248]
Initiated by:	Supervisor Kim
Introduced:	April 9, 2013
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by:	**Sarah Jones, Acting Environmental Review Officer** **sarah.b.jones@sfgov.org, 415-575-9034**
Recommendation:	**Approval of Certain Portions, Disapproval of Certain Portions**

ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Kim would amend the Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Background:

On November 7, 2012; December 5, 2012; and March 20, 2013, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted duly noticed public hearings to consider a proposed Ordinance that would amend local CEQA procedures sponsored by Supervisor Wiener under Board of Supervisors File Number 12-1019. On November 29, 2012 and March 14, 2013, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted duly noticed public hearings to consider the same proposed Ordinance. At each of the hearings, each Commission passed a resolution with advisory recommendations. At the most recent hearings, in March of this year, both Commissions recommended approval of the Ordinance with two modifications. Supervisor Wiener has subsequently modified the proposal in response to these resolutions (HPC Resolution No. 704 and PC Resolution No. 18826). Supervisor Wiener's proposed Ordinance was considered on April 8, 2013 at the Board of Supervisors' Land Use Committee and was continued two weeks.

On March 12, 2013 Supervisor Kim introduced an alternative proposal that would also amend Administrative Code Chapter 31 to address San Francisco's local administration of CEQA and appeal procedures. As this proposed ordinance was introduced shortly before the Commissions' hearings on Supervisor Wiener's proposal and as it was not yet signed to form, the Commissions briefly discussed this proposal but did not consider the content. On April 9, 2013, Supervisor Kim introduced the version described in this case report.

The Way It Is Now Summary:

In San Francisco, the Board of Supervisors considers appeals because 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. Since the Planning Commission and Planning Department are not elected bodies, CEQA provides that CEQA documents approved by the Commission and Department are appealable to the Board. CEQA Guidelines clarify that such appeal is allowed after the project is approved. Case law has clarified that where the elected decision-making body approves the CEQA document itself, no appeal is required.

The appeal right derives from state law and the ordinance under consideration would not change or abrogate that right.

State CEQA law leaves establishment of the appeal process (and other provisions) to local bodies. In San Francisco, Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR certification[1] to the Board, 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 interim 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 Chapter 31 does not provide specified time limits for filing appeals. The Clerk has addressed this problem by referring every appeal to the City Attorney's Office for advice on whether an appeal is timely. On February 22, 2008, the City Attorney drafted a memorandum[2] explaining general guidelines for determining if appeals of private projects were 1) "ripe" or ready for appeal and 2) "timely" meaning not too late. This memo provides general guidance whereby appeals could be filed prior to the expiration of the appeal period for the final administrative approval. For private projects, the time in which an appeal can be filed depends on the entitlements needed for a project. The Clerk continues to refer each appeal to the City Attorney's Office for a case by case determination. In practice, it is difficult for the public to understand when the filing of a CEQA appeal is appropriate.

The Way It Would Be Summary:

The proposed Ordinance would establish new controls in the following categories:

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[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". It is posted on the Clerk's web page.

1. procedural requirements for the Planning Commission, Historic Resource Commission, and the Environmental Review Officer (ERO),
2. substantial increases in notification requirements,
3. specific controls for projects with multiple approvals,
4. regulations concerning modifications of projects previously determined to be exempt from CEQA,
5. delegation of ERO's authority to the SFPUC and SFMTA,
6. procedures specific to appeal of CEQA documents to the Board of Supervisors.

The Way It Would Be: Details and Analysis

Below is an examination of the six types of changes contained in the proposed Ordinance and the Department's analysis of these changes.

1. THE LEGISLATION CONTAINS MULTIPLE AMENDMENTS ESTABLISHING NEW PROCEDURAL REQUIREMENTS FOR ENVIRONMENTAL REVIEW. SPECIFICALLY, THE CHANGES WOULD AFFECT THE PLANNING COMMISSION, HISTORIC RESOURCE COMMISSION, AND THE ENVIRONMENTAL REVIEW OFFICER (ERO).

   Sec 31.04(d): "The Historic Preservation Commission shall have the authority to review and comment on all environmental documents and determinations for projects that may have an impact on historic or cultural resources."

   Analysis: This language is in the Planning Code and Charter, and does not appear to have any further implications.

   Recommendation: The Department has no recommendation on this language.

   Sec 31.08(h)(1): The legislation calls for the Planning Commission to approve an exemption determination prior to approving a project (Sec 31.08(h)(1)).

   Analysis: This would transfer responsibility for the administrative action of determining if a project qualifies for exemption from the ERO to the Planning Commission approval. For an exemption, the question at hand is whether there are unusual circumstances that disqualify a project that otherwise fits into the exemption category. If a project is exempt from CEQA, it means it is not subject to CEQA review and therefore there is no CEQA finding for the Commission to approve. The Commission's role in the exemption process is the adoption of policies and procedures (e.g. the list of project types that qualify for exemptions), rather than individual determinations regarding exempt projects.

   There are staff time impacts of both this section, and Section 31.08(i)(3), in that Environmental Planning (hereinafter "EP") staff would be required to attend every project approval hearing before the Planning Commission or other boards and commissions in case of public testimony or questions on the environmental determination. The estimated staff time impact could be up to 3 Full-Time Employees given the uncertainty of Commission hearing length.

Recommendation: The Department recommends opposing the changes contained in Sec 31.08(h)(1) and Sec 31.08(i)(3).

Sec 31.11(j) and 31.15(f): The legislation proposes amending the statement that the ERO "may" file a Notice of Determination (NOD) to state that the ERO "shall" file the NOD.

Analysis: In practice, since this notice requires payment of fees to the County Clerk by the project sponsor, it is subject to the sponsor's discretion to pay the fee and file this notice. The fee can exceed $3,000. The incentive to the sponsor to file a NOD is a shortening of the time in which a lawsuit may be filed. As it now stands, the sponsor may choose whether or not to assume the risk of not filing an NOD, and if it is not filed there is more opportunity for the public to challenge a project.

Recommendation: There is no apparent reason to make the proposed change. Compliance is uncertain since it would be in the project sponsor's control. Therefore, the language should be modified to state that the ERO shall file an NOD upon payment of required fees by the project sponsor. With this modification, the Department could recommend support this provision.

Sec 31.12: The legislation requires public scoping meetings for every EIR.

Analysis: These meetings are required during the scoping process for certain types of projects as specified in CEQA, including some General Plan amendments, residential development exceeding 500 units, office development exceeding 250,000 square feet, and projects located in the California Coastal Zone/Bay Conservation and Development Commission jurisdiction (CEQA Guidelines Sec 15206 and 15082(c)). Requiring scoping meetings for every EIR would require expenditure of cost and time associated with venue fees, materials, court reporter, and meeting attendance.

Recommendation: The Department recommends that the Commissions oppose this proposed amendment.

Sec 31.14(a)(1)(c): This provision would require that any Draft EIR addressing alterations to a structure more than 50 years old be referred to the HPC for comment at a noticed public meeting, scheduled at least 10 days before the Planning Commission hearing on the DEIR.

Analysis: There are two aspects of this provision that are problematic. First, not every structure more than 50 years old is a historic resource under CEQA. If the structure has been determined not to be a historic resource, then there is no basis for review of the EIR by the HPC. Requiring this additional hearing for buildings that are not historic resources is unduly burdensome for staff, the HPC, the project sponsor, and the public, and is beyond the responsibilities of the HPC.

Second, given the biweekly schedule of the HPC, the requirement that hearings occur 10 days prior to the Planning Commission could serve to delay the Planning

Commission hearing and lengthen the comment period. Planning and/or HPC resolution would be an appropriate mechanism for defining a preferred time lapse between hearings.

Recommendation: The Department recommends opposing the inclusion of all buildings over 50 years old in the list of projects that would require a hearing before the HPC. The Department recommends opposing any codified requirement regarding the amount of time between hearings.

Sec 31.14(c): This provision allows for distribution of EIRs in electronic form unless hard copy is requested.

Analysis: Any reduction in the number of EIRs that must be printed would reduce cost and resource use.
Recommendation: The Department recommends strongly supporting this provision.

Sec 31.15(a): The legislation states that Response to Comments documents shall be distributed no less than 14 days prior to the Planning Commission's consideration of certification.

Analysis: The requirement under CEQA is 10 days. While Response to Comments documents are usually distributed 14 days ahead of the hearing, anything longer than what CEQA requires should not be defined by ordinance.
Recommendation. The Department should oppose codification of this provision.

2. THE PROPOSED ORDINANCE CONTAINS SUBSTANTIAL INCREASES IN NOTIFICATION REQUIREMENTS.

General Analysis of Increased Notification: The ordinance requires a substantial increase in mailed and electronic notification. The result of these requirements would be substantial additional staff time devoted to notification, and possible delays in otherwise over-the-counter permits. Conversely, adding notification of CEQA actions for permits that are not issued over the counter would involve minor additional time and cost. There is already extensive notification and review associated with these permits, and the review process provides adequate time for notification. The Department could combine CEQA notification with other notification that already occurs (e.g. Section 311/213, See Exhibit D).

The increased notification would be unduly burdensome for both staff and project sponsors when it comes to over-the-counter permits. These permits are only issued for the very smallest of projects, those that result in no increase in intensity of use, dwelling units, or building envelope. In short, **they are permits that have no potential to result in significant environmental impacts**. The Department is committed to developing a web-based map of exemptions issued, on which these minor exemptions would be visible and searchable, a substantial improvement over our existing system. Beyond web posting,

notification of these exemptions, which number in the hundreds per month, would not have sufficient benefit to justify the substantial time and cost.

The various aspects of the increased notification requirements are described below.

Sec 31.04(h): A subscription-based electronic notification system is required. As defined it would have to allow subscribers to receive notifications tailored to their subscription, e.g. notification about a specific property, neighborhood, or type of CEQA determination.

> *Analysis:* As proposed, this system would be extremely cumbersome. It means that for every CEQA determination there would need to be a decision made as to which list of subscribers should be notified. It would add staff time to every determination and it would create a lot of potential for error. Also, it would be impossible to offer a choice of mailing list that is tailor-made for every possible preference; it is not equitable notification to meet some people's requests and not others.
>
> A distinction has to be made here for electronic notification lists based on document type, in contrast to electronic notification list based on project attribute. For types of determinations that are already notified, it would be a simple addition to add an email notification for anyone who had indicated a desire to receive that kind of document – that is to say, if someone wants a notification every time a Neg Dec is issued, or a catex is issued for a permit that is not issued over the counter, that would be a simple additional step. Even for catexes issued over the counter, we could consider design of a system that could summarize the week's catexes and notify the interested list. The salient point is that document type-based mailing list distinctions do not require individual, project-by-project consideration for inclusion on different mailing lists, and therefore can be administered automatically. Administration of such a system would potentially require up to 1 FTE.
>
> *Recommendation:* Mailing list subscriptions based on project attributes (such as location, size, site ownership, historic status, etc.) would be extremely problematic to administer. For each CEQA determination, staff would need to analyze and consider which list should be included in the notification; this means that the process could not be completed automatically. The additional time and potential for error would be substantial, potentially requiring up to an estimated five (5) Full-Time Employees. It is questionable whether the benefit of an attribute-based notification service would exceed these costs. The Department recommends opposing this aspect of the ordinance.

Sec 31.08(d): As it currently exists in Chapter 31, this section requires the mailed notification of Class 31 and Class 32 exemptions, exemptions for projects that are historic resources as defined by CEQA, and any demolition of a structure. The exemption

determinations for projects in these categories are mailed to a list of individuals and organizations who have requested such notice.

The amendments add the following categories of projects to the notice requirement: alteration of a building 50 years or older, "demolition" of a residential building under Planning Code Section 317 (which includes major alterations), "demolition" of an existing structure as defined in Section 1005(f) of the Planning Code (it is unclear if this is intended to include any structure or only structures subject to Article 10 of the Code), projects within or affecting any park or open space under the jurisdiction of the Recreation and Park Commission or any other City board or commission, and any community plan exemption.

Analysis: These changes would substantially increase the number of catexes requiring mailed notice. Most notably, the requirement for mailed notice of a catex determination for any alteration to a building 50 years or older could apply to a very large number of projects and permits. This would involve mailed notice of an estimated 15 determinations per day beyond those already noticed. Up to three (3) Full-Time Employees might be necessary to meet this requirement, in addition to materials and postage costs. The ordinance would also require posting on the Department website of all exemption determinations associated with these projects.

Mailed notice is already provided for exemptions associated with historical resources under CEQA and for other types of projects that have potential impacts (such as demolition of a structure). A further category of projects are subject to 311/312 notification. The remaining projects that have no notification of exemption determinations at this stage constitute those very minor projects that have no potential to significantly impact the environment. Moreover, the Department completes a CEQA Categorical Exemption Determination checklist for each catex, which identifies projects that may have unusual circumstances (such as steep slopes or historical resources) and requires further environmental review prior to permit issuance (see Exhibit C). The costs of mailed notice for the projects that do not already qualify for notice and/or further environmental review would far exceed any benefits.

That said, while there is no added benefit to a CEQA-specific notification it should be noted that most of the projects described above would benefit from mailed public notification of the project *and* that the Commissions' and the Department have proposed such project notification also include public notification of the CEQA determination. Mailed project notification is currently required for demolitions and defacto demolitions as defined under Planning Code Section 317. The Building Department also provides notification of demolition as defined in the Building Code. Mailed public notice is required for major permit to alter in relation to Conservation Districts as described in Planning Code Section 1110.

Mailed public notification is required for Certificate of Appropriateness as described in Planning Code Section 1006.

Recommendation: While the Department recommends opposing the expanded requirements for mailed notice, the proposed requirements for web posting would provide great public benefit and should be supported. Independent of any requirement to provide additional online notice, the Department is already pursuing vastly improved posting of all exemptions, in a system searchable by location with filtering by date of issuance.

Sec 31.11(c)(5), 31.13(d)(4): This section calls for mailed notice to residential occupants within 300 feet, to the extent practical.

Analysis: Since mailing labels are generated through property tax and ownership records, it is substantially more complex to provide mailed notice to occupants (i.e. renters).

Recommendation: The mailed notices to which these sections refer are replicated on the Department's website, in a newspaper of general circulation, and through posting at the project site. The notice is adequate, and the Department recommends opposing the addition of residential occupants to the notice requirements even with the caveat regarding practicality.

3. THE PROPOSED ORDINANCE SPECIFIES CONTROLS FOR PROJECTS WITH MULTIPLE APPROVALS. Sec 31.08(f) requires "written determinations" for projects with multiple permits or other approvals that describe and evaluate the whole of the project and list all approval actions necessary.

Analysis: Any project reviewed by Planning, whether over-the-counter or otherwise, could involve multiple permits or approvals.

It is unclear what constitutes a "written determination", since the next section (31.08(g)) discusses Certificates of Exemption. Depending on the intent and interpretation, this requirement could be onerous if it would constitute a greater effort than our current catex checklist. (See Exhibit C which is the four-page thorough checklist.) Currently, approximately 300 exemptions per year that are taken in by Planning staff for review and receive an exemption without a certificate of determination. Literally thousands more exemptions per year are issued over-the-counter. Requiring some additional written determination beyond the chceklist for these would represent an estimated 50% increase in the time required to grant each and every exemption.

The ordinance would require that the written determination identify all discretionary approvals needed to implement the project. Since most of these approvals are granted by other agencies, further staff time would be required to coordinate with the agencies, and there is no guarantee that such a list would be accurate over time. Furthermore, it should be noted that CEQA always requires

analysis of the whole of the action for which approval is sought in its very definition of the term "project", and specifically states that the project may be subject to several discretionary approvals (CEQA Guidelines Sec 15378).

Recommendation: The concept of an "approval" as it is defined in CEQA and in the existing provision of Chapter 31 is discussed below under Appeals. The Department recommends supporting the concept of identifying the "approval" in the CEQA determination, and recommends opposing the other aspects of this provision.

4. THE PROPOSED ORDINANCE INCREASES REGULATIONS CONCERNING MODIFICATIONS OF PROJECTS PREVIOUSLY DETERMINED TO BE EXEMPT FROM CEQA.

Analysis: The legislation defines "modifications" as follows: "a modification requiring re-evaluation under Section 31.19 shall mean a change in the scope of a project as described in the original application upon which Planning based the exemption determination." (Sec 31.08(k)) Under CEQA, a change to the scope of the project as described will necessarily require issuance of a new exemption, as there is no mechanism for amending a catex. There is no description or definition in the ordinance to guide the determination of whether there has been a "change to the scope of the project."

Recommendation: Re-evaluation of changed projects is an appropriate and necessary component of CEQA, and is one that is done now by the ERO. The concept of codified assurance that modified projects will be referred to the ERO is one that the Commissions should support. However, the language as proposed does not provide sufficient clarity around the salient determination that a project has changed. The issue addressed in this Section 31.08(k) should be that, when a project is referred to Planning regarding a modification in an aspect of the project regulated under the Planning Code (such as height, setbacks, or uses) the application shall be referred to the ERO for consideration of its consistency with the project as described in the original exemption. If the ERO determines that the project description no longer fits within the previous project description, a new determination shall be issued. The Department recommends supporting language to this effect.

<u>While a new exemption associated with an altered project should always be appealable,</u> the Commissions should oppose legislation that makes appealable the determination of a modified project's consistency with the original project description. This is a ministerial decision involving use of fixed measurements that requires little to no application of judgment on the part of the ERO. Ministerial decisions are not subject to CEQA.

5. THE PROPOSED ORDINANCE AMENDS THE ERO'S DELEGATION OF ERO'S AUTHORITY TO OTHER CITY DEPARTMENTS.

ANALYSIS: The ERO currently has delegation agreements with SFPUC and SFMTA for issuance of exemptions, as provided for under Chapter 31. These agencies may prepare exemptions that are affirmed by the ERO and posted by the Planning Department along with other exemptions. The Department's analysis shows that together these agencies issue approximately 100 exemptions per year; in some cases an exemption will cover multiple exempt activities such as no parking zones, stop signs, sewer repair affecting less than one mile of linear feet, etc.

Recommendation: There has been no indication or evidence that these delegation agreements have resulted in problematic circumstances for the public. However, the ordinance amendments would eliminate these agreements (Sec 31.08(d)). Elimination of the agreements would require additional staff time at the Planning Department for completion of these exemptions (estimated increase of one to two Full-Time Employees), and would likely be highly burdensome to the agencies' efforts to complete minor projects that are clearly exempt from CEQA. The Department recommends opposing this aspect of the ordinance.

6. PROCEDURES SPECIFIC TO APPEAL OF CEQA DOCUMENTS TO THE BOARD OF SUPERVISORS.

ANALYSIS: The aspect of the legislation concerning the timing of appeal of exemption determinations is a critical issue for the Department. The legislation proposes an appeal window extending from the time that the exemption determination is noticed (which could occur many months prior to project approval) until 30 days following the issuance of any discretionary permit or any other approval action for the project (Sec 31.16(e)(1)(A)) – therefore, 30 days beyond the last permit issued. This lengthens the appeal window on the front end of a project; on the back end, it is substantially identical to our current system. For an exemption that was not noticed, the appeal window would extend to 60 days beyond the discretionary action.

Recommendation: The Department recommends **strongly opposing** codification of the appeal window in this manner. Both CEQA and Chapter 31 are very clear on the question of the relationship of CEQA to multiple discretionary approvals. Section 15352 of the CEQA Guidelines defines "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person,", and makes it clear that a single "project" may be subject to multiple discretionary approvals. Section 31.20 of Chapter 31 applies this definition in the context of multiple approvals, specifying that *"For purposes of determining the appropriate time for evaluation of projects and preparation of EIRs pursuant to this Chapter,* there shall be only one relevant decision by the City to carry out or approve, or not to carry out or approve, a project. *However for other purposes there may be more than one determination* by the same or separate boards, commissions and departments of the

City, either discretionary or ministerial, affecting the carrying out or approval of the project."[emphasis added] (Sec 31.20(d)).

Appeals of exemptions are allowed under Section 15061(e) of the CEQA Guidelines, which states that "when a nonelected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt from CEQA may be appealed..." Since both "project" and "approval" are defined in CEQA, the apparent intent of this section of the Guidelines is that the exemption determination be appealable after the approval, that is, after that single "decision by a public agency to which commits the agency to a definite course of action in regard to a project."

The Department believes that just as CEQA review for any project must consider the entirety of the project regardless of the number of discretionary approvals involved, so too should the CEQA determination only be appealable in association with that single approval defined in the CEQA Guidelines and in Administrative Code Section 31.20.

In the interest of maximum clarity, the Department should clearly identify the "approval" as defined by CEQA associated with each project on that project's environmental determination. The Department recommends supporting a requirement that the approval be identified on each CEQA determination.

Other Appeals-Related Issues

Sec 31.16(b)(4): This provision would allow consideration of landmarking to continue while an appeal to the Board of Supervisors is pending, but other actions could not be considered.

Analysis: Why should this action be able to proceed, but not others? Furthermore, one issue in the appeal could be the historic status of the building, so landmarking might constitute action on an issue under dispute. There are other approvals that are just as important and time-sensitive as landmarking, so calling this one out does not seem equitable.

Recommendation: The Department recommends opposing the singling out of landmarking as the only approval that could occur during the appeal period.

31.16(b)(5): This section provides that if multiple appellants file an appeal, each individual appellant shall be granted the full amount of time that would be granted to a single appellant.

Analysis: The granting of equal time for testimony to up to 3 appellants could create an incentive for multiple appeals to be filed in order for appellants to gain more presentation time. Currently, both the lead appellant and the project sponsor are each granted 10 minutes to present with an allowance for individual speakers to present a lesser amount (typically 2-3 minutes apiece) in either support or opposition to the appeal. If there were three appeallants and if all

parties were granted the 10 minutes that are currently allocated for presentations, there could be up to 90 minutes for the primary presentations in addition to any public comment.

Recommendation: The Department recommends opposing this provision.

31.16(b)(6): This provision establishes timeframes for submittal of material to the Board and would guard against "data dumping" in the appeals process.

Analysis: The Department recommends supporting this provision with a modification.

Recommendation: The recommended modification would be to revise as follows: "Written materials submitted later than noon, eight days prior to the scheduled hearing, other than Planning Department responses to the appeal, will not be considered part of the record unless the Board affirmatively votes to include such written materials in the record."

31.16(d)(1): This provision allows appeals of Negative Declarations to the Board without an appeal to the Planning Commission.

Analysis: The public comment and appeal opportunity on Negative Declarations to the Planning Commission is widely noticed and is an integral part of the Neg Dec process under CEQA. It is consistent with the purpose and spirit of CEQA, which is to encourage public participation in the assessment of environmental impacts so as to allow for improvements to projects as proposed for approval. Further, per City Attorney advice, appellants may unwittingly weaken their own prospects in litigation before the courts if they do not partake in the appeal opportunity at the Planning Commission. It is also unfair to project sponsors who have fully submitted to the CEQA process to allow later appeal of the environmental review if this critical opportunity for input was ignored.

Recommendation: Because application of this provision may impact both appellants and project sponsors, the Department recommends opposing this provision.

POTENTIAL COMMISSION ACTION

The proposed Ordinance is before both the Planning Commission and the Historic Preservation Commission so that each may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department strongly recommends that both the Historic Preservation Commission and the Planning Commission recommend *approval of some portions* of the proposed Ordinance and disapproval of other portions and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

In March of this year, both the Planning Commission and the Historic Preservation Commission recommended approval of a similar Ordinance [BF 121019, Supervisor Wiener] that would amend local CEQA procedures. (HPC Resolution No. 704 and PC Resolution No. 18826). In light of that recommendation, the Department recommends that the Commission approve some portions of this proposed Ordinance [BF 130248, Supervisor Kim] that would complement and support the Commission's earlier recommendation.

While the detailed recommendations were reviewed section by section in the earlier portion of this report, overall the Department recommends that the Commissions' position on the major aspects of the Chapter 31 amendments proposed by Supervisor Kim should be as follows:

- **Procedural Requirements:** The Department recommends that the Commissions support requiring distribution of EIRs by electronic means unless hard copies are requested. The Department should also recommend a modification to the requirement that NODs be filed by adding "Upon submittal of required fees by the project sponsor" to the requirement. All other procedural amendments should be opposed.
- **Modification of Projects:** Chapter 31 should have stronger language requiring referral to the ERO when a previously approved project has been referred to the Planning Department for changes to aspects of the project regulated under the Planning Code. If the ERO makes the ministerial determination that an exempt project is no longer consistent with the original project description, a new exemption shall be issued. The Department recommends that the Commissions support a modified version of 31.08(k), but should oppose amendments that would make the determination that a project requires a new exemption appealable.
- **Multiple Approvals:** The Department recommends that the Commissions oppose the requirement of a "written determination" for projects with multiple approvals.
- **Notification and Posting:** Expanded requirements for web posting and for subscription-based alerts by document type would be feasible to implement and could be incorporated into any effort to update Article 31 (although specific codification is probably unwise given the need to respond to changes in available technology). The Department recommends that all other provisions of the legislation related to notification and posting be opposed.
- **Delegation Agreements:** The Department recommends that the Commissions s oppose the elimination of the ability to delegate issuance of exemption determinations to Departments carrying out projects.
- **Appeals:** The timeline for appeals should be tied to the project approval, as defined in CEQA and Section 31.20. In addition, the Department recommends that the Commissions support a new requirement that, for each project, this project approval should be identified on the CEQA determination.

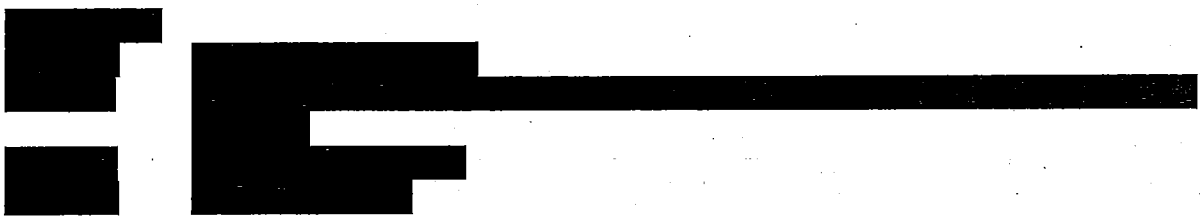
ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

The Planning Department has not received communication specific to Supervisor Kim's proposal since the March 2013 hearings on Supervisor Wiener's proposal. In March 2013, the Department received multiple letters that have previously been submitted to the Commissions.

RECOMMENDATION:	Approval of Certain Portions and Disapproval of Certain Portions



SIERRA CLUB
FOUNDED 1892

San Francisco Group
June 20, 2013

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear Supervisor Chiu:

Thank you for your hard work with us in the past few months to improve local implementation of the California Environmental Quality Act (CEQA). The Sierra Club is pleased that the proposed legislation makes public notification more robust and that the full Board of Supervisors retains its role in hearing CEQA appeals of projects, among other aspects of the legislation that the full Board will consider on June 25, 2013.

The Sierra Club endorses the CEQA legislation as currently proposed contingent upon the introduction of trailing legislation regarding project modifications. That legislation will implement a process for the televised appeal of Environmental Review Officer decisions on modifications of categorically exempt projects after the appeal period for first approvals has passed.

We respectfully request that the trailing legislation, matching the intent expressed by you at the last Land Use and Economic Development Committee meeting, be introduced at the full Board on June 25, 2013 (or as soon thereafter as possible) and heard at the Planning Commission and the Historical Preservation Commission in time for the legislation to be considered by the full Board of Supervisors on July 9, where it could be amended into the CEQA implementation legislation – presuming this legislation passes – at its second hearing at the Board.

Sincerely,
Susan Vaughan
Secretary
Executive Committee
San Francisco Group
SF Bay Chapter of the Sierra Club

CC:
Mayor Ed Lee
Clerk of the Board Angela Calvillo
District Three Legislative Aide Judson True Judson
District Three Legislative Aide Catherine Rauschuber
Supervisor Eric Mar

Legislative Aide Nick Pagoulatos
Supervisor Mark Farrell
Legislative Aide Catherine Stefani
Supervisor Katy Tang
Legislative Aide Ashley Summers
Supervisor London Breed
Legislative Aide Conor Johnston
Supervisor Jane Kim
Legislative Aide April Veneracion
Supervisor Norman Yee
Legislative Aide Matthias Mormino
Supervisor Scott Wiener
Legislative Aide Andres Power
Supervisor David Campos
Legislative Aide Hillary Ronen
Supervisor Malia Cohen
Legislative Aide Andrea Bruss
Supervisor John Avalos
Legislative Aide Raquel Redondiez

June 17, 2013

File No. 130248
6/17/13. Received in Committee

Board of Supervisors – Land Use and Economic Development Committee
City Hall
1 Dr. Carlton B. Goodlett Place, Room 263
San Francisco, CA 94102-4689

Subject: BOS File Nos. 121019, 130248, 130464 – CEQA Procedures Legislation

Supervisors Scott Wiener, Jane Kim and David Chiu of the Land Use and Economic Development Committee:

I appreciate your work on incorporating the requests of the larger community of stakeholders in the crafting of this very important piece of legislation on amending Chapter 31 of the Administrative Code on California Environmental Quality Act (CEQA) procedures.

Many projects are "Cat Ex'd" (categorically exempt) from CEQA after an initial environmental review. In the legislation being massaged over these many months, people have said that projects can morph and both sides have agreed that after a permit approval, this occurs on many occasions. The legislation still needs to allow the citizens the right to appeal projects after changes even if such changes are within the original project description on the permit application or within the scope of the project due to the fact that there could be non-findings at the time of the initial project review but evidence of environmental impact subsequently with the modifications.

Realistically, people will not appeal windows that move 6 inches to the left or right of a wall anyway or appeal a change of a staircase banister as were a couple of examples given for not allowing appeal of modifications. The request for this additional language is for the greater purpose for the entire city of San Francisco's future.
It is to protect the right of the public to appeal these modifications that could impact the environment and to afford the elected and appointed government officials to make responsible decisions to protect the environment as the public has entrusted them to do so. This committee is about land use and not just economic development.
Land use affects the environment. Economic development may not necessarily care.

So to ensure that the strongest environmental protections are in place for the future of our city as the greenest model of a city, and to ensure that people are allowed the right to appeal projects that after modifications can damage our environment, I ask that this be included in the main body of the legislation rather than as a supplemental piece of legislation as needed for clear and open government process.

Thank you very much.

Rose Hillson
115 Parker Avenue
San Francisco, CA 94118

Miller, Alisa

From: NINERSAM@aol.com
Sent: Tuesday, June 11, 2013 3:08 PM
To: Chiu, David
Cc: Miller, Alisa; True, Judson; Rauschuber, Catherine; Mar, Eric (BOS); Pagoulatos, Nickolas; Farrell, Mark; Stefani, Catherine; Tang, Katy; Summers, Ashley; Breed, London; Johnston, Conor; Jane.Kim@sfgov.orgapril, Veneracion@sfgov.org; Yee, Norman (BOS); Mormino, Matthias; Wiener, Scott; Power, Andres; Campos, David; Ronen, Hillary; Cohen, Malia; Bruss, Andrea; Avalos, John; Redondiez, Raquel
Subject: CEQA Amendments

Supervisor David Chiu, President
Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

June 11, 2013

Dear President Chiu:

The Richmond community Association (RCA) would like to thank you for your leadership in crafting the CEQA amendments that will benefit all San Franciscans. The Richmond Community Association believes the amendments greatly improve Supervisor Weiner's original CEQA legislation which would have weaken the CEQA protections by:

- Shortening the Appeal time without adequate notification
- Appeals heard by a committee of three Supervisors
- Replacing fair argument language
- Allowing approvals when Appeals being heard at BOS

However, the Richmond Community Association is concern that the modification of projects originally determined to be categorically exempt from CEQA can result in projects that by-pass the CEQA process. .There needs to be language that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Many projects, if not most projects, change before completion. San Franciscans need a transparent process for significant modifications to a project. Anything less than this will render CEQA essentially useless.

Yours truly,
Hiroshi Fukuda, President
Richmond Community Association

CC:
Land Use and Economic Development Clerk Alisa Miller Alisa.Miller@sfgov.org
District Three Legislative Aide Judson True Judson.True@sfgov.org
District Three Legislative Aide Catherine Rauschuber Catherine.Rauschuber@sfgov.org
Supervisor Eric Mar Eric.L.Mar@sfgov.org
Legislative Aide Nick Pagoulatos Nickolas.Pagoulatos@sfgov.org
Supervisor Mark Farrell Mark.Farrell@sfgov.org
Legislative Aide Catherine Stefani Catherine.Stefani@sfgov.org
Supervisor Katy Tang <Katy.Tang@sfgov.org>
Legislative Aide Ashley Summers Ashley.Summers@sfgov.org
Supervisor London Breed London.Breed@sfgov.org

Legislative Aide Conor Johnston <Conor.Johnston@sfgov.org>
Supervisor Jane Kim Jane.Kim@sfgov.org
Legislative Aide April Veneracion April.Veneracion@sfgov.org
Supervisor Norman Yee Norman.Yee@sfgov.org
Legislative Aide Matthias Mormino Matthias.Mormino@sfgov.org
Supervisor Scott Wiener Scott.Wiener@sfgov.org
Legislative Aide Andres Power Andres.Power@sfgov.org
Supervisor David Campos David.Campos@sfgov.org
Legislative Aide Hillary Ronen <Hillary.Ronen@sfgov.org>
Supervisor Malia Cohen Malia.Cohen@sfgov.org
Legislative Aide Andrea Bruss Andrea.Bruss@sfgov.org
Supervisor John Avalos John.Avalos@sfgov.org
Legislative Aide Raquel Redondiez Raquel.Redondiez@sfgov.org

Miller, Alisa 130248

From: Malana [malana@romagroup.net]
Sent: Monday, June 10, 2013 9:42 AM
To: Chiu, David; Kim, Jane; Wiener, Scott
Cc: Miller, Alisa; True, Judson; Rauschuber, Catherine; Mar, Eric (BOS); Farrell, Mark; Tang, Katy; Breed, London; Yee, Norman (BOS); Cohen, Malia; Avalos, John; Campos, David
Subject: Save CEQA

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation. I have testified many times at the Land Use Committee meetings and am very pleased with how closely you and Supervisor Kim and Supervisor Wiener listened to the many voices from around San Francisco.

The Preservation Consortium is especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

However, The Preservation Consortium urges the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last. This is so very important to help save the many valuable historic resources contained in the city.

Sincerely,

Malana Moberg

130248

Miller, Alisa

From: M.A. Miller [ma-miller@msn.com]
Sent: Sunday, June 09, 2013 9:59 PM
To: Miller, Alisa; Chiu, David; True, Judson
Subject: Please amend CEQA legislatiion

David Chiu, President

Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: CEQA legislation

Dear President Chiu:

Thank you for the amendments that you have brought forward to improve the CEQA legislation introduced by Supervisor Weiner. ***SPEAK*** (Sunset-Parkside Education and Action Committee) are really pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation. We thank you for your leadership.

However, we urge the inclusion of several more changes in the form of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Otherwise CEQA will be useless if individuals and organizations are not able to challenge projects that change from the first approval to the last.

Thank you for considering these additional amendments!

Sincerely,

Mary Anne Miller

President, ***SPEAK***

Sunset-Parkside Education and Action Committee

130248

Miller, Alisa

From: Aaron Goodman [amgodman@yahoo.com]
Sent: Sunday, June 09, 2013 9:51 PM
To: Miller, Alisa; True, Judson; Rauschuber, Catherine; Mar, Eric (BOS); Pagoulatos, Nickolas; Farrell, Mark; Stefani, Catherine; Tang, Katy; Summers, Ashley; Breed, London; Johnston, Conor; Kim, Jane; Veneracion, April; Yee, Norman (BOS); Mormino, Matthias; Wiener, Scott; Power, Andres; Campos, David; Ronen, Hillary; Cohen, Malia; Bruss, Andrea; Avalos, John; Redondiez, Raquel
Subject: CEQA Legislation Hearing - Memo

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation.

However, *as a member of the public who has seen the issues first-hand in legislation on multiple projects citywide, I strongly* urge the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. Parkmerced was a prime example of the concern when legislation is interjected without adequate review.

That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last.

As a local architect, environmentalist, and concerned housing transit and open space advocate who has witnessed first-hand the concerns of adequate analysis and review of projects and alternatives, I am especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

I consistently am concerned about the impacts lobbyists and individual organizations supported by the real estate industry have impacted panels and committees from the Planning Commission to the Historical Preservation Commission, and Ethics Commission. and even the California Coastal Commission. The impacts and lack of public input adequate review of alternatives, and the proper and inclusionary method of open comment and input must be preserved for the public's best interests.

Sincerely,

Aaron Goodman
25 Lisbon St
SF, CA 94112
T: 415.786.6929

CC:
Land Use and Economic Development Clerk Alisa Miller Alisa.Miller@sfgov.org
District Three Legislative Aide Judson True Judson.True@sfgov.org
District Three Legislative Aide Catherine Rauschuber Catherine.Rauschuber@sfgov.org

Supervisor Eric Mar Eric.L.Mar@sfgov.org
Legislative Aide Nick Pagoulatos Nickolas.Pagoulatos@sfgov.org

Supervisor Mark Farrell Mark.Farrell@sfgov.org
Legislative Aide Catherine Stefani Catherine.Stefani@sfgov.org

Supervisor Katy Tang <Katy.Tang@sfgov.org>

Legislative Aide Ashley Summers Ash[illegible] Summers@sfgov.org

Supervisor London Breed London.Breed@sfgov.org
Legislative Aide Conor Johnston <Conor.Johnston@sfgov.org>

upervisor Jane Kim Jane.Kim@sfgov.org
egislative Aide April Veneracion April.Veneracion@sfgov.org

Supervisor Norman Yee Norman.Yee@sfgov.org
Legislative Aide Matthias Mormino Matthias.Mormino@sfgov.org

Supervisor Scott Wiener Scott.Wiener@sfgov.org
Legislative Aide Andres Power Andres.Power@sfgov.org

Supervisor David Campos David.Campos@sfgov.org
Legislative Aide Hillary Ronen <Hillary.Ronen@sfgov.org>

Supervisor Malia Cohen Malia.Cohen@sfgov.org
Legislative Aide Andrea Bruss Andrea.Bruss@sfgov.org

Supervisor John Avalos John.Avalos@sfgov.org
Legislative Aide Raquel Redondiez Raquel.Redondiez@sfgov.org

130248

SIERRA CLUB CALIFORNIA

June 5, 2013

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation.

The Sierra Club is especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

However, The Sierra Club urges the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will substantially weaken the public's ability to track and influence projects that change over the course of the issuance of approvals by different departments and commissions.

Sincerely,

Kathryn Phillips

Kathryn Phillips
Director

CC:
Land Use and Economic Development Clerk Alisa Miller
District Three Legislative Aide Judson True Judson
District Three Legislative Aide Catherine Rauschuber
Supervisor Eric Mar
Legislative Aide Nick Pagoulatos
Supervisor Mark Farrell
Legislative Aide Catherine Stefani
Supervisor Katy Tang
Legislative Aide Ashley Summers
Supervisor London Breed
Legislative Aide Conor Johnston
Supervisor Jane Kim
Legislative Aide April Veneracion
Supervisor Norman Yee
Legislative Aide Matthias Mormino
Supervisor Scott Wiener
Legislative Aide Andres Power
Supervisor David Campos
Legislative Aide Hillary Ronen
Supervisor Malia Cohen
Legislative Aide Andrea Bruss
Supervisor John Avalos
Legislative Aide Raquel Redondiez

909 12th Street, Suite 202, Sacramento, CA 95814
(916) 557-1100 • Fax (916) 557-9669 • www.SierraClubCalifornia.org

Miller, Alisa

130248

From: tesw@aol.com
Sent: Thursday, June 06, 2013 10:04 AM
To: Chiu, David
Cc: Miller, Alisa; Mar, Eric (DPH); Farrell, Mark; Chiu, David; Tang, Katy; Breed, London; Kim, Jane; Yee, Norman (BOS); Wiener, Scott; Campos, David; Cohen, Malia; Avalos, John
Subject: CEQA legislation

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689
Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation.

The Haight Ashbury Neighborhood Council is especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

However, HANC urges the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last.

We also urge the inclusion of the noticing requirements from Supervisor Kim's legislation, which include noticing residents by email, regular mail, and posting, in addition to listing projects on Planning's web site.

Sincerely,

Kevin Bayuk
President

by Tes Welborn, Treasurer

130248

From: Cat Bell [bellacatus@yahoo.com]
Sent: Friday, May 31, 2013 12:29 AM
To: Chiu, David
Cc: Miller, Alisa; True, Judson; Rauschuber, Catherine; Mar, Eric (BOS); Pagoulatos, Nickolas; Farrell, Mark; Tang, Katy; Summers, Ashley; Breed, London; Johnston, Conor; Kim, Jane; Veneracion, April; Yee, Norman (BOS); Mormino, Matthias; Wiener, Scott; Power, Andres; Campos, David; Ronen, Hillary; Cohen, Malia; Bruss, Andrea; Avalos, John; Redondiez, Raquel
Subject: CEQA

Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation.

I am especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

However, I urge the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last.

Sincerely,
Cathy Bellin

Miller, Alisa

130248

From: NINERSAM@aol.com
Sent: Thursday, May 30, 2013 10:04 AM
To: Chiu, David
Cc: Kim, Jane; Wiener, Scott; Miller, Alisa
Subject: CEQA Amendments

Supervisor David Chiu, President
Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

The Richmond community Association (RCA) would like to thank you for your leadership in crafting the CEQA amendments that will benefit all San Franciscans. The Richmond Community Association believes the amendments greatly improve Supervisor Weiner's original CEQA legislation which would have weaken the CEQA protections by:

- Shortening the Appeal time without adequate notification
- Appeals heard by a committee of three Supervisors
- Replacing fair argument language
- Allowing approvals when Appeals being heard at BOS

However, the Richmond Community Association is concern that the modification of projects originally determined to be categorically exempt from CEQA can result in projects that by-pass the CEQA process.. There must be clear criteria for the Environmental Review Officer (ERO) to determine if modifications are significant or not significant to allow a CEQA appeal. Many projects, if not most projects, change before completion. San Franciscans need a transparent process for significant modifications to a project. Anything less than this will render CEQA essentially useless.

urs truly,
roshi Fukuda, President Richmond Community Association
Chair CSFN Land Use and Housing Community

CC:
Land Use and Economic Development Clerk Alisa Miller Alisa.Miller@sfgov.org
District Three Legislative Aide Judson True Judson.True@sfgov.org
District Three Legislative Aide Catherine Rauschuber Catherine.Rauschuber@sfgov.org
Supervisor Eric Mar Eric.L.Mar@sfgov.org
Legislative Aide Nick Pagoulatos Nickolas.Pagoulatos@sfgov.org
Supervisor Mark Farrell Mark.Farrell@sfgov.org
Legislative Aide Catherine Stefani Catherine.Stefani@sfgov.org
Supervisor Katy Tang <Katy.Tang@sfgov.org>
Legislative Aide Ashley Summers Ashley.Summers@sfgov.org
Supervisor London Breed London.Breed@sfgov.org
Legislative Aide Conor Johnston <Conor.Johnston@sfgov.org>
Supervisor Jane Kim Jane.Kim@sfgov.org
Legislative Aide April Veneracion April.Veneracion@sfgov.org
Supervisor Norman Yee Norman.Yee@sfgov.org
Legislative Aide Matthias Mormino Matthias.Mormino@sfgov.org
Supervisor Scott Wiener Scott.Wiener@sfgov.org
Legislative Aide Andres Power Andres.Power@sfgov.org
Supervisor David Campos David.Campos@sfgov.org
Legislative Aide Hillary Ronen <Hillary.Ronen@sfgov.org>
Supervisor Malia Cohen Malia.Cohen@sfgov.org
egislative Aide Andrea Bruss Andrea.Bruss@sfgov.org
pervisor John Avalos John.Avalos@sfgov.org
egislative Aide Raquel Redondiez Raquel.Redondiez@sfgov.org

Miller, Alisa

130248

From: tesw@aol.com
Sent: Thursday, May 30, 2013 9:50 AM
To: Chiu, David
Cc: Miller, Alisa; Rauschuber, Catherine; True, Judson; Breed, London; Johnston, Conor
Subject: CEQA

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

Thank you for your leadership on local implementation of the California Environmental Quality Act (CEQA). Your amendments have vastly improved Supervisor Scott Wiener's original CEQA legislation.

I am especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that the fair argument language has been restored to the legislation.

Noticing of all CEQA determinations needs to include much more from Kim's legislation, informing the public directly by email, letter and poster. Having information on Planning's website for look up puts too much of a burden on ordinary citizens.

I also urge the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal. Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last.

Sincerely,
Tes Welborn
D5 Action Coordinator

Miller, Alisa

130248

From: Rupert Clayton [rupert.clayton@gmail.com]
Sent: Thursday, May 30, 2013 1:08 PM
To: Chiu, David
Cc: Miller, Alisa; True, Judson; Rauschuber, Catherine; Mar, Eric (BOS); Pagoulatos, Nickolas; Farrell, Mark; Stefani, Catherine; Tang, Katy; Summers, Ashley; Breed, London; Johnston, Conor; Kim, Jane; Veneracion, April; Yee, Norman (BOS); Mormino, Matthias; Wiener, Scott; Power, Andres; Campos, David; Ronen, Hillary; Cohen, Malia; Bruss, Andrea; Avalos, John; Redondiez, Raquel
Subject: CEQA: Modifying approved projects should require new determinations; these should be appealable

Honorable David Chiu
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Dear President Chiu:

Thank you for your involvement in the review of local implementation of the California Environmental Quality Act (CEQA). Your amendments have much improved Supervisor Scott Wiener's original CEQA legislation.

I am especially pleased that the full Board of Supervisors has been restored as the elected body hearing appeals of EIRs and that fair argument language has been restored to the legislation.

However, I urge the inclusion of a sub-section regarding the modification of projects originally determined to be categorically exempt from CEQA. That language should say that modifications of projects after the first approval should trigger new determinations and that those new determinations should be subject to appeal.

Anything less than this will render CEQA essentially useless, as individuals and organizations will not be able to challenge projects that change from the first approval to the last.

Sincerely,

Rupert Clayton

CC:
Land Use and Economic Development Clerk Alisa Miller Alisa.Miller@sfgov.org
District Three Legislative Aide Judson True Judson.True@sfgov.org
District Three Legislative Aide Catherine Rauschuber Catherine.Rauschuber@sfgov.org
Supervisor Eric Mar Eric.L.Mar@sfgov.org
Legislative Aide Nick Pagoulatos Nickolas.Pagoulatos@sfgov.org
Supervisor Mark Farrell Mark.Farrell@sfgov.org
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Supervisor Katy Tang <Katy.Tang@sfgov.org>
Legislative Aide Ashley Summers Ashley.Summers@sfgov.org
Supervisor London Breed London.Breed@sfgov.org
Legislative Aide Conor Johnston <Conor.Johnston@sfgov.org>
Supervisor Jane Kim Jane.Kim@sfgov.org
Legislative Aide April Veneracion April.Veneracion@sfgov.org
Supervisor Norman Yee Norman.Yee@sfgov.org
Legislative Aide Matthias Mormino Matthias.Mormino@sfgov.org
Supervisor Scott Wiener Scott.Wiener@sfgov.org
Legislative Aide Andres Power Andres.Power@sfgov.org

Supervisor David Campos David.Campos@sfgov.org
Legislative Aide Hillary Ronen <H ry.Ronen@sfgov.org>
Supervisor Malia Cohen Malia.Cohen@sfgov.org
Legislative Aide Andrea Bruss Andrea.Bruss@sfgov.org
Supervisor John Avalos John.Avalos@sfgov.org
Legislative Aide Raquel Redondiez Raquel.Redondiez@sfgov.org

File 130248/121019

Kevin, Peggy

From: Roland Salvato [rolandsalvato@hotmail.com]
Sent: Wednesday, May 15, 2013 11:38 AM
To: karlhasz.hpc@gmail.com; HPC Andrew Wolfram; aaron.hyland.hpc@gmail.com; ellen.hpc@ellenjohnckconsulting.com; HPC RSE Johns; HPC Diane; jonathan.pearlman.hpc@gmail.com; Byrne, Marlena
Cc: Frye, Tim; Secretary, Commissions; Board of Supervisors
Subject: Preservation Commissioners: Please Push CEQA Forward by Capturing the Progress We've Made in Consolidated Legislation

Dear Commissioners for Historic Preservation,

I'm writing as a representative of the San Francisco Preservation Consortium, a coalition of organizations and individuals who advocate for effective and rational policies of preservation land use. We have participated consistently in evaluating information to support the (three versions of the) legislation to amend CEQA. You may know the Preservation Consortium still favors Jane Kim's version of the legislation.

I'm writing to encourage you to help to resolve the current impasse by proposing a specific solution.

First, let's acknowledge the important role that the Supervisors played in bringing CEQA legislation into the light this year:

- Supervisor Wiener put it on the track and moved it forward by fomenting comment;
- Supervisor Kim corrected the main flaws in Wiener's version and challenged some of the assumptions supporting the Wiener version;
- Supervisor Chiu continues to try to forge a compromise and nail down some loose language.

It's important to recognize and commend what we (and you and the three supervisors) have accomplished so far to clean up CEQA: 1) **One, not many, CEQA appeals**; and 2) **Time limits on the appeal period**. This is fantastic progress and if this is where we stop, that would do a lot to improve local CEQA procedures.

But the First Approval v. Final Approval disagreement threatens to be a deal-breaker, certainly for the preservationists and probably for most of the community groups. And there is a clear route to compromise that benefits all stakeholders.

Here are the main elements of that compromise:

- Strictly define terms that trigger environmental reviews or re-evaluation of projects. Do not accept vague terms such as "scope change" or "substantial".

- Develop a registry on the Department's website that enables RSS feeds for ALL projects of a certain nature (e.g. Categorically Exempt, Negative Declarations, EIRs...)

- Require the Planner to illustrate—in advance—the number and types of permits a project would require.

To reach this solution we have to expand our focus to include the "Elephant In The Room" that is spoiling our compromises.

That "elephant in the room" is the Planning Department.

The Planning Department has never developed a documented, illustrated, easy-to-understand process for CEQA appeals administration. This deficiency has led to the frustration that we've all heard coming from neighbors, builders and anyone trying to deal with the permitting and building processes. Much of the testimony at hearings over the past few months has underlined the lack of clarity and consistency resulting from the Planning Department's inadequate procedures.

We're not "against" the Planning Department but in order to bring out the solution to this CEQA legislative impasse we must call out its shortcomings truthfully: The Planning Department is perennially short of resources, qualified staff and other wherewithal to process the amazing number of permits that are sought each year (approximately 7,000 annually, according to City records).

In its memos on CEQA (e.g., 11/29/2012 from ERO Bill Wycko), the Planning Department states clearly and unequivocally that [paraphrased] "CEQA appeals are very difficult to process". His memo also states "...Appeals at the Board of Supervisors are highly disruptive to the Department's work." This is a stunning statement for the Department to make, considering that administering CEQA is the Department's job, and the BoS is required by law to hear CEQA appeals! In statements in public meetings, current acting ERO Sarah Jones stated that CEQA appeals are "dreaded" and "problematic for the Department." In sum, it looks as though the Planning Department and DBI are troubled by the CEQA process, not so much because it isn't working for the public but because it doesn't work for the Department.

The Departments of Planning and Building Inspection have failed consistently to apply the highest standards to their work. There is no shortage of evidence that the Planning Department relies on citizen assistance, thus the value of CEQA appeals. As an adjunct support service the Department of Planning uses an organization called "Friends of Planning" that relies on paid events to finance amenities such as text books, seminars, trips, private consultations and other "necessities" to help them do their jobs. Though the paid events are open to all citizens and qualified organizations, the vast majority

(more than 85%) of attendees work full time in the building industry. Regardless, Planning needs a "volunteer staff" to point out the ways that projects can be improved.

Another big shortcoming of the Department of Planning that CEQA appeal restrictions in the Wiener/Chiu legislation will exacerbate is its failure to do its most important job: estimating and preparing for *the cumulative impacts* of all construction projects (building, transportation and other infrastructure) occurring simultaneously within the mere 49 square miles of this City boundaries. Even though the Department acknowledges it relies on community and neighborhood impact, it prefers to limit input to aspects of projects, rather than expand input to comprise a project's broader impact, and tries to exercise top-down planning that it simply doesn't have means to implement.

As CEQA demonstrates, Planning and DBI need—in fact, cannot do without—neighborhood input to improve the projects. By limiting public input through clauses such as "First Approval" (two of the three legislation versions use that approach) we risk severely limiting that substantial and crucial assistance the Departments need. The solution and compromise for pending CEQA legislation can occur now by acknowledging the important role the public plays in determining the outcome of projects, especially those that impact the natural, social and cultural environments of neighborhoods.

Commissioners, you can help correct and improve the shortcomings of the current process by incorporating these elements into the legislation:

1. The entire outcome of this CEQA improvement opportunity hinges on the public's need to know that their appeal rights are preserved if a project morphs; therefore, strictly define terms that trigger environmental reviews or re-evaluation of projects. Do not accept vague terms such as "scope change" or "substantial".

2. Develop a registry on the Department's website that enables RSS feeds for ALL projects of a certain nature (e.g. Categorically Exempt, Negative Declarations, EIRs...) Once triggered, those RSS feeds could be printed and mailed to stakeholders.

3. Require the planner to illustrate—in advance—the number and types of permits a project would require. Apparently this seemingly obvious exercise has bedevilled planners and their constituents for years. This simply requirement would expunge one of the main flaws in the current CEQA/Environmental Evaluation process.

Any compromise comes down to this: **The conclusive and final version of CEQA legislation will allow sufficient notice and time for the public to be heard and to contribute to the improvement of a project.** The conclusive and final legislation would not force appeals to be made artificially and prematurely at a project's very first approval.

The public needs to first find out about a project, then have an opportunity to learn from planners and project sponsors, then negotiate with project sponsors to make the project better for the environment and the neighborhood. Such a process is reasonable and fair

and—under any compromise—would NOT cause projects to be delayed by multiple CEQA appeals.

Concerning the Wednesday May 15 HPC hearing -- We strongly recommend that all legislation be reviewed SIMULTANEOUSLY at the May 20 Land Use Hearing and at the Board of Supervisors so that it can be better crafted and perhaps include the elements I've outlined. You can help end this impasse by encouraging a single version of legislation that includes these elements. Therefore, at your hearing today, please promote the Jane Kim version now so that it can be heard on equal standing with all other versions of the legislation and so that we can achieve a consolidated, compromise version.

Thank you.

Until the lions have historians, the history of the hunt will always glorify the hunter.
-- Chinua Achebe

File (130248)/121019

From: Aaron Goodman [amgodman@yahoo.com]
Sent: Wednesday, May 15, 2013 8:23 AM
To: karlhasz.hpc@gmail.com; andrew.wolfram@perkinswill.com; aaron.hyland.hpc@gmail.com; ellen.hpc@ellenjohnckconsulting.com; RSEJohns@yahoo.com; diane@johnburtonfoundation.org; jonathan.pearlman.hpc@gmail.com; Byrne, Marlena
Cc: Frye, Tim; Secretary, Commissions; sfpreservationconsortium@yahoogroups.com; Board of Supervisors
Subject: CEQA - SF Historic Preservation Commission May 15th Hearing - A.Goodman

May 15th, 2013

SF Historic Preservation Commissioners

As I am unable to attend the hearing please accept this email as a memo in support of hearing and including Jane Kims legislation on proper track to be heard with Supervisor Wiener's legislation. Even with Supervisor Chiu's ammendments the concern lies with the inclusivity of the general public on the decision making and concerns of CEQA, preservation, and the adequate analysis of options and alternatives that are sustainable and preservation based solutions. This is a big issue, and some new commissioners may not be versed in the multitude of concerns on the CEQA front, from the Appleton and Wolfard Libraries (a non-contiguous district of projects) to Parkmerced, and other preservation battles in the last years that hinged on CEQA appeals though limited in number, very powerfull in concerns.

Too often on major and minor projects with the city, preservation has been relegated to a side role, often ignoring the premise that good sustainable architecture stems from preservation and proper analysis of options that do not wholesale demolish, or destroy the embued energy in our buildings, habitat, and surrounding natural and built environment.

I spoke to some of the commissioners prior on the Parkmerced project, and some of you are newer to the historic preservation commission. Yet I want to be sure it is comprehended that on one of the largest rental garden unit developments in San Francisco, where 6 preservation organizations local and national submitted a joint letter recommending that there be an adequate preservation based alternative, and infill option, the panel (HPC), planning department, planning commission and board of supervisors in general failed to re-enforce the concerns brought by the preservation, and environmental community members on the need to look seriously and adequately at the proposal to demolish and destroy an entire community.

It was against the SF General Plan, the intent of CEQA, and the memos and spoken documents submitted to those organizations.

That is why Parkmerced's project is in the courts still, and may be the singular case focused on the premise of preservation and the need to include options and alternatives that focus on real sustainable design vs. developer "green-$-greed".

Jane Kims legislation will include the ability of individuals and groups to appeal when at the last minute changes are made that may hurt more the existing communities. The example I use is that of David Chiu's "phantom" ammendments tacked on without adequate notice, which dealt with enforceability of rent-control concerns and the need to notify organizations to adequately review the proposed changes. Many tenants and renter's righst groups were upset and shocked that the issues and ability to review the legislation was short-utted. Some supervisors were brought before the Ethics commission and determined to be at fault in terms of negligence by them in regards to their public duties. The current agreement approved is NOT enforceable when the property changes hands, and currently the management of the property changed hands AGAIN to Essex

Proprerty Trust a REIT from Wisconsin. The possibility of the re-sale of Parkmerced, coupled with an un-enforceable agreement package that was not re-reviewed per CEQA laws that would allow for appeal again stem from negligence of our current housing and community needs throughout the city.

We need to be more thoughtfull of our communities future, and preservation and sustainability go hand in hand. They are not separate, and should be sincerely considered in all proposed CEQA changes to be inclusive of thought, and ideas in the preservation and design realms.

Please think sincerely on the legislation before you, and enforce the need for the public's best interests.

Sincerely

Aaron Goodman
25 Lisbon St.
San Francisco, CA 94112
c: 4155555.786.6929

File 130248
BOS-11

From: Roland Salvato [rolandsalvato@hotmail.com]
Sent: Thursday, May 09, 2013 2:52 PM
To: Kim, Jane; Wiener, Scott; Farrell, Mark; Yee, Norman (BOS); Cohen, Malia; Mar, Eric (BOS); Tang, Katy; Avalos, John; Campos, David; Breed, London; Board of Supervisors
Cc: Eric (preservation consortium) Brooks
Subject: FW: letter in support of Supervisor Kim's CEQA Legislation
Attachments: Kim CEQA Legislature Support Letter_01.pdf

FYI

Until the lions have historians, the history of the hunt will always glorify the hunter.
-- Chinua Achebe

Date: Thu, 9 May 2013 14:44:40 -0700
From: tanyayurovsky@yahoo.com
Subject: letter in support of Supervisor Kim's CEQA Legislation
To: David.Chiu@sfgov.org

Dear David,

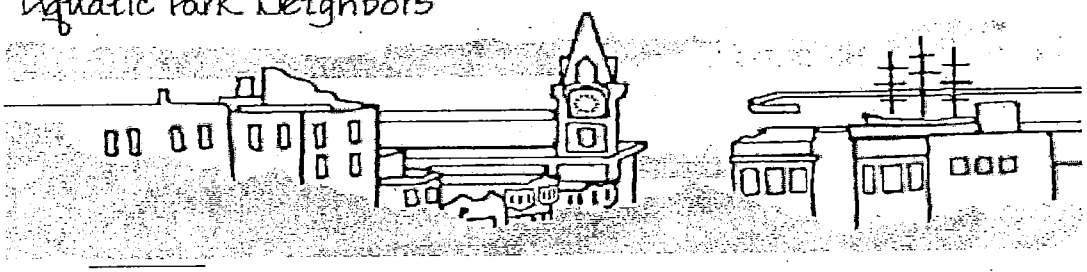
Please see attached a letter of support from Aquatic Park Neighbors for Supervisor Kim'w CEQA legislation.

Thank you.

Tanya Yurovsky
President
Aquatic Park Neighbors

(19)

Aquatic Park Neighbors



TO: David Chiu

FROM: AQUATIC PARK NEIGHBORS

SUBJECT: SUPPORT for Supervisor Kim's CEQA Legislation

Honorable President Chiu,

Aquatic Park Neighbors (APN), a neighborhood association of over 250 concerned citizens and business owners, is writing in support of the Supervisor Kim's CEQA Legislation, which we believe was built by a broad collaborative public participation process.

We support Supervisor Kim's legislation because it offers the best protection for neighbors and neighborhood groups, so we can be aware about proposed projects and work closely with project sponsors to influence the final outcomes.

Respectfully submitted on behalf of
Aquatic Park Neighbors by

Tanya Yurovsky
APN Board President

Application Number: 8 WASHINGTON 201203276954 Why Final approval needed
Form Number: 1
Address(es): 0201 / 012 / 0 370 DRUMM ST
Description: ERECT 12 STORY OF TYPE 1A CONSTRUCTION .
Cost: $155,000,000.00 File Nos. 121019 + 130248
Occupancy Code: A-3,A-2 5/13/13. Received
Building Use: 24 - APARTMENTS in Committee

Disposition / Stage:

Action Date	Stage	Comments
3/27/2012	TRIAGE	
3/27/2012	FILING	
3/27/2012	FILED	

Contact Details:

Contractor Details:

Addenda Details:

FUTURE REVISIONS WHICH MAY OCCUR THRU SUBSEQUENT RECEIVING STATIONS

Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Phone	Hold Description
1	CPB	3/27/12	3/27/12			3/27/12	SHEK KATHY	415-558-6070	
2	CP-ZOC	3/27/12	7/23/12			7/23/12	GUY KEVIN	415-558-6377	Pursuant to Planning Department review on 7/23/12, site permit application complies with Conditional Use Authorization/Planned Unit Development approval. Associated rezone and General Plan Amendment ordinances are now effective. Planning is withholding final approval and signoff until recordation of the Notice of Special Restrictions, as well as final review of future revisions which may occur through subsuquent reviewing stations. Routed to Bldg on 7/23/12 to allow review to proceed.
3	BLDG	7/24/12	8/29/12	2/21/13			SMITH ALAN	415-558-6133	comments mailed, to PPC
4	SFFD	8/31/12	9/11/12	9/18/12			FIELDS MELISSA	415-558-6177	REQ PRE-APP MIN 9/18; RECD RESP FR ARS/NO APPROVED MINS TO PROCEED W/OUT; DWGS SUBJECT TO RE-REVIEW IF MINS PROVE TO HAVE ANY AFFECT ON PLAN REVIEW
5	DPW-BSM	2/21/13	2/22/13	2/22/13			MINIANO DANNY	415-558-6060	02/22/13 - New 12-storey residential building ($155M). Awaits BSM recommendation to sign off / see email. Among others, need BSM permits: Sidewalk Legislation; Street Improvement; Vault; Overwide Driveway; Landscape/Tree. Submit application plus all requirements to Bur. Of St.-Use and Mapping @ 1155 Market St. 3rd Flr. Call 415-554-5810 for all particulars of the permit.
6	SFPUC							415-575-6941	
7	HEALTH	2/25/13	2/26/13			2/26/13	WONG CHANNING	415-252-3815	
8	SFMTA							415-701-5418	
9	PPC						SAMARASINGHE GILES	415-558-6133	2/26/13: to MEGA HOLD #2.grs 2/25/13: to HEALTH.grs 2/21/13: to BSM.grs 2/6/13: two official sets currenly with Al Smith; snt. 1/3/13: one set with original application in HOLD BIN; snt. 1/2/13: one set & original application to Al Smith for recheck; one set with Melissa Fields; snt. 8/31/12: to SFFD.grs.
9	CP-ZOC							415-558-6377	
10	CPB						3039	415-558-6070	

Miller, Alisa

From: Board of Supervisors
Sent: Monday, May 06, 2013 1:12 PM
To: BOS-Supervisors; Miller, Alisa
Subject: Continue Supervisor Wiener's Proposed CEQA Legislation, BoS File No. 121019

-----Original Message-----
From: Judith Berkowitz [mailto:sfjberk@mac.com]
Sent: Sunday, May 05, 2013 7:47 PM
To: Chiu, David; Kim, Jane; Board of Supervisors
Subject: Continue Supervisor Wiener's Proposed CEQA Legislation, BoS File No. 121019

Supervisors,

Please continue Supervisor Wiener's proposed local CEQA legislation until May 20 in order that both his and Supervisor Kim's proposal may be heard in the same hearing.

Please do not send the Wiener legislation to the Board at this time.

Thank you,
- Judith Berkowitz, President
Coalition for SF Neighborhoods

Miller, Alisa

From: Board of Supervisors
Sent: Monday, May 06, 2013 1:09 PM
To: BOS-Supervisors; Miller, Alisa
Subject: CEQA Legislation revisions

From: Kathy Howard [mailto:kathyhoward@earthlink.net]
Sent: Saturday, May 04, 2013 10:10 PM
To: kathyhoward@earthlink.net
Subject: CEQA Legislation revisions

Dear Supervisors,

I support the revisions to the local CEQA legislation proposed by Supervisor Kim. We need a careful process that protects our City from ill-considered development. Supervisor Kim's legislation does that.

The CEQA process provides information that can improve a project. Poor projects often have to be torn down at great expense.

The unlamented Embarcadero Freeway is an example of a project that might have been stopped if CEQA had been in place. The freeway was pushed through in the name of "progress" and over the objections of residents. Nature -- in the form of an earthquake - -took care of this eyesore, that had ruined the beauty of the waterfront. I think we can all agree that no one misses it. Our waterfront is thriving with the renovated Ferry Building, the Farmer's Market and the thousands of people who walk and jog along the newly opened up waterfront.

A strong CEQA process makes sense financially as well as from the point of view of quality of life for all of the City's residents.

Thank you for your consideration.

Katherine Howard
District 4

Board of Supervisors

File 130248

To: BOS-Supervisors
Subject: reasons why communities need ceqa
Attachments: image2013-04-21-174446.pdf

-----Original Message-----
From: donotreply@lowes.com [mailto:donotreply@lowes.com]
Sent: Sunday, April 21, 2013 9:49 AM
To: Board of Supervisors; parkmercedac@gmail.com
Subject: reasons why communities need ceqa

protect ceqa, protect communities like parkmerced

File No. 130248
4/22/13 Received in Committee

COMMENTS ON SUPERVISOR JANE KIM'S CEQA APPEAL PROCESS LEGISLATION:

From: Bernard Choden

APRIL 21, 2013

I support Supervisor Kim's legislation. It's better and good in meeting the immediate needs of the Appeal process. It does not address reform of the process that still must be undertaken.

1. CUMULATIVE IMPACTS AS BASIS OF APPEALS: Appeals must be taken that are also based upon the cumulative environmental impact of specific and areal impact measured by the value of the cumulative development and, as well, by their environmental affect on the surrounding area. This is in accord with the state CEQA mandate that is not met by present practice.

2. FEE RELIEF: The appeal and respondent process should be fully funded by the General Fund rather that by current fee based basis where the level of permit and planning funding is based upon the amount of fees passed on to the General Fund. This fee based dilatory process pushes the small- scale entrepreneur and benefits the affluent as it was designed to do by political agendas.

3. MITIGATION ASSISTANCE: The city/county needs to establish a government assistance corporation, as exampled elsewhere, that:
    a. Assist the builders in assuring that all requirements are met up front without the surprise of impediments costly to future processes.
    b. Provide an insurance program for builders impeded by nature or un-foreseen delays.
    c. Front-end subsidies for public benefit development builders.

4. The reform needs to be designed by objective, experienced expertise.

File Nos. 121014 & 130248 4/22/13 · Received in Committee

* LEGISLATION IS BASED ON ISSUANCE OF A BUILDING PERMIT THAT RELIES ON A FREEFORM **VAGUE** DESCRIPTION OF THE PROJECT -- **CAT EX'S ARE MARRIED TO THESE VAGUE DESCRIPTIONS**.

* ALL "SITE PERMITS" ARE "BUILDING PERMITS"

  -- NOT ALL SHOW "ADDENDA"

  -- WITH NO ADDENDA + VAGUE DESCRIPTIONS, PROJECT DOES NOT HAVE ENUF DETAILS FOR ALL TO HAVE MEANINGFUL DISCUSSION PRIOR TO APPEALS BEING FILED

  -- WHAT IS THE DIFFERENCE BETWEEN A "SITE PERMIT" AND A "FULL PERMIT"?

  -- NEED EXACT **DEFINITIONS** IN THE LEGISLATION OF WORDS NOT IN THE LEGISLATION SINCE PLANNING AND BUILDING DEPTS' DEFINITIONS DIFFER

* PERMITS APPEALED TOO EARLY IN THE PROCESS ("FIRST APPROVAL") WILL JUST BOTHER EVERYBODY – PEOPLE WILL APPEAL FOR NOTHING WHEN PROJECT IS WITHDRAWN BY DEVELOPER-->USE "LAST APPROVAL"

* IS PLANNING DEPT'S ACTION EVER THE FIRST CITY APPROVAL THAT TRIGGERS THE 30-DAY CLOCK? IF SO, THE LEG CANNOT BE BASED ON THE "FIRST APPROVAL"

3044

3/ 2008 "NEW SINGLE FAMILY RESIDENCE"

Permits, Complaints and Boiler PTO Inquiry

Permit Details Report

Report Date: 4/22/2013 9:13:14 AM

Application Number: 200803278181
Form Number: 2
Address(es): 2719B / 003 / 0 125 CROWN TR
Description: NEW SINGLE FAMILY RESIDENCE
Cost: $530,000.00
Occupancy Code: R-3
Building Use: 27 - 1 FAMILY DWELLING

WITHDRAWN 10/2011

Disposition / Stage:

Action Date	Stage	Comments
3/27/2008	TRIAGE	
3/27/2008	FILING	
3/27/2008	FILED	
10/26/2011	WITHDRAWN	Withdrawn per ower's request

Contact Details:

Contractor Details:

125 CROWN TER.

3045

10/2011 "HORIZONTAL + VERTICAL ADDN"

Permit Details Report

Report Date: 4/22/2013 9:15:59 AM

Application Number: 201110066315
Form Number: 3
Address(es): 2719B / 003 / 0 125 CROWN TR
Description: HORIZONTAL & VERTICAL ADDITION.
Cost: $300,000.00
Occupancy Code: R-3
Building Use: 27 - 1 FAMILY DWELLING

3096

Disposition / Stage:

Action Date	Stage	Comments
10/6/2011	TRIAGE	
10/6/2011	FILING	
10/6/2011	FILED	
11/28/2012	APPROVED	
11/28/2012	ISSUED	
12/21/2012	SUSPEND	Broad of Appeals requested to suspended

Contact Details:

Contractor Details:

125 CT.

VERT. ↑ EXIST 1ST FLR 8'...

Permit Details Report

Report Date: 4/22/2013 8:58:19 AM

Application Number: 200706154015
Form Number: 3
Address(es): 6718 /024 /0 449 CHENERY ST
Description: VERTICALLY EXTEND EXTG 1ST FLOOR UP 8' THEN ADD NEW 1ST FLOOR WITH GARAGE, ADD 3 REAR DECKS. (RAISE EXTG HOUSE)
Cost: $250,000.00
Occupancy Code: R-3
Building Use: 27 - 1 FAMILY DWELLING

3047

Disposition / Stage:

Action Date	Stage	Comments
6/15/2007	TRIAGE	
6/15/2007	FILING	
6/15/2007	FILED	
7/25/2008	PLANCHECK	
7/25/2008	APPROVED	
8/5/2008	ISSUED	
7/2/2009	COMPLETE	CFC Issued

449 CHENERY

LIST OF "SITE PERMITS"

Permits, Complaints and Boiler PTO Inquiry

You selected:

Address: **125 CROWN TR** Block/Lot: **2719B / 003**

Please select among the following links, the type of permit for which to view address information:

Electrical Permits Plumbing Permits Building Permits Complaints

(Building permits matching the selected address.)

Permit #	Block	Lot	Street #	Street Name	Unit	Current Stage	Stage Date
201110066315	2719B	003	125	CROWN TR		SUSPEND	12/21/2012
200708068904	2719B	003	125	CROWN TR		WITHDRAWN	10/26/2011
200708068905	2719B	003	125	CROWN TR		WITHDRAWN	10/26/2011
200803278181	2719B	003	125	CROWN TR		WITHDRAWN	10/26/2011
200803278191	2719B	003	125	CROWN TR		WITHDRAWN	10/26/2011
9719940	2719B	003	125	CROWN TR		COMPLETE	01/26/1998
8809518	2719B	003	125	CROWN TR		COMPLETE	11/30/1988

Online Permit and Complaint Tracking home page.

125 C.T.

"SITE PERMIT" = ALL BLDG PERMITS

Permits, Complaints and Boiler PTO Inquiry

Permit Summary Information:

Permit (Application) Number	Plans Revision No.	Received	Number of Plan Sets	Completed	Total Special Inspections
200803278191				0	0

Show Site Permit Details | Show Authorized Agents

"NO ADDENDA FOR THIS PERMIT"

3049

No addenda for this permit.

If you plan to print this report, please note:

- The reports print best from Internet Explorer v5.0 or higher
- You should set your browser's print left and right margins to 0.25", top margin to 0.216", and bottom margin to 0.243".

125 C.T.

6/2007

Permits, Complaints and Boiler PTO Inquiry

Permit Summary Information:

Permit (Application) Number	Plans Revision No.	Received	Number of Plan Sets	Completed	Total Special Inspections
200706154015	1	03/11/2008	2	11	11

Show Site Permit Details | Show Authorized Agents

3050

"NO ADDENDA FOR THIS PERMIT"

No addenda for this permit.

HHC

Addenda Details:

Description:
SITE

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	10/7/11	10/7/11			10/7/11	CHAN AMARIS	
2	CP-ZOC	10/7/11	10/25/11			11/20/12	SMITH MICHAEL	
3	BLDG	11/21/12	11/26/12			11/26/12	CHUN ROBERT	
4	CP-NP	11/14/11	11/14/11			12/14/11	SMITH MICHAEL	Section 311 Mailed 11/14/11; Expired 12/14/11 (Nora)
5	CP-NP	6/18/12	7/10/12			8/9/12	SMITH MICHAEL	Mailed 311 Notice 7/10/12; Expired 8/9/12 (Vlad)
6	CP-DR	8/7/12	8/10/12			10/25/12	SMITH MICHAEL	Approved per DRA-0295
7	DPW-BSM	11/26/12	11/27/12			11/27/12	MINIANO DANNY	DPW/BSM SITE PERMIT APPROVAL ONLY! Major renovation including (N) garage @ Crown Ter. frontage. Also, horizontal addition at the rear @ Graystone Ter. Needs SI & MSE permits (for retaining wall) prior to any addenda sign off. Also, Tree/Landscape permit from BUF.
8	SFPUC	11/28/12	11/28/12			11/28/12	TOM BILL	Reviewed & assessed for capacity charges. 50% paid with permit fees; balance due within 12 months of permit issuance date. See invoice attached to application. Route site submittal to PPC 11/28/12.
9	PPC	11/28/12	11/28/12			11/28/12	SAMARASINGHE GILES	11/28/12: to CPB.grs 11/27/12: to PUC.grs 11/26/12: Hand delivered to BSM by R. Chun.grs 11/21/12: Delivered to R. Chun, per T. Hui's request.grs
10	CPB	11/28/12	11/28/12			11/28/12	CHEUNG WAI FONG	11/26/12: SFUSD PAID. WF

3054

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

125 CT

"SITE PERMIT" VS. "FULL PERMIT"

Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	6/15/07	6/15/07			6/15/07	SHAWL HAREGGEWAIN	
2	CP-ZOC	6/18/07	8/1/07	8/23/07	5/5/08	5/5/08	MIDDLEBROOK SOPHIE	08/23/2007: Sent NPR: needs historic review. 05/05/2008: Approved.
3	CP-NP	4/2/08	4/2/08			5/5/08	MIDDLEBROOK SOPHIE	Section 311 mailed on 4/2/08, expires on 5/2/08. 05/05/2008: 311 complete.
4	PPC	5/7/08	5/7/08			7/24/08	GREEN EMILIE	5-7-08: Route to Bldg. sjf 5-12-08: Route to BSM. sjf 5-16-08: Rec'd plan set from BSM. Per Mira, applicant will pick up plans here for "full permit." 05/29/08: Ken Guan PE picked up site permit plans. SM 6-12-08: Route to Bldg (Ted). sjf 7/17/08: recd plns & comments from Maoe Tjoe (BLDG) for cust pick up & correction. gs 7/24/08: applicant picked up plns & comments. gs 7/25/08: route to CPB. gs 7/28/08: REC'D FROM CPB, NEED SCHOOL FEE FORM. EG
5	BLDG	5/7/08	5/8/08			5/8/08	OMOKARO ERIC	PERMIT CONVERTED FROM SITE TO FULL PERMIT
6	BLDG	6/12/08	7/2/08	7/16/08		7/24/08	TJOE MAOE	rechecked. 7/24/08 site permit converted to regular full permit. BSM reapproval required.
7	MECH	7/24/08	7/24/08			7/24/08	ZHAN JAMES	
8	DPW-BSM	5/12/08	5/15/08			5/15/08	MINIANO DANNY	Site permit approval only! Vertical add'n. w/ new garage: needs SI permit. Informed Ken Guan/810-9367/ applicant via phone. No addendum sign off prior to SI permit completion.
9	CPB	7/24/08	7/25/08			7/25/08	SHEK KATHY	SFUSD REQ'D, APPROVED BY JC.

3052

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

4A9 C.

SUMMARY OF POSSIBLE CEQA AMENDMENTS
SUPERVISOR DAVID CHIU
June 17, 2013

File Nos. 121019, 130248 and 130464
6/17/13. Distributed in Committee

DISCUSSION ONLY
~~Amendments~~ to be made in Board

Appeal Trigger for Negative Declarations and EIRs

- Maintain current practice - Approval for Neg Decs, Certification for EIRs

Review of Whether Project Changes Constitute a Modification

- Specify language around modifications as agreed to by the Planning Department and stipulate that modifications trigger new environmental review (and hence possibility of new appeal).
- Allow for public hearing with Environmental Review Officer on day of a regularly scheduled Planning Commission meeting to object to decision that a project change is not a modification; short time frame for this process, possibly modeled on Discretionary Review timelines.

Electronic Posting and Notification System

- Continue to tie operative date of legislation to searchable, geocoded posting of CEQA determinations.
- Require creation of subscription-based email system within 3 months of operative date, with categories matching geocoded information in Planning's existing database.

Clarify Required Content of Exemption Determinations

- Include project description, approval action.
- No "written determination" separate from exemption determination.

Affordable Housing and Bicycle/Pedestrian Safety

- Prioritize these projects in a way workable for the Planning Department and advocates

Document Submittals

- Maintain deadline for appellant documents as 11 days before hearing, and 8 days for response from Planning.
- Add in allowance for re-rebuttal only on new issues by appellants up to 3 days in advance of hearing.

Timeline for Scheduling Appeals at the Board of Supervisors

- Stipulate that hearings before the Board of Supervisors will be held a minimum of 21 days subsequent to the appeal.

"Fair Argument" Language

- Identify additional locations to add in "fair argument" language where legally appropriate.

HPC and Planning Timelines on Draft EIR Hearings

- Require 7 days between hearings at HPC and the Planning Commission on Draft EIRs, except where this requirement would lengthen the DEIR comment period.

FILE NO. ORDINANCE NO.

File No. 130248
5/14/13 supervisor Chiu
distributed for
DISCUSSION PURPOSES
ONLY

[Administrative Code – California Environmental Quality Act Procedures]

Ordinance amending Administrative Code Chapter 31 to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including without limitation: codifying procedures for appeals of exemptions and negative declarations; providing for the Board to make the final CEQA decision on projects requiring Board legislative action, negating the need to file formal CEQA appeals; revising noticing procedures for environmental impact reports and negative declarations for plan area projects exceeding 20 acres; expanding noticing requirements for certain exempt projects; clarifying existing noticing requirements for exempt projects; and making environmental findings..

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:

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

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

SEC. 31.04. RESPONSIBILITY *AND DEFINITIONS*.

(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. *When CEQA requires posting of a notice by the county clerk of the county in which the project will be located, the Planning Department shall transmit the required notice to the applicable county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the posting shall commence.*

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

(d) For proposed projects that ~~*the Environmental Review Officer of the Planning Department has determined*~~ *may have an impact on historic or cultural resources, the Historic Preservation Commission has the authority pursuant to Charter Section 4.135 to* ~~*may*~~ *review and comment on* ~~*such*~~ *all environmental documents and determinations under* ~~*in a manner consistent with CEQA and*~~ *this Chapter 31. [CHANGES REFLECT AUTHORITY OF HPC PERSUANT TO SF CHARTER SEC. 4.135] –* [CHANGES PER KIM]

~~(c)~~(e) 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)~~(f) 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.

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

(g) Notifications. [REQUIRING ROBUST NOTICING SYSTEM – ALLOWS INDIVIDUALS AND ORGANIZATIONS TO CHOOSE ELECTRONIC NOTIFICATION AND SETS FORTH REQUIREMENTS FOR ESTABLISHING AN ELECTRONIC NOTIFICATIN SYSTEM.] – [CHANGES PER KIM]

(1) Notwithstanding Administrative Code Section 8.12.5, all notices required by this Chapter shall be provided by mail in hard copy form unless an individual or organization has requested notice in electronic form as provided below. Electronic notification shall not be used when CEQA requires a mailed notice by the United States Postal Service in hard copy form. All notices required by this Chapter 31 to be posted in the Planning Department shall also be posted on the Planning Department's website.

(2) Electronic Notifications.

(A) The Environmental Review Officer shall implement an electronic notification system for the notification requirements in this Chapter 31. The Environmental Review Officer shall offer interested persons and organizations the opportunity to subscribe to an automated

electronic mail notification system. The system shall distribute all notifications required by this Chapter to subscribers. Subscribers shall have the option to receive electronic mail regarding all CEQA notifications or all CEQA notifications for: (i) a specific project; (ii) a specific neighborhood; (iii) designated historic districts; (v) parks; (vi) exemption determinations; (vii) negative declarations; and (viii) environmental impact reports.

(B) The electronic notification system shall not be used in lieu of notifications by mail in hard copy form as required by this Chapter 31 unless: (i) a subscriber affirmatively opts-out of notice in such form; and (ii) no other provision of law requires notice in such form.

(h) Definitions.

"Approval Action" means:

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

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

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

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

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

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

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

~~*(3) For all projects determined to require the preparation of a negative declaration, the approval of the project by the first City decision-making body that adopts the negative declaration or mitigated negative declaration as provided for in Section 31.11(h) of this Chapter.*~~ *[UNNECESSARY IF APPEAL PROCEDURES FOR NEG DECS PER CEQA REGS ARE USED.]*

~~*(4) For all projects determined to require the preparation of an environmental impact report, the approval of the project by the first City decision-making body following the certification of completion of the environmental impact report by the Planning Commission as provided for in Section 31.15(d) of this Chapter.*~~ *[UNNECESSARY IF EXISTING APPEAL PROCEDURES FOR EIRs ARE MAINTAINED.]*

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

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

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

(i) The Planning Department or other City department as authorized by Section 31.08(d), when rendering ~~*a CEQA decision*~~ *an exemption determination*, shall identify the

Approval Action for the project and provide that information to the public prior to or at the time of project approval. The information ~~may~~ *shall* be provided in ~~an~~ *the* ~~environmental review document or~~ exemption determination, in information posted by the Planning Department at it offices or on its website; ~~or~~ *and* in a*ny* notice about the project or the *exemption determination* provided to the public by the Planning Department or other city department. *Following the Approval Action, the Planning Department shall post on the Planning Department website a notice that the project has been approved in reliance on the exemption determination and shall include the date of the Approval Action. [PURPOSE OF THESE CHANGES IS TO ESTABLISH A CLEAR DATE FROM WHICH THE APPEAL CLOCK WILL BEGIN TO RUN]*

SEC. 31.05. OFFICE OF ENVIRONMENTAL REVIEW.

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

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

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

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

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

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

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

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

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

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

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

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

(l) The Environmental Review Officer shall process applications for environmental review in accordance with the requirements for equal treatment of permit applicants, unless there is a written finding of a public policy basis for not doing so, as set forth in Campaign and Governmental Conduct Code Section 3.400 and the written guidelines adopted by the Planning Department as required by Section 3.400. For purposes of Section 3.400, this Section of Chapter 31, and any corresponding written guidelines of the Planning Department, the Board finds that expediting environmental review out of order, on a priority basis for the purpose of expediting permit processing shall qualify as a public policy basis for projects consisting of: (1) publicly funded affordable housing projects that provide new affordable housing in 100 percent of the on-site dwelling units (where such units are rented or sold at the economic levels defined in Planning Code Section 415); (2) bicycle and pedestrian projects that are designed primarily to address public safety issues; and (3) publicly-funded social services projects. ***[City Atty is still looking for guidance on this category – this cannot be exempt projects as suggested because the whole purpose of priority is to determine whether the projects are exempt and if not, what level of review is required].*** *The Planning Department shall evaluate its*

written guidelines, and, if necessary, revise them to provide for a preliminary environmental evaluation assessment ~~prior to~~ upon the submittal of a completed permit application that would inform applicants of these projects within 60 days of the receipt of a request, as to whether a project may be exempt from CEQA, and if so, any additional information that will be needed to make that determination; if not exempt, any potential significant environmental effects of the project, potential alternatives and mitigation measures, the expected studies needed, the level of environmental review required, and an anticipated schedule for completing the environmental evaluation process. [ADDITION PER KIM PENDING]

SEC. 31.06. COVERAGE OF STATE LAW.

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

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

(a) CEQA provides that certain ~~*classes*~~ *projects are exempt from CEQA because: the project is exempt by statute ("statutory exemption"); the project is in a class* of projects *that* generally do not have a significant effect on the environment ~~*and therefore are categorically exempt from CEQA*~~ *and therefore are exempt from CEQA in accordance with the letter and the intent expressed in the classes of categorical exemptions specified in CEQA ("categorical exemption"); CEQA streamlining procedures allow reliance on a prior environmental document prepared on a zoning or*

planning level decision, for example, as provided in community plan areas and for specified urban infill projects, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site ("community plan exemption"); or the activity is covered under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, thus, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA ("general rule exclusion"). Unless otherwise specifically stated, reference in this Chapter 31 to "exemptions" or "exempt from CEQA" or an "exemption determination" shall collectively refer to statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions. [CHANGES PER KIM]

(b) For categorical exemptions:

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

~~*(b)*~~*(2)* The Environmental Review Officer shall maintain the required list of types of projects which are categorically exempt, and ~~*such list shall be kept posted shall*~~ *post it* in the offices of the Planning Department *and on the Planning Department website, and shall provide it to all City departments*. Such list shall be kept up to date in accordance with any changes in CEQA and any changes in the status of local projects. The initial list and any additions, deletions and modifications thereto shall be adopted as administrative regulations by resolution of the Planning Commission after public hearing, according to the procedure set forth in Section 31.04~~*(e)*~~*(e)* of this Chapter. [CHANGES PER KIM] *[WIENER'S AMENDMENTS DELETED THE EXISTING REQUIREMENT THAT THE LIST BE POSTED IN THE DEPARTMENT – SHOULD BE POSTED IN DEPT AND ON DEPT WEBSITE AND PROVIDED TO OTHER CITY*

DEPARTMENTS, EXPECIALLY SINCE THESE AMENDMENTS ALLOW DELEGATION OF AUTHORITY TO OTHER DEPTS TO MAKE EXEMPTION DETERMINATIONS. CONSISTENT WITH IMPROVING PUBLIC NOTICE RE EXEMPTION DETERMINATIONS.]

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

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

~~(e)~~*(d)* The Environmental Review Officer shall advise other departments of the *requirements of CEQA for determining whether a project is exempt from environmental review.* ~~categorical exemptions.~~ The Environmental Review Officer may delegate the determination whether a project is ~~categorically~~ exempt from CEQA to other departments, provided that other departments shall consult with the Environmental Review Officer regarding the application of ~~the categorical~~ exemptions *and that each determination shall be provided in writing;* and provided further that *at the time of each exemption determination, such other departments shall inform the Environmental Review Officer and provide a copy of the exemption determination to the Environmental Review Officer.* ~~the~~ *The* Environmental Review Officer shall be responsible for all determinations so delegated to other departments. *When the Planning Department or other City department determines that a project is exempt from CEQA, the issuance of the exemption determination shall be considered an exemption determination by the Planning Department.* [CHANGES PER KIM]

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

(1) May issue a Certificate of Exemption from Environmental Review by posting a copy in the offices of the Planning Department and on the Planning Department website, and by mailing copies to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations who previously have requested such notice in writing. Each Certificate of Exemption shall identify the Approval Action for the project and shall include a description of the project determined to be exempt, the specific type and class of exemption claimed, the date of the exemption determination and information, supporting the determination. [NEEDED TO CLARIFY WHAT IT CONTAINS, INCLUDING "APPROVAL ACTION". UNCLEAR WHAT THE DIFFERENCE IS BETWEEN A CERTIFICATE AND THE NOTICE REQUIRED BY (2).]

(2) Shall provide notice to the public ~~shall be provided~~ for all such determinations involving ~~the following types of projects~~:

~~(1)~~*(A)* any historical resources, ~~as~~ defined ~~in CEQA, including without limitation, as~~ any buildings and sites listed individually or located within districts *(i)* listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-recognized historical surveys, (iii)~~ *on an historic resource survey that has been adopted or officially recognized by the City,* on the California Register *or determined eligible for listing on the California Register by the State Historical Resources Commission, including, without limitation, any location,* ~~or (iv)~~ *listed* on *or determined eligible for* the National Register of Historic Places, *or (ii) a resource that the Environmental Review Officer determines, based on substantial evidence, to be a historical resource under Public Resources Code Section 5024.1*;

~~(2)~~*(B)* any Class 31 categorical exemption;

~~(3)~~(C) any demolition *as defined in Planning Code Section 317 or in Planning Code Section 1005(f)* of an existing structure; ~~or,~~

~~(4)~~(D) any Class 32 categorical exemption;

(E) any alteration to a building 50 years or older that changes the roof, adds a garage, modifies the front façade except for replacements in-kind, or expands the occupied square footage of the building, excluding square footage below grade;

(F) *any project within or affecting a park or open space under the jurisdiction or designated for acquisition by the Recreation and Park Commission, or any park under the jurisdiction of any other City department, board or commission; and*

(G) any community plan exemption. ~~*Written determinations of categorical exemptions*~~*All exemption determinations* for these types of projects shall be *in writing,* posted in the offices of the Planning Department *and on the Planning Department's website,* and ~~*shall be*~~ mailed *to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and* to any individuals or organizations that have previously requested such notice in writing. [ABOVE CHANGES to SUBSECTION (2) PER KIM EXCEPT DOUBLE UNDERLINED]

Each such notice of an exemption determination shall identify the Approval Action for the project and shall include a description of the project determined to be exempt, the specific type and class of exemption claimed, and the date of the exemption determination and shall include any information supporting the determination. [CLARIFYING WHAT THE NOTICE WILL CONTAIN, INCLUDING "APPROVAL ACTION". ADDITION OF (E) AND (F) PROVIDE ENHANCED PUBLIC NOTICE FOR EXEMPT PROJECTS.]

*(3) **Written Determinations for Projects with Multiple Approvals**. When a project subject to an exemption determination involves the issuance of multiple discretionary permits or other project approvals, the Environmental Review Officer shall prepare a written determination of*

exemption that describes and evaluates the whole of the project that will result from all discretionary approval actions and lists all of the discretionary approval actions that are needed to implement the project. The Planning Department shall post the written determination of exemption in the offices of the Planning Department and on the Planning Department website, and shall mail the determination to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations that have previously requested such notice in writing. Instead of a separate notice, the written determination required by this section may be provided on the Certificate of Exemption from Environmental Review pursuant to Section 31.08(e)(1) or on the notice of exemption provided pursuant to Section 31.08(e)(2). [PUBLIC NOTICE FOR EXEMPT PROJECTS INVOLVING MULTIPLE APPROVAL ACTIONS]

~~(g)~~*(f) Informing the public of the Approval Action for a project as part of public hearing notice.*

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

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

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

~~*(C) Inform the public that under CEQA, in a later court challenge a litigant may be limited to raising only those issues previously raised at a hearing on the project or in written correspondence delivered to the Planning Department or other City department at, or prior to, such hearing, or as part of the appeal hearing process, if any, on the CEQA determination.*~~

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

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

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

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

(g) A City board, commission, department or official that grants the Approval Action for a project of the type defined in Section 31.16~~(f)~~(e)(2)(B) of this Chapter, which Approval Action is taken without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, shall thereafter arrange for the Planning Department to post on the Planning Department's website a written decision or written notice of the Approval Action for the project that informs the public of the first date of posting on the website and advises the public that the exemption determination may be appealed to the Board of Supervisors as provided in Section 31.16~~(f)~~(e)(2)(B) of this Chapter within 30 days after the first date of posting of the notice.~~When the Environmental Review Officer, or any other department to which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above, has determined that a project is excluded or categorically exempt from CEQA, the Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the

~~*applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations who have previously requested such notice in writing.*~~

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

[CHANGES PER KIM]

~~*(i) The Environmental Review Officer has the authority*~~ under Section 31.19(b) ~~*to re-evaluate the application of an exemption to a project in the event that a project changes after the Approval Action for the project. If the Planning Commission or Planning Department renders a new CEQA*~~ exemption ~~*determination for a project after the Approval Action,*~~ as provided for in Section 31.19(b)~~*, and the City takes a new Approval Action for the project in reliance on the new CEQA determination, the new CEQA determination may be appealed in accordance with the provisions of Section 31.16 of this Chapter, as to those issues associated with the project changes since the original exemption determination.*~~

*(i) **Modification of Exempt Project.** Where a modification occurs to a project that has been determined to be exempt, prior to any subsequent approval actions, the Environmental Review Officer shall re-evaluate the project and make a new determination pursuant to Section 31.19 of this Chapter 31. For purposes of exempt projects, a modification requiring re-evaluation under Section 31.19 shall mean: (1) a change in the scope of a project as described in the original application upon which the*

exemption determination was based, (2) a change in the project from that described in the public notice of the exemption determination, (3) additional discretionary permits or project approvals not included in a written determination of exemption under Section 31.08(e)(3) of the Chapter for projects with multiple approvals, (4) a change in the project that would expand the building envelope requiring public notice under Planning Code Sections 311 or 312, (5) a change in the project that would constitute a demolition under Planning Code Sections 317 or 1005(f), or (6) the Environmental Review Officer is presented with new information or evidence of changed circumstances regarding the environmental impacts of the project. If the Environmental Review Officer again determines the project is exempt, the new determination may be appealed to the Board of Supervisors as provided for in Section 31.16. [THIS IS INTENDED TO PROVIDE OBJECTIVE STANDARDS FOR THE DEFINITION OF MODIFICATIONS REQUIRING RE-EVALUATION OF EXEMPT PROJECTS BY THE ERO UNDER SECTION 31.19.] [BASED ON KIM'S CONCEPT FOR PROVIDING FOR DETERMINING OBJECTIVE STANDARDS FOR WHEN MODIFICATIONS TO AN EXEMPT PROJECT WOULD REQUIRE A NEW DETERMINATION BY THE ERO]

SEC. 31.09. DETERMINATION OF NEED FOR EVALUATION.

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

Environmental Review Officer may make an immediate determination and dispense with the initial study.

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*~~, *including the analysis set forth in Planning Code Section 295.* [RESTORING EXISTING CH 31 LANGUAGE PER KIM] 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:

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

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

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

~~*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.*~~

SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE DECLARATIONS.

(a) When *the Environmental Review Officer determines that a* ~~*any*~~ negative declaration *or a mitigated negative declaration* is *the appropriate level of environmental review* required *by CEQA, such determination* ~~*it*~~ shall be prepared by or at the direction of the Environmental

Review Officer. *Unless otherwise specifically stated, reference in this Chapter 31 to "negative declaration" shall collectively refer to a negative declaration and a mitigated negative declaration.* The negative declaration shall *include the information required by CEQA and in any event 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*~~ *A mitigated* negative declaration shall also indicate mitigation measures~~, *if any,*~~ *to be* included in the project to avoid potentially significant effects*, together with a mitigation and monitoring plan*.

(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 on the Planning Department website.* ~~*and mail notice thereof to the applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.*~~

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

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

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

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

(4) Posting on the subject site. The Planning Department shall develop guidance on the requirements for posting to assure that posters are visible from the closest public street or other public space. [CHANGES PER KIM]

(5) ~~, by mail~~*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 20 acres or more, the Environmental Review Officer shall* ~~not~~ *only be required to provide notice by mail* ~~pursuant to this Section 31.11(c)(4) except~~ *to the owners or occupants within the exterior boundaries of the project area, and to all organizations and individuals who previously requested such notice in writing.* [CHANGES PER KIM]

(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 *when known to the Planning Department at the time of the notice*, 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*, and the Planning Department contact person. The notice of intent shall include a statement that no appeal of the negative declaration to the Board of Supervisors under Section 31.16 of this Chapter will be permitted unless the appellant first files an appeal of the preliminary negative declaration to the Planning Commission, and any other information as required by CEQA*.

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

(f) The Planning Commission shall ~~*hold*~~*schedule* a public hearing on any such appeal within ~~*not less than fourteen (14) nor more than*~~ *[DO NOT DELETE THE MINIMUM OF 14 DAYS] not less than 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 on the Planning Department website*, 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*s* or organization*s* that *previously* ~~*has*~~*have* requested such notice in writing.

(g) After *holding* such hearing the Planning Commission shall affirm the proposed negative declaration if it finds that the project could not have a significant effect on the environment, may refer the proposed negative declaration back to the Planning Department for *specified* revisions, or shall overrule the proposed negative declaration and order preparation of an environmental impact report if it finds ~~based on~~ *substantial evidence* to support a fair argument 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, prior to approving the project. *A public notice of the* ~~*proposed action to adopt*~~ *adoption of the negative declaration* ~~*and take the Approval Action for the project*~~ *shall advise the public of its appeal rights to the Board of Supervisors with respect to the negative declaration* ~~*following the Approval Action in reliance on the negative declaration and*~~ *within the time frame specified in Section 31.16 of this Chapter. Such notice shall be posted in the offices of the Planning Department and on the Planning*

Department website, and shall be mailed to any individual(s) or organization(s) who have previously requested such notice in writing. [NOTICE OF THE APPROVAL ACTION UNNECESSARY HERE PER THE CEQA GUIDELINES FOR APPEAL OF NEG DECS] 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 *and the project is considered finally approved as provided for in Section 31.16*~~(c)~~(b)*(11), in accordance with CEQA procedures, and upon the payment of required fees by the project sponsor*, the Environmental Review Officer ~~*may*~~ *shall* file a notice of determination with the county clerk in the county or counties in which the project is to be located. If required by CEQA, the notice of determination shall also be filed with the California Office of Planning and Research. *When the Environmental Review Officer files a notice of determination with the county clerk or the California Office of Planning and Research, or both, the Planning Department shall also post a copy of the notice of determination in the offices of the Planning Department and on the Planning Department website, and mail a copy of the notice of determination to any individuals or organizations who have previously requested such notice in writing.* [CHANGES PER KIM]

SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE REQUIRED.

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

containing the information required by CEQA and provide such other notice as required by CEQA. In addition, the Environmental Review Officer shall prepare a notice advising the public of the notice of preparation and of any scheduled scoping meetings and publish the notice of preparation in a newspaper of general circulation in the City, ~~*shall*~~ post the notice of preparation in the offices of the Planning Department *and on the Planning Department website*, and ~~*shall*~~ mail the notice of preparation to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project and to all organizations and individuals who have previously requested such notice in writing. ~~*The Environmental Review Officer shall provide such other notice as required by CEQA.*~~ *[DELETE BECAUSE IT IS ALREADY STATED ABOVE]*

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.

(d) When the draft EIR has been prepared, the Environmental Review Officer shall file a notice of completion of such draft *with the California Office of Planning and Research* as required by CEQA *and make the draft EIR available through the State Clearinghouse if and as required by the California Office of Planning and Research*. ~~*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.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.*~~

SEC. 31.14. CONSULTATIONS AND COMMENTS.

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

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

~~*(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.*~~

A. In sending such notices, 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. [CHANGES PER KIM – RESTORING EXISTING PROVISIONS OF CH 31 RE: EIRS]

B. For the types of projects set forth in Section 31.08(e)(2)(A) of this Chapter and for any other projects that may be subject to the approval of the Historic Preservation Commission, the Environmental Review Officer shall send a copy of the draft EIR to the Historic Preservation Commission and obtain any comments that the Historic Preservation Commission has on the draft EIR at a noticed public meeting scheduled at least seven days prior to any Planning Commission hearing on the draft EIR. [CHANGES PER KIM]

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

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

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

(5) Mail the notice to the owners and, to the extent practical, the residential occupants, 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 20 acres or more, the Environmental Review Officer shall ~~not~~ only be required to provide notice by mail to the owners or occupants within the exterior boundaries of the project area, and to all organizations and individual who previously requested such notice in writing ~~pursuant to this Section 31.14(a)(5).~~

[CHANGES PER KIM]

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

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

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

~~(3) State that only commenters on the Draft EIR will be permitted to file an appeal of the certification of the Final EIR to the Board of Supervisors under Section 31.16 of this Chapter.~~ [THIS NEW LIMITATION ON APPEALING EIRS TO THE BOARD IS NOT IN EXISTING CH 31.]

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

~~(e) 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)~~ (d) 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 *and CEQA*,

in any manner ~~it~~*the Environmental Review Officer* 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)~~ *(e)* The Planning Commission shall hold a public hearing on every draft EIR *during the public comment period*, with such hearing combined as much as possible with other activities of the Planning Commission, *provided that public comment on the draft EIR shall be allowed prior to and separate from the Planning Commission consideration of any project approvals*. 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.~~

~~(f)~~*(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.~~ *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. [WHY IS THIS DELETED FROM EXISTING CH*

31? THE PUBLIC AND PLANNING COMMISSIONERS HAVE A RIGHT TO KNOW AND CONSIDER ANY REVISIONS TO THE DRAFT EIR AND ANY COMMENTS RECEIVED FROM OTHERS.] [CHANGES PER KIM – RESTORING EXISTING PROVISIONS OF CH 31 RE: EIRS]

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. *No less than 14 days prior to the Planning Commission hearing to consider certification of the final EIR, the final EIR shall be made available to the public and to any board(s), commission(s) or department(s) that will carry out or approve the project.* [CHANGES PER KIM] *[A REASONABLE TIME PERIOD REQUESTED BY THE COMMUNTIY WORKING GROUP FOR MEANINGFUL REVIEW BY THE PUBLIC AND THE PLANNING COMMISSION OF USUALLY HUNDRESD OF PAGES OF C & R. PLANNING DEPARTMENT OBJECTS SAYING THAT CEQA ONLY REQUIRES 10 DAYS PRIOR.]*

(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*~~ *An administrative* record ~~*of proceedings*~~ 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 recorded by a phonographic reporter and shall cause it to be transcribed and retained as part of the administrative record.* ~~*Any transcription of a*~~

~~*hearing record shall be at the expense of the person requesting such transcription.*~~ [CHANGES PER KIM]

(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 notice of the Planning Commission hearing on the certification of the final EIR shall inform the public of ~~the expected Date of the Approval Action on the project and of~~ its appeal rights to the Board of Supervisors with respect to the final EIR ~~after such date and~~ within the time frame specified in Section 31.16 of this Chapter.* [NOTICE OF THE APPROVAL ACTION UNNECESSARY HERE PER EXISTING CH 31 AND THE CEQA GUIDELINES FOR APPEAL OF EIRs] 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) After the City has decided to carry out or approve the project and the project is considered finally approved as provided for in Section 31.16~~(c)~~(b)(11), in accordance with CEQA procedures, and upon the payment of required fees by the project sponsor, the Environmental Review Officer shall file a notice of determination with the county clerk in the county or counties in which the project is to be located. If required by CEQA, the notice of determination shall also be filed with the California Office of Planning and Research. The Environmental Review Officer shall also post the notice of determination in the offices of the Planning Department and on the Planning Department website, and mail a copy to any individuals or organizations who have previously requested such notice in writing. [CHANGES PER KIM]

SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.

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

(b) ~~Where such a modification occurs as to a project that has been determined to be excluded or categorically exempt pursuant to this Chapter, a new determination shall be made as provided in this Chapter.~~ ~~*For a project that the Planning Department has determined is exempt, when a project changes and a City department re-refers the project application to the Planning Department for review, such review shall include the Environmental Review Officer.*~~ Where ~~*such*~~ a modification *as defined in Section 31.08(k)* occurs as to a project that has been determined to be ~~*excluded or categorically*~~ exempt pursuant to this Chapter, a new determination shall be made as provided in this Chapter *by the Environmental Review Officer*.

~~*(1) If the Environmental Review Officer determines that the project description as modified is still within the scope of the previous project description, the Environmental Review Officer shall note this determination in writing in the case record and no further evaluation shall be required by this Chapter.*~~

~~*(2) If the Environmental Review Officer determines that the project description is no longer within the scope of the previous project description the Environmental Review Officer shall issue a new CEQA determination.*~~

(1) If the modified project is again determined to be ~~excluded or categorically~~ exempt, ~~no further evaluation shall be required by~~ the Environmental Review Officer shall issue a new exemption determination in accordance with this Chapter *or note the determination and the reasons therefore in the case record, post a notice of the determination in the offices of the Planning Department and on the Planning Department website, and mail such notice to any individual or organization that commented on the exemption determination, and to any individuals or organizations that have previously requested such notice in writing.*

(2) If the modified project is determined not to be ~~*excluded or categorically*~~ exempt, an initial study shall be conducted as provided in this Chapter.

[CHANGES to (b) ABOVE PER KIM]

Section 3. The Administrative Code Chapter 31 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 FINAL ENVIRONMENTAL IMPACT REPORTS.***~~

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

~~*(1) A letter of appeal shall be submitted to the Clerk of the Board within twenty (20) calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the Board. The grounds for appeal 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. The appellant shall submit a copy of the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal to the Clerk of the Board.*~~

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

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

~~*(b) The Clerk of the Board shall promptly 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. If more than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal with 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, not less than ten (10) days prior to the date of the hearing.*~~

~~*(c) The Board shall conduct its own independent review of the final EIR. The Board shall consider anew all facts, evidence and/or 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 Planning Commission's certification of the EIR. The Board may consider new facts, evidence and/or issues that were not introduced before the Planning Commission or the Environmental Review Officer.*~~

~~*(d) 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 are correct. The Board may affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific findings and remand the final EIR to the Planning Commission for further action consistent with the Board's findings. The Board shall act by motion in affirming or reversing the Planning Commission's certification of the final EIR.*~~

~~*(e) The Board shall act on an appeal within thirty (30) days of appeal of the Planning Commission's certification of the EIR, 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 30 days, the Board may postpone said hearing and decision thereon until, but not later than, the full membership of the Board*~~

~~*is present; 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. The date of certification of the final EIR shall be the date upon which the Planning Commission originally certified the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's certification of the final EIR is affirmed by action of the Board.*~~

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

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

SEC. 31.16. APPEAL OF CERTAIN CEQA DECISIONS.

(a) ***Decisions Subject to Appeal.*** *In accordance with the provisions set forth in this Section 31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the "Board")* ~~where the Board is not otherwise the CEQA decision-making body for the project as provided below in Section 31.16(b)~~*: (1) certification of a final EIR by the Planning Commission; (2) adoption of a negative declaration* ~~*by the first decision-making body; and*~~ *(3) determination by the Environmental Review Officer, Planning Department or any other authorized City department that a project is exempt from CEQA; and (4) determination by the Environmental Review Officer that no additional environmental review is required for a modification to a project that was the subject of a prior EIR, negative declaration or exemption determination.* [ADDITION OF (4) PER KIM]

~~(b) Board as CEQA Decision-Making Body.~~

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

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

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

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

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

~~(3) For any project for which the Board is the CEQA decision-making body as defined by this Section 31.16, any person may raise objections to the CEQA decision in writing prior to or at a public hearing on the project held by the Board or a committee of the Board. The Board shall consider any written or oral objections raised prior to the close of the public hearing on the project. Procedures for the submittal of materials to the Board by the public or the preparation of a response by the Planning Department to any objections raised shall be as set forth by the Board in its Rules of Order, provided, however, that before the Board takes action to approve the project, the Board shall provide the Planning Department with an adequate opportunity to submit a written response to any objections to the CEQA decision raised by the public prior to the close of the public hearing.~~

~~(4) For any project for which the Board is the CEQA decision-making body as defined by this Section 31.16, prior to or as part of its consideration of the project, the Board~~

~~shall affirm or reject the CEQA decision for the project rendered by the Planning Commission or the Planning Department.~~

~~(c)~~(b) ***Appeal Procedures.*** *In addition to the applicable requirements of Section 31.16* ~~(d)~~(c) *pertaining to EIRs, Section 31.16*~~(e)~~(d) *pertaining to negative declarations,* ~~*or*~~ *Section 31.16* ~~(f)~~(e) *pertaining to exemption determinations or Section 31.16(f) pertaining to determinations on modified projects, the following requirements shall apply to an appeal of any of the decisions listed in Section 31.16(a).* [CHANGES PER KIM]

(1) The appellant shall submit a letter of appeal ~~along with all written materials in support of the appeal~~ *to the Clerk of the Board within the time frames set forth in Sections 31.16* (c), *(d),* ~~or~~ *(e) or (f),* ~~or (f),~~ *as applicable. The letter of appeal shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,* ~~authorized in writing,~~ *file an appeal on his or her behalf. The appellant shall submit with the appeal a copy of the CEQA* ~~*EIR certification or the negative declaration approval by the Planning Commission, or a copy of the exemption determination by the Planning Department that is*~~ *decision being appealed, if available, and otherwise shall submit it when available* ~~and a copy of the Approval Action taken for the project by a City board, commission, department or official.~~ ~~*The appellant shall submit a copy of the letter of appeal and all written materials in support of the appeal to the Environmental Review Officer at the time appellant submits the letter of appeal to the Clerk of the Board.*~~ *Appellant shall concurrently submit a copy of the letter of appeal to the Environmental Review Officer. The submission to the Environmental Review Officer may be made by electronic means.* [CHANGES PER KIM] The Clerk of the Board shall have three business days from the time of submittal of the appeal to assess the appeal package for completeness and compliance with this subpart. ~~*If complete and compliant with this subpart, the Clerk shall process the appeal within the time limits from*~~

~~provisional acceptance.~~ The Clerk of the Board may reject an appeal if appellant fails to comply with this Section 31.16~~(c)~~(b)(1).

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

(3) ~~For projects that require multiple City approvals, while the appeal is pending, and until the CEQA determination is affirmed by the Board,~~ (A) ~~the Board may not take action to approve the project but may hold hearings on the project and pass any pending approvals out of committee without a recommendation for the purpose of consolidating project approvals and the CEQA appeal before the full Board, and (B)~~ ~~other City boards, commissions, departments and officials may consider the approval of the project that is the subject of the CEQA determination on appeal but shall not undertake activities to implement the project that physically change the environment~~ After the Clerk has received the letter of appeal, all project approvals shall be suspended and the City shall not carry out or consider the approval of the project that is the subject of the appeal while the appeal is pending, and until the environmental determination is affirmed or revised as may be required by the Board. [PER EXISTING CH 31] except activities that 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.

(4) The Clerk of the Board shall schedule a hearing on the appeal before the full Board ~~or as otherwise provided by the Board in its Rules of Order~~, without regard to any rule or policy of the Board, no less than 30 and ~~The Clerk shall schedule the hearing~~ ~~no less than 30 and~~ no more than 45 days following expiration of the time frames set forth in Sections 31.16 (c), (d), ~~or~~ (e) or (f), ~~or (f),~~ as applicable, for filing an appeal. The Planning Department shall assist the Clerk in

determining when the time period for filing an appeal of a particular project has expired. If more than one person submits a letter of appeal, the Board ~~shall~~ *President may* consolidate such appeals so that they are heard simultaneously, *and up to 3 individual appellants each shall have its own time for testimony as if such appeals were being heard separately. The Clerk shall provide notice of the appeal by mail to the appellant or appellants and to all organizations and individuals who have previously requested such notice in writing. The Clerk shall provide such notice no less than 14 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 or determination in a timely manner, or requested notice of an appeal, no less than 20 days prior to the scheduled hearing.*

(5) Members of the public, appellant and *real parties in interest or City agencies sponsoring the proposed project may submit written materials to the Clerk of the Board no later than noon, 11 days prior to the scheduled hearing. The Planning Department shall submit to the Clerk of the Board a written response to the appeal no later than noon, eight days prior to the scheduled hearing. Any written document submitted by any party later than noon, eight days prior to the scheduled hearing will be considered part of the record, but will not ~~after these deadlines shall~~ not be distributed to the ~~Supervisors~~ Board as part of ~~their~~ its hearing materials. [TO ALLOW RESPONSE TO THE PLANNING DEPARTMENT'S MATERIALS EVEN IF NOT DISTRIBUTED TO THE BOARD WITH THEIR MATERIALS.]*

(6) The Board shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA. The Board shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions. [ADDITION IS CONSISTENT WITH CEQA AND EXISTING CH 31]

(7) The Board shall act on an appeal within 30 days of the date scheduled for the hearing, provided that if the full membership of the Board is not present on the last day on which the appeal is set for a decision within said 30 days, the Board may postpone a 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 decision may be so postponed under this Section shall be not more than 90 days from the expiration of the time frames set forth in Sections 31.16 (c), (d), ~~or~~ (e), or (f), *as applicable, for filing an appeal.*

(8) The Board may affirm or reverse ~~the~~ any CEQA decision ~~of the Planning Commission, Planning Department or other authorized City agency~~ by a vote of a majority of all members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board shall act by motion. The Board shall adopt findings in support of its decision, which may include adoption or incorporation of findings made by the Planning Commission, Environmental Review Officer or other City department 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.

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

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

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

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

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

(2) The appellant of a final EIR shall submit a letter of appeal ~~and written materials in support of the appeal~~ to the Clerk of the Board ~~after the Planning Commission certifies the final EIR as complete and~~ no later than ~~within~~ *30 days after the ~~Date of the Approval Action for the project following the~~ Planning Commission's certification of the EIR. [CHANGES TO REFLECT THE LANGUAGE IN EXISTING CH 31 and* PER KIM*]]*

~~*(3) The grounds for appeal of an EIR shall be limited to whether the EIR complies with CEQA, including the adequacy, accuracy and objectiveness of the final EIR, the sufficiency of the final EIR as an informational document and the correctness of its conclusions, the correctness of the findings contained in the Planning Commission's certification of the EIR, and whether it is adequate, accurate and objective,~~ reflects the independent judgment and analysis of the City. [CHANGES TO REFLECT THE LANGUAGE IN EXISTING CH 31 and* PER KIM*]]*

(4) The Board shall affirm the Planning Commission's certification of the final EIR if the Board finds that the final EIR complies with CEQA, is adequate, accurate and objective, is sufficient as an informational document, that its conclusions are correct, that the findings contained in the Planning Commission's certification motion are correct, and that it reflects the independent

judgment and analysis of the City. [CHANGES TO REFLECT THE LANGUAGE IN EXISTING CH 31 and PER KIM]

(5) The Board shall reverse the Planning Commission's certification of the EIR if the Board finds that the EIR does not comply with CEQA or is not adequate, accurate and objective, is not sufficient as an informational document, that its conclusions or the findings contained in the Planning Commission's certification motion are incorrect, or that it does not reflect the independent judgment and analysis of the City. If the Board reverses the Planning Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission for further action consistent with the Board's findings. Any further appeals of the EIR shall be limited only to the portions of the EIR that the Planning Commission has revised and any appellant shall have commented on the revised EIR at or before a public hearing held on the revised EIR or the project, if any. The Board's subsequent review, if any, also shall be limited to the portions of the EIR that the Planning Commission has revised including, without limitation, new issues that have been addressed. Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16. [CHANGES TO REFLECT THE LANGUAGE IN EXISTING CH 31 and PER KIM*]*

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

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

(2) The appellant of a negative declaration shall submit a letter of appeal to the Clerk of the Board no later than 30 days after the Planning Commission *has affirmed the negative declaration on appeal, or, if no one appealed the negative declaration to the Planning Commission, no later than 30 days after the Planning Department has posted and mailed the notice of adoption of the*

negative declaration pursuant to Section 31.11(h) ~~approves the final negative declaration and within 30 days after the Date of the Approval Action for the project taken in reliance on the negative declaration.~~

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

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

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

(A) In the event the Board remands the negative declaration to the Planning Department for revision, the Environmental Review Officer shall finalize the revised negative declaration and send notice to the public, as set forth in Section 31.11 of this Chapter, 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 30

days of publication of the revised negative declaration and shall comply with the procedures set forth in this Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the negative declaration that the Planning Department has revised.

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

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

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

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

(A) For a private project seeking a permit, license or other entitlement for use for which the City otherwise provides an appeal process for the entitlement, the appeal of an exemption determination shall be filed after the Planning Department issues the exemption determination and *~~within~~ no later than 30 days after the Date of the Approval Action, regardless of whether the Approval Action is subject to a shorter appeal period. ~~Departments that issue permits or entitlements supported by exemption determinations shall take steps as they determine appropriate to advise applicants seeking permits, licenses or other entitlements for use of the 30-day appeal period for the exemption determination.~~*

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

(i) If the Approval Action is taken following a noticed public hearing as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be filed after the Planning Department issues the exemption determination and ~~*within*~~ *no later than 30 days after the Date of the Approval Action.*

(ii) If the Approval Action is taken without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be filed after the Planning Department issues the exemption determination ~~an approval of the project in reliance on the exemption determination~~ *and* ~~*within*~~ *no later than 30 days after the first date the Planning Department posts on the Planning Department's website a notice as provided in Section 31.08(g) of this Chapter.*

(C) The time limits set forth in (a) and (b) notwithstanding, in the case of projects involving multiple approval actions, the appeal shall be filed no later than 30 days after a City decision-maker takes the final discretionary approval action identified by the Environmental Review Officer in the written determination of exemption, as provided for in Section 31.08(e)(3); further, for such projects, the Clerk shall reject any appeal if at the time of the appeal the Board has already considered and upheld the same exemption determination following an earlier appeal. [CHANGES PER KIM]

(D) As to any exemption determination for a project for which no public notice of the exemption determination and Approval Action has been provided pursuant to this Chapter 31, an appeal may be filed within 30 days following the appellant's discovery of the exemption determination or Project Approval based on an exemption determination.

(3) The grounds for appeal of an exemption determination shall be limited to whether there is a "fair argument" that the project may have a significant effect on the environment, or that the project does not otherwise conforms to the requirements of CEQA for an exemption.

(4) The Board shall affirm the exemption determination if it finds that the project conforms to the requirements set forth in CEQA for an exemption and that there is no substantial evidence to support a fair argument that the project may have a significant effect on the environment.

(5) The Board shall reverse the exemption determination if it finds that record includes substantial evidence to support a fair argument that the project may have a significant effect on the environment or that the project does not otherwise conform to the requirements set forth in CEQA for an exemption. If the Board finds that the project does not conform to the requirements set forth in CEQA for an exemption, the Board shall remand the exemption determination to the Planning Department for further action consistent with the Board's findings. In the event the Board reverses the exemption determination of any City department other than the Planning Department, the exemption determination shall be remanded to the Planning Department, and not the City department making the original exemption determination, for consideration of the exemption determination in accordance with the Board's directions.

*(f) **Appeal of Determinations on Modified Projects.***

(1) In addition to those requirements set forth in Section 31.16(b) of this Chapter, any person or entity may appeal the Environmental Review Officer's determinations in Section 31.19(b)(1) or Section 31.19(c)(1) of this Chapter that no additional environmental review is necessary for modifications to a project that was the subject of a prior EIR, negative declaration, or exemption determination following the written notice given by the Environmental Review Officer pursuant to Section 31.19(b)(1) or Section 31.19(c)(1) of this Chapter and for up to 30 days following the notice.

(2) If no notice was given by the Environmental Review Officer of a determination that no additional environmental review is required for a modification to a project that was the subject of a prior EIR, negative declaration or exemption determination, an appeal may be filed within 30 days of the appellant's discovery of the Environmental Review Officer's determination decision.

(3) The grounds for appeal under this Section 31.16(f) shall be limited to whether the project modification requires additional environmental review.

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

Section 5. Operative Date. This ordinance shall become operative *by resolution of the Board* ~~on the later date of September 1, 2013, or five business days~~ after the Secretary of the Planning Commission provides a memorandum to the Clerk of the Board of Supervisors advising that the Planning Commission has held a public hearing at which the Planning Department has demonstrated to the Planning Commission that it has updated its website to *conform to the requirements of Section 31.04(g)(2) of this Chapter.* ~~provide up-to-date information to the public about each CEQA exemption determination in a format searchable by location, such as through the "Active Permits In My Neighborhood" tool now used by the Planning Department and the Building Department.~~

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

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

By: _____
ELAINE C. WARREN
Deputy City Attorney

File No. 130248
5/20/13 - Supervisor Kim
Amendment
✓ ACCEPTED

Land Use Committee May 20, 2013.

Item 6: 130248 Sponsors: Kim; Campos, Avalos and Mar

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Proposed Amendment:

1. Page 14, after line 22, add Section 31.09 and amend as shown:

SEC. 31.09 DETERMINATION OF NEED FOR EVALUATION

All projects that are not statutorily excluded or categorically exempt from CEQA shall be referred to the Environmental Review Officer, prior to the decision as to whether to carry out or approve the project, for an initial study to establish whether a negative declaration or an environmental impact report is required. By law, the City is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the Environmental Review Officer should be alert for environmental issues that might require preparation of an environmental impact report or that may require additional explanation by the applicant. As provided for in CEQA Sections 21080.1 and 21080.2, in the case of a project that involves an application for a permit or other entitlement for use, the Environmental Review Officer shall determine, within 30 days from the date on which an application for the project is accepted as complete, whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for the project. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in CEQA Section 21167.

2. Page 2, line 2, add "31.09" to the list of Administrative Code sections amended.

130248
5/20/13 Clerk of Board
Amendments
✓ACCEPTED

CEQA Legislation Proposed Amendments

File No. 121019 (Wiener)	File No. 130248 (Kim)
Acceptance: Page 32, Line 8, by adding after 'manner': ', by the Planning Department, or any other authorized City Department making determinations,' *This would ensure that all determinations from Planning or any other authorized City Department is the responsibility of Planning Department to inquire and ultimately determine whether such appeal is ripe or timely.*	Acceptance: Page 32, Line 14, by adding before 'The Clerk': 'An appeal shall be accepted by the Clerk of the Board with notice given to the appellants that the acceptance is conditioned upon the Planning Department determining that the appeal has been filed in a timely manner, by the Planning Department, or any other authorized City Department making determinations, and the Clerk otherwise determining that the appeal complies with the requirements of this section. The Planning Department shall make such determination within three working days of receiving the Clerk's request for review. Within seven working days of the filing of the appeal the Clerk shall mail notice to the appellants of the acceptance or rejection of the appeal.' *This would ensure that this agreed upon language included in File No. 121019 is also included in this legislation to ensure the Clerk of the Board has coverage to get from Planning the determination of such appeals.*

Processing: Page 34, Line 2, by adding after 'before': ' in writing to the Clerk of the Board, on official letterhead, with five (5) Board members original signatures,' Page 34, Line 4, by adding after 'in the': 'official file and considered as part of the' *It is important to note the complexity of preparing Board agenda packet materials and how such deadlines and timeframes also interfere with other Committee agenda packet deadlines and timeframes. It is always our intent to ensure that the public and all parties are involved have ample time to be able to review and respond to materials. The 8 (eight) days prior is critical. We have always accepted materials after that timeframe, up to the close of the hearing, given that the information is not in the Board agenda packet materials, but may be included in the official file. Planning Department, project sponsors, and appellants have always indicated '**on record**' during the meeting if they have not had an opportunity to review materials and therefore have no response.*	Processing: Page 34, Line 4, by adding after 'writing': 'to the Clerk of the Board, on official letterhead, with Board members original signature.' Page 34, Line 5, by adding after 'in the': 'official file and considered as part of the' *Again, it is important to note the complexity of preparing Board agenda packet materials and how such deadlines and timeframes also interfere with other Committee agenda packet deadlines and timeframes. It is always our intent to ensure that the public and all parties are involved have ample time to be able to review and respond to materials. The 8 (eight) days prior is critical. We have always accepted materials after that timeframe, up to the close of the hearing, given that the information is not in the Board agenda packet materials, but may be included in the official file. Planning Department, project sponsors, and appellants have always indicated '**on record**' during the meeting if they have not had an opportunity to review materials and therefore have no response.*

Scheduling: Page 34, Line 12, by adding after 'thereon': ', or the next regularly scheduled Board meeting should such timeframes fall within a Board recess;' *This will ensure that should an appeal need to be scheduled with the 40 day , that the Clerk has some flexibility to ensure that should such a date fall within a Board recess, there is coverage to schedule such an appeal at the next regularly scheduled Board meeting.*	Scheduling: Page 34, Line 18, by adding after 'hearing': ', or the next regularly scheduled Board meeting should such timeframes fall within a Board recess;' *This will ensure that should an appeal need to be scheduled with the 40 day , that the Clerk has some flexibility to ensure that should such a date fall within a Board recess, there is coverage to schedule such an appeal at the next regularly scheduled Board meeting.*

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
Ed Reiskin, Director, Municipal Transportation Agency
Tom Hui, Director, Department of Building Inspection
Karen Hong Yee, County Clerk
Mohammed Nuru, Director, Department of Public Works
Barbara Garcia, Director, Department of Public Health
Chief Joanne Hayes-White, Fire Department
Fire Marshal Thomas Harvey, Fire Department
Monique Moyer, Executive Director, Port
Edward Byrne, Chief Engineer, Port
Phil Ginsburg, General Manager, Recreation and Park Department

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

DATE: May 15, 2013

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following **substitute** legislation, introduced by Supervisor Kim on May 14, 2013:

File No. 130248-3

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

This matter will be heard next at the Land Use and Economic Development Committee meeting on Monday, May 20, 2013, at 1:30 p.m.

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Joy Navarrete, Planning Department
Monica Pereira, Planning Department
Elaine Forbes, Port
Greg Wagner, Department of Public Health
Frank Lee, Department of Public Works
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Kelly Alves, Fire Department
Sarah Ballard, Recreation and Park Department

BOARD of SUPERVISORS

City Hall
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April 12, 2013

File No. 130248-2

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

Dear Ms. Jones:

On April 9, 2013, Supervisor Kim introduced the following proposed legislation:

File No. 130248-2

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board
Alisa Miller
By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

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

April 12, 2013

Planning Commission
Attn: Jonas Ionin
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On April 9, 2013, Supervisor Kim introduced the following proposed legislation:

File No. 130248-2

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

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

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Karen Hong Yee, County Clerk
Mohammed Nuru, Director, Department of Public Works
Barbara Garcia, Director, Department of Public Health
Chief Joanne Hayes-White, Fire Department
Fire Marshal Thomas Harvey, Fire Department
Monique Moyer, Executive Director, Port
Edward Byrne, Chief Engineer, Port
Phil Ginsburg, General Manager, Recreation and Park Department

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

DATE: April 12, 2013

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Kim on April 9, 2013:

File No. 130248-2

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Kelly Alves, Fire Department
Sarah Ballard, Recreation and Park Department

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

MEMORANDUM

TO: Jon Givner, Deputy City Attorney

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

DATE: March 20, 2013

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following DRAFT ordinance, introduced by Supervisor Kim on March 12, 2013:

File No. 130248

Draft 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.

This matter is being forwarded to your department pursuant to Board Rule 2.3, Approval as to Form. This matter will not be considered by the Board until a signed ordinance is received.

Please forward the signed ordinance, once it is approved as to form, to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☐ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☒ 8. Substitute Legislation File No. 130248

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☒ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisor Kim; Supervisors Campos, Avalos, Mar

Subject:

Administrative Code - California Environmental Quality Act Procedures

The text is listed below or attached:

Please see attached

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

130248

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☐ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☒ 8. Substitute Legislation File No. ~~130351~~ 130748

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

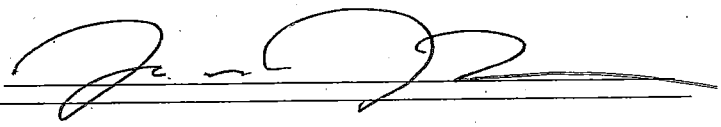
Supervisor Kim; Campos, Avalos, Mar

Subject:

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

The text is listed below or attached:

Ordinance amending Administrative Code Chapter 31 to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determination, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notice system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental findings.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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An ordinance, resolution, motion, or charter amendment.

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☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No. [ ]

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☒ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Supervisor Kim

Subject:

CEQA procedures, appeals and public notice

The text is listed below or attached:

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

130248