

File No. 201284 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date May 17, 2021

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral PC 111820</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI 11820</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CEQA Determination 021621</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PLN Transmittal 031121</u> |
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Completed by: Erica Major Date May 13, 2021

Completed by: Erica Major Date _____

1 [Administrative Code - CEQA Appeals]

2

3 **Ordinance amending the Administrative Code to allow certain projects to proceed while**
4 **an appeal of the project's determination under the California Environmental Quality Act**
5 **(CEQA) is pending before the Board of Supervisors, and modifying requirements for**
6 **appeals to the Board of Supervisors for certain projects under CEQA.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

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

13

14 Section 1. Findings.

15 (a) In San Francisco, Chapter 31 of the Administrative Code implements the California
16 Environmental Quality Act, California Public Resources Code Sections 21000 et seq., and the
17 Guidelines for Implementation of the California Environmental Quality Act, Title 14, Division 6,
18 Chapter 3 of the California Code of Regulations (collectively, "CEQA").

19 (b) Administrative Code Section 31.16 authorizes and sets forth a process for
20 appealing certain CEQA decisions to the Board of Supervisors (the "Board"). Under that
21 section, once a CEQA decision is scheduled for an appeal hearing, all City boards,
22 commissions, and departments are prohibited from taking any action to carry out or further
23 consider approval of the appealed project, except in specified emergency circumstances.

24

25

1 (c) It is in the public interest that the CEQA appeal process not be used to delay or
2 obstruct projects undertaken by City departments to protect the public health, safety, or
3 property, or that involve temporary or reversible actions.

4 (d) It is also in the public interest that CEQA appeals to the Board for projects within
5 the Municipal Transportation Authority's or the Port's exclusive jurisdiction under the Charter
6 be limited in situations where the Board of Supervisors may not otherwise have any review
7 authority for the projects themselves.

8 (e) The Planning Commission, in Resolution No. 20862, adopted findings
9 recommending approval of this ordinance. A copy of said Resolution is on file with the Clerk
10 of the Board of Supervisors in File No. 201284, and is incorporated herein by reference.

11
12 Section 2. Chapter 31 of the Administrative Code is hereby amended by revising
13 Section 31.16, to read as follows:

14 **SEC. 31.16. APPEAL OF CERTAIN CEQA DECISIONS.**

15 (a) **Decisions Subject to Appeal.** In accordance with the provisions set forth in this
16 Section 31.16, the following CEQA decisions may be appealed to the Board of Supervisors
17 (the "Board"): (1) certification of a final EIR by the Planning Commission; (2) adoption of a
18 negative declaration by the first decision-making body; and (3) determination by the Planning
19 Department or any other authorized City department that a project is exempt from CEQA.

20 (b) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16(c)
21 pertaining to EIRs, Section 31.16(d) pertaining to negative declarations, or Section 31.16(e)
22 pertaining to exemption determinations, the following requirements shall apply to an appeal of
23 any of the decisions listed in Section 31.16(a).

24 (1) The appellant shall submit a letter of appeal to the Clerk of the Board within
25 the time frames set forth in Sections 31.16(c), (d), or (e), as applicable. The letter of appeal

1 shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in
2 Section 31.22 of this Chapter, payable to the San Francisco Planning Department. The
3 appellant shall sign the letter of appeal, or may have an agent, file an appeal on ~~his or her~~the
4 appellant's behalf. The appellant shall submit with the appeal a copy of the CEQA decision
5 being appealed, if available, and otherwise shall submit it when available. The appellant shall
6 submit a copy of the letter of appeal and any other written materials submitted to the Clerk in
7 support of the appeal to the Environmental Review Officer at the time the appellant submits
8 the letter of appeal to the Clerk of the Board. The submission to the Environmental Review
9 Officer may be made by electronic means. An appeal shall be accepted by the Clerk with
10 notice given to the appellants that the acceptance is conditioned upon the Planning
11 Department determining that the appeal of the CEQA decision, whether rendered by the
12 Planning Department or another City commission, department, agency or official, has been
13 filed in a timely manner, and the Clerk otherwise determining that the appeal complies with
14 the requirements of this section 31.16(b)(1). The Planning Department shall make such
15 determination within three working days of receiving the Clerk's request for review. Within
16 seven working days of the filing of the appeal the Clerk shall mail notice to the appellants of
17 the acceptance or rejection of the appeal. The Clerk of the Board may reject an appeal if the
18 appellant fails to comply with this ~~§~~section 31.16(b)(1).

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

23 (3) For projects that require multiple City approvals, after the Clerk has
24 scheduled the appeal for hearing and until the CEQA decision is affirmed by the Board,;
25

1 (A) the Board may not take action to approve the project but may hold
2 hearings on the project and pass any pending approvals out of committee without a
3 recommendation for the purpose of consolidating project approvals and the CEQA appeal
4 before the full Board; and

5 (B) other City boards, commissions, departments, and officials shall not
6 carry out or consider further the approval of the project that is the subject of the CEQA
7 decision on appeal, except for the following activities:

8 _____ (i) actions that are essential to abate hazards to the public health
9 and safety, including abatement of hazards on a structure or site determined by the
10 appropriate City official, including but not limited to the Director of Building Inspection, the
11 Director of Public Works, the Director of Public Health, the Fire Marshal, or the Port Chief
12 Engineer, to be an emergency presenting an imminent hazard to the public and requiring
13 immediate action; or

14 (ii) actions that are undertaken by the San Francisco Municipal
15 Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or
16 the Recreation and Parks Department, and the appropriate commission or department head or their
17 designee has determined in writing that the action is one of the following:

18 a. a safety, health, or remedial measure necessary to protect the
19 public, public employees, or public property or to allow the existing use of public property to continue;
20 or

21 b. a temporary activity that will be removed or will cease within
22 180 days following the commencement of said activity; or

23 c. a reversible action wholly implemented and operated by a City
24 department or agency, or a City department's or agency's contractor, that either does not involve
25

1 physical construction activities or is limited to additions that can be removed or reconditioned without
2 damage to the site.

3 The appropriate department head or their designee shall provide their written
4 determination about the project's characterization as a safety, health, or remedial measure, a
5 temporary activity, or a reversible action, as described above in subsections (ii)a, (ii)b, and (ii)c,
6 respectively, to the Environmental Review Officer.

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

18 (5) Members of the public, appellant, and real parties in interest or City
19 agencies sponsoring the proposed project, may submit written materials to the Clerk of the
20 Board no later than noon, 11 days prior to the scheduled hearing. The Clerk will distribute any
21 written document submitted by noon, eight days prior to the scheduled hearing to the Board
22 through the Board's normal distribution procedures.

23 (6) The Board shall conduct its own independent review of whether the CEQA
24 decision adequately complies with the requirements of CEQA. The Board shall consider anew
25 all facts, evidence, and issues related to the adequacy, accuracy, and objectiveness of the

1 CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the
2 correctness of its conclusions.

3 (7) The Board shall act on an appeal within 30 days of the date scheduled for
4 the hearing, provided that if the full membership of the Board is not present on the last day on
5 which the appeal is set for a decision within said 30 days, the Board may postpone a decision
6 thereon until, but not later than, the full membership of the Board is present; and provided
7 further, if the Board of Supervisors does not conduct at least three regular Board meetings
8 during such 30-day period, the Board of Supervisors shall decide such appeal within 40 days
9 of the time set for the hearing thereon or at the next regularly scheduled Board meeting
10 should such deadline fall within a Board recess; and provided further that the latest date to
11 which said decision may be so postponed under this Section shall be not more than 90 days
12 from the expiration of the time frames set forth in Sections 31.16(c), (d), or (e), as applicable,
13 for filing an appeal.

14 (8) The Board may affirm or reverse any CEQA decision by a vote of a majority
15 of all members of the Board. A tie vote shall be deemed to be disapproval of the CEQA
16 decision. The Board shall act by motion. The Board shall adopt findings in support of its
17 decision, which may include adoption or incorporation of findings made by the Planning
18 Commission, Environmental Review Officer, or other City department authorized to act on the
19 CEQA decision below. If the Board reverses the CEQA decision, the Board shall adopt
20 specific findings setting forth the reasons for its decision.

21 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final
22 negative declaration, or *the* final exemption determination shall be the date upon which the
23 Planning Commission, Planning Department, Environmental Review Officer, or other
24 authorized City department, as applicable, first certified the EIR, adopted the negative
25

1 declaration, or issued the exemption determination and any actions approving the project
2 made prior to the appeal decision shall be deemed valid.

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

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

9 (12) For projects that the San Francisco Municipal Transportation Agency sponsors or
10 approves pursuant to its exclusive authority in Charter Section 8A.102(b)(1)-(9) and which are not
11 subject to review by the Board of Supervisors under Transportation Code Section 10.1, or for any
12 transit service changes approved by the San Francisco Municipal Transportation Agency that do not
13 constitute route abandonment pursuant to Charter Section 8A.108, a CEQA document or determination
14 may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the
15 Board of Supervisors subscribe to the notice of appeal. The signature on the appeal of members of the
16 Board of Supervisors shall not be deemed to be any indication of their position on the merits of the
17 appeal but rather shall indicate only that they believe there is sufficient public interest and concern in
18 the matter to warrant a hearing by the Board of Supervisors. All such appeals shall comply with all
19 other requirements for an appeal set forth in this Section 31.16, except that members of the Board of
20 Supervisors shall not be required to submit comments on an EIR or file an appeal of a preliminary
21 negative declaration to the Planning Commission as provided in Sections 31.16(c) and (d) in order to
22 subscribe to the notice of appeal of such negative declaration.

23 (13) For leases of property under the jurisdiction of the Port Commission for maritime
24 uses, which are not subject to Board of Supervisors review under Charter Section 9.118, a CEQA
25 document or determination may be appealed to the Board of Supervisors only if 50 San Francisco

1 residents or five Members of the Board of Supervisors subscribe to the notice of appeal. The signature
2 on the appeal of members of the Board of Supervisors shall not be deemed to be any indication of their
3 position on the merits of the appeal but rather shall indicate only that they believe there is sufficient
4 public interest and concern in the matter to warrant a hearing by the Board of Supervisors. All such
5 appeals shall comply with all other requirements for an appeal set forth in this Section 31.16, except
6 that members of the Board of Supervisors shall not be required to submit comments on an EIR or file
7 an appeal of a preliminary negative declaration to the Planning Commission as provided in Sections
8 31.16(c) and (d) in order to subscribe to the notice of appeal of such negative declaration.

9 * * * *

10
11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the “Note” that appears under
20 the official title of the ordinance.

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

23 By: /s/
24 KATE H. STACY
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - CEQA Appeals]

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

Existing Law

Administrative Code Chapter 31.16 provides the procedures for appeal of environmental documents and determinations under the California Environmental Quality Act ("CEQA"). Among other things, Section 31.16 provides that once the Clerk has scheduled the appeal hearing for a CEQA decision, the Board may not approve a project and other City boards, commissions, and departments may not carry out or consider further the approval of the project except activities that are essential to abate hazards to the public health and safety, until the CEQA decision is affirmed by the Board.

Section 31.16 further provides who may appeal CEQA determinations: (1) any person who submitted written or oral comments to the Planning Commission or the Environmental Review Officer on a draft EIR may appeal the Planning Commission's certification of the final EIR; (2) any person who filed an appeal of a preliminary negative declaration with the Planning Commission may appeal the Planning Commission's approval of the final negative declaration; and (3) any person may appeal an exemption determination by the Planning Department or other authorized City department to the Board.

Amendments to Current Law

The proposed legislation would change these provisions of Section 31.16 in two ways. First, the legislation would allow additional kinds of decisions and work to move forward while an appeal is pending at the Board of Supervisors. These additional actions include the following: (1) actions that are undertaken by the San Francisco Municipal Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or the Recreation and Parks Department, where the appropriate commission or department head or their designee has determined in writing that the action is (a) a safety, health, or remedial measure necessary to protect the public, public employees, or public property or to allow the existing use of public property to continue, (b) a temporary activity that will be removed or will cease within 180 days following its commencement, or (c) a reversible action wholly implemented and operated by a City department or agency that either does not involve physical construction activities or is limited to additions that can be removed or reconditioned without damage to the site. The department head or their designee would provide their

written determination about the project's characterization as a safety, health, or remedial measure, a temporary activity, or a reversible action, to the Environmental Review Officer.

Second, the legislation would limit who may appeal specific CEQA determinations. For projects that the San Francisco Municipal Transportation Agency sponsors or approves under its exclusive authority in Charter Section 8A.102(b)(1)-(9) and which are not subject to review by the Board of Supervisors under Transportation Code Section 10.1, or for any transit service changes approved by the San Francisco Municipal Transportation Agency that do not constitute route abandonment pursuant to Charter Section 8A.108, a CEQA document or determination may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the Board of Supervisors subscribe to the notice of appeal.

Similarly, under the proposed legislation, for leases of property under the jurisdiction of the Port Commission for maritime uses, which are not subject to Board of Supervisors review under Charter Section 9.118, a CEQA document or determination may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the Board of Supervisors subscribe to the notice of appeal.

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BOARD of SUPERVISORS



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

November 18, 2020

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On November 10, 2020, Mayor Breed introduced the following legislation:

File No. 201284

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

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 and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: Rich Hillis, Director
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Legislative Affairs
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
Aaron Starr, Manager of Legislative Affairs
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Major Environmental Analysis

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

02/16/2021 A handwritten signature in cursive script, appearing to read "Jonas Ionin".



March 11, 2021

Ms. Angela Calvillo, Clerk
Honorable Mayor Breed
Supervisor Haney
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 Department Case Number 2021-000541PCA:
Administrative Code - CEQA Appeals
Board File No. 201284

Planning Commission Recommendation: **Approval**

Dear Ms. Calvillo, Mayor Breed, and Supervisor Haney,

On February 25, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor Breed and Supervisor Haney that would amend Administrative Code Chapter 31. At the hearing the Planning Commission recommended approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

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

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc: Kate Stacy Deputy City Attorney
Sophia Kittler, Liaison to the Board of Supervisors
Courtney McDonald Aide to Supervisor Haney
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 20862

HEARING DATE: FEBRUARY 25, 2021

Project Name: CEQA Appeals
Case Number: 2021-000541PCA [Board File No. 201284]
Initiated by: Mayor Breed, Supervisor Haney / Introduced November 10, 2020
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE TO ALLOW CERTAIN PROJECTS TO PROCEED WHILE AN APPEAL OF THE PROJECT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) IS PENDING BEFORE THE BOARD OF SUPERVISORS, AND MODIFYING REQUIREMENTS FOR APPEALS TO THE BOARD OF SUPERVISORS FOR CERTAIN PROJECTS UNDER CEQA.

WHEREAS, on November 10, 2020 Mayor Breed and Supervisor Haney introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 201284, which would amend the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 25, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); 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 Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

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:

The proposed Ordinance will support projects that serve the general health and safety of the public, public employees, and public property.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

COMMUNITY SAFETY ELEMENT

OBJECTIVE 1

REDUCE STRUCTURAL AND NONSTRUCTURAL HAZARDS TO LIFE SAFETY AND MINIMIZE PROPERTY DAMAGE RESULTING FROM FUTURE DISASTERS.

Policy 1.3

Assure that new construction meets current structural and life safety standards.

Policy 1.15

Preserve, consistent with life safety considerations, the architectural character of buildings and structures important to the unique visual image of San Francisco, and increase the likelihood that architecturally and historically valuable structures will survive future earthquakes.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance supports the Community Safety Element's goal to comply with current life safety standards. Additionally, the proposed Ordinance supports the Commerce and Industry Element's goals to support existing commercial businesses and provide greater flexibility through temporary installations. One example of this includes temporary outdoor seating offered through the Shared Spaces program.

Planning Code Section 101 Findings

The proposed amendments to the Administrative Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would have a positive effect on neighborhood serving retail uses interested in pursuing temporary extensions of outdoor spaces. The proposed Ordinance will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

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

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Administrative Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 25, 2021.



Jonas P. Ionin
Commission Secretary

AYES: Chan, Diamond, Fung, Imperial, Moore, Koppel

NOES: None

ABSENT: Tanner

ADOPTED: February 25, 2021



EXECUTIVE SUMMARY ADMINISTRATIVE CODE TEXT AMENDMENT

HEARING DATE: February 25, 2021

Project Name: CEQA Appeals
Case Number: 2021-000541PCA [Board File No. 201284]
Initiated by: Mayor Breed, Supervisor Haney / Introduced November 10, 2020
Staff Contact: Veronica Flores, Legislative Affairs
 Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
 aaron.starr@sfgov.org, 628-652-7533

Recommendation:	Approval
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Administrative Code Amendment

The proposed Ordinance would amend the amend the Administrative Code to allow certain projects to proceed while an appeal of the project’s determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

The Way It Is Now:	The Way It Would Be:
Other City commissions/boards shall not act on any projects while a CEQA appeal is pending at the Board of Supervisors.	Other City commissions/boards outside of the Board of Supervisors would now be able to proceed with certain project while a CEQA appeal is pending at the Board of Supervisors. This proposed amendment only applies to public projects for which the respective commission or department head (or designee) demonstrates in writing that such projects meet one of the following criterion: <ul style="list-style-type: none"> • Related to safety/health measures necessary to protect the public, public employees, or

	<p>public property,</p> <ul style="list-style-type: none"> • A temporary activity lasting no more than 180 days, or • A reversible action that does not involve physical construction activities or is limited to additions that can be easily removed without damaging the site.
<p>Any person or single entity may appeal the CEQA determination.</p>	<p>Public projects sponsored or approved by the San Francisco Municipal Transportation Agency (SFMTA) or properties under leases from the Port Commission would now require 50 San Francisco residents or five Supervisors to subscribe to the notice of appeal. These appeals shall be subject to all other appeal requirements, except that the Board of Supervisors shall not be required to submit comments on an Environmental Impact Report or file an appeal of a Preliminary Mitigated Negative Declaration to the Planning Commission.</p>

Background

Last year there were several appeals filed on CEQA determinations for projects related to COVID-19 recovery activities. This delayed many of those projects and the respective efforts to assist and serve the public. This Ordinance is proposed to avoid such delay in the future for similar projects that respond to emergencies.

Issues and Considerations

CEQA Overview

The Planning Department reviews projects for potential environmental impacts through CEQA, a state law created in 1970. The basic goals of CEQA include:

- Identifying and informing decision makers and the public about the potential significant environmental impacts,
- Preventing significant, avoidable damage to the environment by requiring changes to a project, and
- Disclosing to the public the reasons why decisions are made if significant impacts occur.

Environmental review is not an approval of a project, but it must be complete before city decision makers determine whether to approve a project that could impact the environment. After the potential environmental impacts are assessed, the Planning Department issues a CEQA determination in the form of a Categorical Exemption, Community Plan Exemption, a Negative Declaration, or an Environmental Impact Report. The final determination is based on the significance of environmental impacts, if any. It is this CEQA determination that can then be appealed to the Board of Supervisors. If an appeal is filed, environmental review needs to be revisited preventing City commissions and boards from taking any further action on the project until the Board of Supervisors makes their decision on the CEQA appeal.

Appeals Process

The Clerk of Board of Supervisors schedules an appeal hearing within 30-45 days of the appeal filing. After hearing from the appellant, general public, and staff, the Board of Supervisors vote to either deny or uphold the appeal. If the appeal is denied, the CEQA determination is finalized, thus completing environmental review. If the appeal is upheld, the Board of Supervisors will include findings instructing all parties on next steps. One example may include instructing staff to revisit technical studies that were included in the original CEQA determination and reassess the potential of significant impacts.

The Ordinance would not impact the appeal filing deadlines, hearing scheduling, or Board of Supervisors' decision-making process. However, the Ordinance would benefit qualifying projects by allowing City commissions and boards to act on the project while awaiting the Board of Supervisors' final decision on the CEQA appeal. This change would only impact those public projects (undertaken by the SFMTA, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or the Recreation and Park Department) for which the respective commission or department head (or designee) demonstrates they meet the criterion to promote the general health and safety of the public or are temporary in nature. Projects that do not fall within these categories would still adhere to the current practice of waiting until the Board of Supervisors' make their final decision on the CEQA appeal before other City commissions and boards can act on the project.

The Ordinance would also change requirements for CEQA appeals filed on public projects sponsored or approved by the SFMTA or properties under leases from the Port Commission. CEQA appeals for these types of projects would require at least 50 San Francisco residents or five Supervisors to subscribe to the notice of appeal. A similar practice with higher requirements is already in effect for appeals on Conditional Use Authorizations (CUA), which requires 20% of the affected property owners or five Supervisors to subscribe to the appeal. While the Ordinance would result in a higher requirement for filing a CEQA appeal, it is not unprecedented as seen through the CUA appeal requirements.

Appeals Metrics

The Department pulled data on all CEQA appeals filed on between 2015 and 2020 and summarized the findings in Table 1.

Table 1: Summary of CEQA Appeals Filed from 2015-2020

	Appeal Denied	Appeal Upheld	Pending	Withdrawn
Subtotal	53	8	2	34
Grand Total				97

Out of the 97 CEQA appeals filed from 2015-2020, only eight were upheld. This means that the Board of Supervisors denied the vast majority of appeals they heard. If the same pattern continued, there would be no major harm if other City commissions or boards act on public projects before the Board of Supervisors makes their final determination on the appeal.

COVID-19 Recovery

The Ordinance focuses on very specific types of projects that are meant to promote the general health and safety of the public or projects that are temporary in nature. Many COVID-19 recovery efforts, such as Shared Spaces,

fall under these categories. If this Ordinance is enacted, all these projects would still go through environmental review to determine if there are any significant impacts; however, if the environmental determination is appealed the project could continue as the appeal was pending before the Board of Supervisors. This allows the City to review projects related to COVID-19 recovery or projects responding to other emergencies as expeditiously as possible. In some cases, this may save the project approximately six (or more) weeks of waiting time. As evidenced through the current pandemic, those handful of weeks saved may make a critical difference in resident and business livelihood.

General Plan Compliance

The proposed Ordinance supports the Community Safety Element's goal to comply with current life safety standards by allowing the City to respond to future emergencies more quickly. Additionally, the proposed Ordinance supports the Commerce and Industry Element's goals to support existing commercial businesses and provide greater flexibility through temporary installations. One example of this includes temporary outdoor seating offered through the Shared Spaces program. The CEQA determination for that project was appealed to the Board of Supervisors and would have benefited from the proposed amendments.

Racial and Social Equity Analysis

Understanding the benefits, burdens, and opportunities to advance racial and social equity that proposed Administrative Code amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the Office of Racial Equity, which will require all Departments to conduct this analysis.

The proposed amendments would further racial and social equity by allowing temporary installations during a crisis like COVID-19 to proceed while a CEQA appeal is pending at the Board of Supervisors. Programs like Shared Spaces are beneficial for small immigrant and minority owned business owners by allowing them to quickly adjust their services to keep their business running and employees working. It would have also benefit SFMTA's Slow Streets program, which is designed to limit through traffic on certain residential streets and allow them to be used as a shared space for people traveling by foot and by bicycle. When the CEQA determination for this program was appealed, the entire project had to stop, preventing expansion into underserved communities that may not have as ample park or open space. The Ordinance would also support measures to enhance the general public's safety and health and other temporary projects that respond to potential future emergencies.

The Ordinance, however, does increase the barriers to filing a CEQA appeal, and this could disproportionately impact communities that are less organized and knowledgeable about City process. Raising the CEQA appeal filing requirement from one resident to 50 residents potentially poses a greater task in neighborhoods that do not have active neighborhood associations. Further, the other appeal path, requiring five Supervisors to subscribe to the notice of appeal, may also hinder those less versed in navigating San Francisco's political landscape. This is particularly true when reaching out to Supervisors outside their district; however, such issues could be mitigated if the District Supervisor advocates on the concerned resident's behalf.

Overall though, the projects that would be subject to additional appeal barriers are limited to a small subset of projects. These projects include those that are related to safety/health measures, temporary, or a reversible action and under the jurisdiction of the SFMTA and the Port. It would not impact permanent projects that are under the discretion on the Board of Supervisors, which includes the vast majority of projects that receive CEQA review by the Planning Department. Given that and the benefit that this subset of projects could have for

communities of concern in future emergencies, the overall impact of these amendments would help advance the City's racial and social equity goals.

Implementation

The Department determined that this Ordinance would have minor scheduling impacts in our current implementation procedures. The proposed changes would result in completing the Department's appeal review sooner compared to our current practice. This yields a time-savings benefit for the project sponsor.

Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

Basis for Recommendation

The Department is recommending approval of the proposed Ordinance because it allows City commissions and boards to act on public projects awaiting a final CEQA appeal determination from the Board of Supervisors. Such projects are limited to those that demonstrate they are related to safe or healthy measures meant to protect the public, or projects temporary in nature such as expanded outdoor seating in response to the COVID-19 pandemic. All other projects would still need to comply with the existing procedures which require other City commissions and boards to refrain from acting on projects until after the Board of Supervisors' hearing on the CEQA appeal. The Ordinance would impact a minor subset of projects but could have positive impact on the public's health, safety, and welfare.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 201284

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: February 25, 2021

Project Name: CEQA Appeals
Case Number: 2021-000541PCA [Board File No. 201284]
Initiated by: Mayor Breed, Supervisor Haney / Introduced November 10, 2020
Staff Contact: Veronica Flores, Legislative Affairs
 Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
 aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE TO ALLOW CERTAIN PROJECTS TO PROCEED WHILE AN APPEAL OF THE PROJECT’S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) IS PENDING BEFORE THE BOARD OF SUPERVISORS, AND MODIFYING REQUIREMENTS FOR APPEALS TO THE BOARD OF SUPERVISORS FOR CERTAIN PROJECTS UNDER CEQA.

WHEREAS, on November 10, 2020 Mayor Breed and Supervisor Haney introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 201284, which would amend the Administrative Code to allow certain projects to proceed while an appeal of the project’s determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 25, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); 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 Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

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:

The proposed Ordinance will support projects that serve the general health and safety of the public, public employees, and public property.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

COMMUNITY SAFETY ELEMENT

OBJECTIVE 1

REDUCE STRUCTURAL AND NONSTRUCTURAL HAZARDS TO LIFE SAFETY AND MINIMIZE PROPERTY DAMAGE RESULTING FROM FUTURE DISASTERS.

Policy 1.3

Assure that new construction meets current structural and life safety standards.

Policy 1.15

Preserve, consistent with life safety considerations, the architectural character of buildings and structures important to the unique visual image of San Francisco, and increase the likelihood that architecturally and historically valuable structures will survive future earthquakes.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance supports the Community Safety Element's goal to comply with current life safety standards. Additionally, the proposed Ordinance supports the Commerce and Industry Element's goals to support existing commercial businesses and provide greater flexibility through temporary installations. One example of this includes temporary outdoor seating offered through the Shared Spaces program.

Planning Code Section 101 Findings

The proposed amendments to the Administrative Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would have a positive effect on neighborhood serving retail uses interested in pursuing temporary extensions of outdoor spaces. The proposed Ordinance will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

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

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Administrative Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 25, 2021.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 25, 2021

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1 [Administrative Code - CEQA Appeals]

2

3 **Ordinance amending the Administrative Code to allow certain projects to proceed while**
4 **an appeal of the project's determination under the California Environmental Quality Act**
5 **(CEQA) is pending before the Board of Supervisors, and modifying requirements for**
6 **appeals to the Board of Supervisors for certain projects under CEQA.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

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

13

14 Section 1. Findings.

15 (a) In San Francisco, Chapter 31 of the Administrative Code implements the California
16 Environmental Quality Act, California Public Resources Code Sections 21000 et seq., and the
17 Guidelines for Implementation of the California Environmental Quality Act, Title 14, Division 6,
18 Chapter 3 of the California Code of Regulations (collectively, "CEQA").

19 (b) Administrative Code Section 31.16 authorizes and sets forth a process for
20 appealing certain CEQA decisions to the Board of Supervisors (the "Board"). Under that
21 section, once a CEQA decision is scheduled for an appeal hearing, all City boards,
22 commissions, and departments are prohibited from taking any action to carry out or further
23 consider approval of the appealed project, except in specified emergency circumstances.

24

25

1 (c) It is in the public interest that the CEQA appeal process not be used to delay or
2 obstruct projects undertaken by City departments to protect the public health, safety, or
3 property, or that involve temporary or reversible actions.

4 (d) It is also in the public interest that CEQA appeals to the Board for projects within
5 the Municipal Transportation Authority's or the Port's exclusive jurisdiction under the Charter
6 be limited in situations where the Board of Supervisors may not otherwise have any review
7 authority for the projects themselves.

8 (e) The Planning Commission, in Resolution No. _____, adopted findings
9 recommending approval of this ordinance. A copy of said Resolution is on file with the Clerk
10 of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

11
12 Section 2. Chapter 31 of the Administrative Code is hereby amended by revising
13 Section 31.16, to read as follows:

14 **SEC. 31.16. APPEAL OF CERTAIN CEQA DECISIONS.**

15 (a) **Decisions Subject to Appeal.** In accordance with the provisions set forth in this
16 Section 31.16, the following CEQA decisions may be appealed to the Board of Supervisors
17 (the "Board"): (1) certification of a final EIR by the Planning Commission; (2) adoption of a
18 negative declaration by the first decision-making body; and (3) determination by the Planning
19 Department or any other authorized City department that a project is exempt from CEQA.

20 (b) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16(c)
21 pertaining to EIRs, Section 31.16(d) pertaining to negative declarations, or Section 31.16(e)
22 pertaining to exemption determinations, the following requirements shall apply to an appeal of
23 any of the decisions listed in Section 31.16(a).

24 (1) The appellant shall submit a letter of appeal to the Clerk of the Board within
25 the time frames set forth in Sections 31.16(c), (d), or (e), as applicable. The letter of appeal

1 shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in
2 Section 31.22 of this Chapter, payable to the San Francisco Planning Department. The
3 appellant shall sign the letter of appeal, or may have an agent, file an appeal on ~~his or her~~the
4 appellant's behalf. The appellant shall submit with the appeal a copy of the CEQA decision
5 being appealed, if available, and otherwise shall submit it when available. The appellant shall
6 submit a copy of the letter of appeal and any other written materials submitted to the Clerk in
7 support of the appeal to the Environmental Review Officer at the time the appellant submits
8 the letter of appeal to the Clerk of the Board. The submission to the Environmental Review
9 Officer may be made by electronic means. An appeal shall be accepted by the Clerk with
10 notice given to the appellants that the acceptance is conditioned upon the Planning
11 Department determining that the appeal of the CEQA decision, whether rendered by the
12 Planning Department or another City commission, department, agency or official, has been
13 filed in a timely manner, and the Clerk otherwise determining that the appeal complies with
14 the requirements of this section 31.16(b)(1). The Planning Department shall make such
15 determination within three working days of receiving the Clerk's request for review. Within
16 seven working days of the filing of the appeal the Clerk shall mail notice to the appellants of
17 the acceptance or rejection of the appeal. The Clerk of the Board may reject an appeal if the
18 appellant fails to comply with this ~~§~~section 31.16(b)(1).

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

23 (3) For projects that require multiple City approvals, after the Clerk has
24 scheduled the appeal for hearing and until the CEQA decision is affirmed by the Board,;

25

1 (A) the Board may not take action to approve the project but may hold
2 hearings on the project and pass any pending approvals out of committee without a
3 recommendation for the purpose of consolidating project approvals and the CEQA appeal
4 before the full Board; and

5 (B) other City boards, commissions, departments, and officials shall not
6 carry out or consider further the approval of the project that is the subject of the CEQA
7 decision on appeal, except for the following activities:

8 _____ (i) actions that are essential to abate hazards to the public health
9 and safety, including abatement of hazards on a structure or site determined by the
10 appropriate City official, including but not limited to the Director of Building Inspection, the
11 Director of Public Works, the Director of Public Health, the Fire Marshal, or the Port Chief
12 Engineer, to be an emergency presenting an imminent hazard to the public and requiring
13 immediate action; or

14 (ii) actions that are undertaken by the San Francisco Municipal
15 Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or
16 the Recreation and Parks Department, and the appropriate commission or department head or their
17 designee has determined in writing that the action is one of the following:

18 a. a safety, health, or remedial measure necessary to protect the
19 public, public employees, or public property or to allow the existing use of public property to continue;
20 or

21 b. a temporary activity that will be removed or will cease within
22 180 days following the commencement of said activity; or

23 c. a reversible action wholly implemented and operated by a City
24 department or agency, or a City department's or agency's contractor, that either does not involve
25

1 physical construction activities or is limited to additions that can be removed or reconditioned without
2 damage to the site.

3 The appropriate department head or their designee shall provide their written
4 determination about the project's characterization as a safety, health, or remedial measure, a
5 temporary activity, or a reversible action, as described above in subsections (ii)a, (ii)b, and (ii)c,
6 respectively, to the Environmental Review Officer.

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

18 (5) Members of the public, appellant, and real parties in interest or City
19 agencies sponsoring the proposed project, may submit written materials to the Clerk of the
20 Board no later than noon, 11 days prior to the scheduled hearing. The Clerk will distribute any
21 written document submitted by noon, eight days prior to the scheduled hearing to the Board
22 through the Board's normal distribution procedures.

23 (6) The Board shall conduct its own independent review of whether the CEQA
24 decision adequately complies with the requirements of CEQA. The Board shall consider anew
25 all facts, evidence, and issues related to the adequacy, accuracy, and objectiveness of the

1 CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the
2 correctness of its conclusions.

3 (7) The Board shall act on an appeal within 30 days of the date scheduled for
4 the hearing, provided that if the full membership of the Board is not present on the last day on
5 which the appeal is set for a decision within said 30 days, the Board may postpone a decision
6 thereon until, but not later than, the full membership of the Board is present; and provided
7 further, if the Board of Supervisors does not conduct at least three regular Board meetings
8 during such 30-day period, the Board of Supervisors shall decide such appeal within 40 days
9 of the time set for the hearing thereon or at the next regularly scheduled Board meeting
10 should such deadline fall within a Board recess; and provided further that the latest date to
11 which said decision may be so postponed under this Section shall be not more than 90 days
12 from the expiration of the time frames set forth in Sections 31.16(c), (d), or (e), as applicable,
13 for filing an appeal.

14 (8) The Board may affirm or reverse any CEQA decision by a vote of a majority
15 of all members of the Board. A tie vote shall be deemed to be disapproval of the CEQA
16 decision. The Board shall act by motion. The Board shall adopt findings in support of its
17 decision, which may include adoption or incorporation of findings made by the Planning
18 Commission, Environmental Review Officer, or other City department authorized to act on the
19 CEQA decision below. If the Board reverses the CEQA decision, the Board shall adopt
20 specific findings setting forth the reasons for its decision.

21 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final
22 negative declaration, or *the* final exemption determination shall be the date upon which the
23 Planning Commission, Planning Department, Environmental Review Officer, or other
24 authorized City department, as applicable, first certified the EIR, adopted the negative
25

1 declaration, or issued the exemption determination and any actions approving the project
2 made prior to the appeal decision shall be deemed valid.

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

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

9 (12) For projects that the San Francisco Municipal Transportation Agency sponsors or
10 approves pursuant to its exclusive authority in Charter Section 8A.102(b)(1)-(9) and which are not
11 subject to review by the Board of Supervisors under Transportation Code Section 10.1, or for any
12 transit service changes approved by the San Francisco Municipal Transportation Agency that do not
13 constitute route abandonment pursuant to Charter Section 8A.108, a CEQA document or determination
14 may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the
15 Board of Supervisors subscribe to the notice of appeal. The signature on the appeal of members of the
16 Board of Supervisors shall not be deemed to be any indication of their position on the merits of the
17 appeal but rather shall indicate only that they believe there is sufficient public interest and concern in
18 the matter to warrant a hearing by the Board of Supervisors. All such appeals shall comply with all
19 other requirements for an appeal set forth in this Section 31.16, except that members of the Board of
20 Supervisors shall not be required to submit comments on an EIR or file an appeal of a preliminary
21 negative declaration to the Planning Commission as provided in Sections 31.16(c) and (d) in order to
22 subscribe to the notice of appeal of such negative declaration.

23 (13) For leases of property under the jurisdiction of the Port Commission for maritime
24 uses, which are not subject to Board of Supervisors review under Charter Section 9.118, a CEQA
25 document or determination may be appealed to the Board of Supervisors only if 50 San Francisco

1 residents or five Members of the Board of Supervisors subscribe to the notice of appeal. The signature
2 on the appeal of members of the Board of Supervisors shall not be deemed to be any indication of their
3 position on the merits of the appeal but rather shall indicate only that they believe there is sufficient
4 public interest and concern in the matter to warrant a hearing by the Board of Supervisors. All such
5 appeals shall comply with all other requirements for an appeal set forth in this Section 31.16, except
6 that members of the Board of Supervisors shall not be required to submit comments on an EIR or file
7 an appeal of a preliminary negative declaration to the Planning Commission as provided in Sections
8 31.16(c) and (d) in order to subscribe to the notice of appeal of such negative declaration.

9 * * * *

10
11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the “Note” that appears under
20 the official title of the ordinance.

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

23 By: /s/
24 KATE H. STACY
25 Deputy City Attorney

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From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Major, Erica \(BOS\)](#)
Subject: FW: Item 13 - OPPOSE CEQA Appeals Legislation
Date: Thursday, February 25, 2021 9:58:51 AM
Attachments: [02-23-21 Sierra Club -OPPOSE CEQA legislation.pdf](#)

From: Kathy Howard <kathyhoward@earthlink.net>

Sent: Wednesday, February 24, 2021 6:59 PM

To: Koppel, Joel (CPC) <joel.koppel@sfgov.org>; Moore, Kathrin (CPC) <kathrin.moore@sfgov.org>; Chan, Deland (CPC) <deland.chan@sfgov.org>; Diamond, Susan (CPC) <sue.diamond@sfgov.org>; Fung, Frank (CPC) <frank.fung@sfgov.org>; Imperial, Theresa (CPC) <theresa.imperial@sfgov.org>; Tanner, Rachael (CPC) <rachael.tanner@sfgov.org>; CPC-Commissions Secretary <commissions.secretary@sfgov.org>

Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Marstaff (BOS) <marstaff@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Item 13 - OPPOSE CEQA Appeals Legislation

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SF Group of the San Francisco Bay Chapter

February 24, 2021

San Francisco Planning Commission
49 South Van Ness, Ste 1400
San Francisco, CA 94103

Subject: OPPOSE: Item 13 - 2021-000541PCA - CEQA APPEALS [BF 201284]

Dear Commission President Koppel,

The Sierra Club is a strong supporter of CEQA. As such, we oppose this legislation. In particular:

- we do not support a project continuing once an appeal has been filed; and
- we do not support requiring 50 signatures to file a CEQA appeal.

CEQA has strengthened a wide variety of construction proposals by protecting not only the environment but also the people in and surrounding the construction. If there are problems with

the CEQA process in San Francisco, there needs to be a larger conversation to discuss modifications to it.

Respectfully,

Becky Evans

Becky Evans

Member, SF Group Executive Committee

Member, SF Bay Chapter Executive Committee

cc: Board of Supervisors



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SF Group of the San Francisco Bay Chapter
Serving San Francisco, CA

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San Francisco Planning Commission
49 South Van Ness, Ste 1400
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Respectfully,

Becky Evans

Becky Evans

Member, SF Group Executive Committee
Member, SF Bay Chapter Executive Committee

cc: Board of Supervisors

Analysis and Concerns with Proposed CEQA Legislation
Administrative Code Text Amendment 2021-000541PCA. ,¹ BOS File 201284

EXECUTIVE SUMMARY

This Ordinance will undermine the effectiveness of the California Environmental Quality Act (CEQA) in San Francisco. CEQA serves to identify the potential environmental risks associated with a project, to inform the public and their elected officials, and to provide decision-makers with that information prior to approving the decision, so that such risks can be avoided or mitigated.

Unfortunately, the proposed legislation would undermine CEQA in two ways:

- First, by allowing work to proceed on a project during an appeal. It is illegal to allow project construction to commence during the pendency of a CEQA appeal. Allowing a City department to proceed without a rigorous environmental review may lead to long-lasting environmental damage. This legislation will affect thousands of City-owned properties - our parks, streets, the Port properties, the airport and SFPUC lands - all will be put at risk. Furthermore, once this precedent has been set, it may be used to argue for extending the same practice to private projects.
- Second, this legislation raises barriers to the public's participation in environmental review. Depriving the public of their rights to a CEQA review by requiring 50 signatures is illegal. Over and above the question of legality, the signature requirement is burdensome to all San Franciscans. Underserved communities, which already face many day-to-day challenges, may be hampered by the additional difficulty of dealing with the 50-signature requirement.

One reason given for modifying the CEQA appeals process in San Francisco is that the number of appeals has been a burden to City government, both in terms of time and finances. However, over the last five years, CEQA appeals in San Francisco comprised only .5% (or ½ of 1 %) of all the categorical exemptions; this is not an onerous burden for City government. In addition, despite inquiries to the City, no actual facts have been provided that show this is a financial burden for a City budget of over \$13.7 Billion. In fact, the impact of environmentally-damaging projects can be much more costly in the long run, both in terms of remediation and, even more importantly, impacts on human and environmental health.

The legislation proponents cite a few examples of benevolent current projects that might have experienced fewer delays under the new legislation. No one can predict the kinds of projects that will be proposed in the future. Even one bad project can do severe environmental damage. In addition, some of the 'benevolent' projects have not proven to be universally positive for the residents. The best way to protect the City and its residents from environmentally-damaging projects is to maintain a consistent and rigorous CEQA process.

Over and above the specific problems with this ordinance, the legislation also adds credence to the pro-development mantra that CEQA is somehow a problem for City governance. If there are problems with the CEQA process in San Francisco, then those problems should be addressed in an open and inclusive conversation with the public and a wide variety of stakeholders.

¹ SF Planning Department, "Executive Summary - Administrative Code Text Amendment, for Planning Commission hearing, February 25, 2021."

DETAILED BACKGROUND FOR THE ABOVE STATEMENTS

The proposed legislation allows for continued actions on public projects during an appeal.

"The Way it Would Be:

Other City commissions/boards outside of the Board of Supervisors would now be able to proceed with certain projects while a CEQA appeal is pending at the Board of Supervisors. This proposed amendment only applies to public projects for which the respective commission or department head (or designee) demonstrates in writing that such projects meet one of the following criterion: [From the Planning Department's Executive Summary].²

(ii) actions that are undertaken by the San Francisco Municipal Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or the Recreation and Parks Department, and the appropriate commission or department head or their designee has determined in writing that the action is one of the following:

a. a safety, health, or remedial measure necessary to protect the public, public employees, or public property or to allow the existing use of public property to continue; or

b. a temporary activity that will be removed or will cease within 180 days following the commencement of said activity; or

c. a reversible action wholly implemented and operated by a City department or agency, or a City department's or agency's contractor, that either does not involve physical construction activities or is limited to additions that can be removed or reconditioned without damage to the site. [FILE 201284, Legislation]³

Concerns:

- It is flatly illegal to allow project construction to commence during the pendency of a CEQA appeal. One of the fundamental requirements of CEQA is that CEQA review must occur prior to project approval and construction. CEQA review is required prior to the first agency approval of a project, when the agency commits itself to a definite course of action. (Save Tara v. City of West Hollywood (2008) 45 Cal. 4th 116, 137-138). The Supreme Court stated, "the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449-450).
- Allowing City departments to be "able to proceed with certain projects while a CEQA appeal is pending" is a dangerous precedent to set for City projects. Any of the categories listed in the legislation has the potential to create serious and even long-lasting environmental damage. Letting a project go forward while under appeal and before a decision is made defeats the purpose of CEQA, which is to allow public input and to inform public officials of the consequences of their decisions.
- Once this precedent has been set, it may be used to argue for extending the same practice to private projects.

² op. cit., SF Planning Department, page 1

³ FILE 201284, Administrative Code, CEQA Appeals. page 4, 5 We have listed quotes from two sources, as the Planning Department document does not quote the exact language of the legislation.

- The language " *a safety, health, or remedial measure necessary to protect the public...etc.*" is too vague. Who decides what is 'necessary?' Based on what information? The purpose of CEQA is to give the public and the decision-makers information so that an informed decision can be made and decision-makers can be held accountable for that decision. CEQA does not leave it up to the unelected bureaucracy to decide unilaterally what is the right thing to do without a full public process.
- This legislation assumes that a City department will always do 'the right thing' by implying that if a department head (or designee) writes a report justifying a project, that that report is disinterested, factual, and complete. Unfortunately, that is not always the case. How can the public trust the City, when the city has already allowed construction activities on Cortese sites, such as 1776 Green Street?
- It is much more difficult to fight a project in the courts if the project has proceeded and funding has been spent on it. Many courts will look at a completed or even a partially completed project and feel that there is no point to ruling in favor of that appeal.
- A great deal of damage can be done in 180 days. That is one-half of a year!
- Because this statement of 180 days is followed by "OR", the project can last more than 180 days. There is no outside time limit for projects called out in the legislation.
- "*A temporary activity lasting no more than 180 days,*" or "*A reversible action . . . that does not involve physical construction activities or is limited to additions that can be easily removed or reconditioned without damage to the site.*" Because of the "or" in this statement, does that mean that an activity that lasts no more than 180 days can involve physical construction activities or additions that cannot be easily removed without damaging the site?
- How does this requirement interact with requests for extensions of the timeline for a project? If the city approves projects on a "temporary" basis, is the City able to "modify" the project further to extend for 4 years, as was done with the Ferris Wheel in Golden Gate Park? If so, the modification would fall under Administrative Code Section 31.19 (not 31.16), which does not allow appeal to the Board of Supervisors. The public would then be deprived of the right to appeal to the elected body, the Board of Supervisors, as is required under CEQA. And the Board of Supervisors would also lose the right to make a final decision on the project.
- Since the appeals under Administrative Code Section 31.19 are made to the Environmental Review Officer, the decisions on a project would circle back to the very department that made the environmental determination in the first place. It is unlikely that the ERO would nullify its own department's decisions. In other words, under this scenario, the Planning Department would be making those decisions unilaterally, and both the public and the Board of Supervisors would be left out of these decisions completely.

* * * * *

Most City Departments with jurisdiction over our City lands are covered by this legislation and would be able to proceed with projects that fulfilled the criteria listed before the appeal was decided.

"This change would only impact those public projects (undertaken by the SFMTA, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or the Recreation and Park Department) for which the respective commission or department head (or designee) demonstrates they meet the criterion to promote the general health and safety of the public or are temporary in nature." ⁴

[Planning Dept. Exec. Summary]

⁴ op. cit., SF Planning Department, page 3

Concerns:

- "Only impact those public projects?" This covers thousands of acres of our public spaces. Let us consider for a moment the public resources that this legislation would impact. Rec and Park alone manages over 4,100 acres with 220 parks, marinas, recreation centers, clubhouses, and Camp Mather in the Sierras.⁵ San Francisco has over 1,100 miles of streets under DPW, which has no public commission.⁶ The Airport is approximately 4,900 acres.⁷ The area under the Port Commission's control comprises nearly eight miles of waterfront lands, commercial real estate and maritime piers from Hyde Street on the north to India Basin in the southeast.⁸ The SFPUC has tens of thousands of acres under its control.⁹
- Some commissions and departments may take advantage of this to pursue their own agendas in the name of such measures. The burden of proof that a project does not comply with the criteria listed in the legislation will then fall on the public.
- The Recreation and Park Department has shown recently that it is not sensitive to habitat and wildlife concerns. Any actions in our parks can have long-term, irreversible environmental impacts; parks deserve full protection under CEQA.
- DPW is under investigation for irregularities by the Department Head, and there are no guarantees that this would not happen again in the future.
- In short, City Agencies have their own agendas and regrettably cannot always be trusted to make beneficial decisions about environmental impacts; if this were not the case, the public and the environment would not have needed CEQA in the first place.
- When an appeal finally reaches the BOS, work on the project will have taken place and the BOS will have the unenviable task of either shutting it down and possibly even removing work that has been done, with the attendant costs.

* * * * *

The legislation modifies the signature threshold for a limited class of public projects - SFMTA and Port of San Francisco

"Public projects sponsored or approved by the San Francisco Municipal Transportation Agency (SFMTA) or properties under leases from the Port Commission would now require 50 San Francisco residents or five Supervisors to subscribe to the notice of appeal. . . ." [Planning Department's Executive Summary].¹⁰

Concerns:

- It would violate state law to require 50 signatures for an appeal. CEQA section 221151(c) states: *"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a*

⁵ Department of Recreation and Park website

⁶ <https://www.sfchronicle.com/bayarea/heatherknight/article/SF-property-owners-maintain-streets-that-city-13991425.php>

⁷ <https://sfgov.org/realestate/real-property-owned-city-and-county-san-francisco-parcels-outside-city-and-county-boundaries>

⁸ Port of San Francisco, wikipedia. https://en.wikipedia.org/wiki/Port_of_San_Francisco

⁹ <https://sfgov.org/realestate/real-property-owned-city-and-county-san-francisco-parcels-outside-city-and-county-boundaries>

¹⁰ op. cit., SF Planning Department. page 2

project is not subject to this division, that certification, approval, or determination may be appealed to the agency’s elected decision-making body, if any.” The proposed ordinance would deny this right unless the appellant is able to obtain 50 signatures.

- Filing a CEQA appeal is not a simple process. Unless a member of the public is already familiar with the notification system, it is difficult to learn about the existence of a project, as well as the CEQA determinations. Learning about a project, learning how to file an appeal, finding an attorney to help with the appeal, writing the appeal, and getting all the documents to the City within the 30-day deadline, are daunting tasks for most members of the public. Requiring 50 signatures adds to the difficulty.
- Organizations such as labor unions or neighborhood groups will be able to meet this requirement easily. It will not prevent them from filing a CEQA appeal. In fact, it is possible to envision a group set up just for the purpose of providing multiple signatures for CEQA appeals to individuals that need them.
- However, for other communities, it will be difficult to meet this 50-person requirement. People who have not previously taken part in the CEQA process and underserved and sensitive communities may not have the resources to organize and oppose an appeal before the 30-day deadline has passed. In this same short time period, they would also have to find 50 people to sign onto it, which means convincing friends and neighbors to put their names on a legal document.
- It is certainly also possible for an SFMTA project to pose environmental risks to one or just a few individuals. A 50-signature requirement could effectively disenfranchise those residents.
- The signature requirement appears to have been introduced solely for the purpose of preventing a few individuals from filing unpopular appeals. That is a minor reason for changing the CEQA appeal process in San Francisco in such a way that it makes it more difficult for other members of the public who have serious concerns about a project to file an appeal.

* * * * *

The Appeals Metrics given in the Planning Department report are lacking information and make unsubstantiated assumptions.

"The Department pulled data on all CEQA appeals filed on between 2015 and 2020 and summarized the findings in Table 1.

Table 1: Summary of CEQA Appeals Filed from 2015-2020

	<i>Appeal Denied</i>	<i>Appeal Upheld</i>	<i>Pending</i>	<i>Withdrawn</i>
<i>Subtotal</i>	53	8	2	34
<i>Grand total</i>				97

*"Out of the 97 CEQA appeals filed from 2015-2020, only eight were upheld. This means that the Board of Supervisors denied the vast majority of appeals they heard. If the same pattern continued, there would be no major harm if other City commissions or boards act on public projects before the Board of Supervisors makes their final determination on the appeal. "*¹¹ [The Planning Department's Executive Summary

¹¹ Op. Cit., SF Planning Dept. page 3

Concerns:

- The prior table shows that eight appeals were upheld and 34 were withdrawn. Most of the appeals were withdrawn due to settlements that resolved community concerns. Thus, of the 97 appeals, 42 (almost half) were resolved in favor of the appellant in some fashion. This is an extremely high rate showing that many meritorious appeals are being filed and that the city staff is frequently abusing its discretion and issuing improper or illegal CEQA exemptions. The purpose of CEQA is to identify these risks and to inform both the public and the decision-makers before they make their decision.
- The Planning Department's table omits important data -- it neglects to include the number of categorical exemptions that the Planning Department approved in approximately the same time period. The Appeals Table below shows these figures from 2015 to 2020.¹²

Appeals Table
(Planning Department Data: October 2020)

	2015	2016	2017	2018	2019	2020*	TOTAL
Total Appeals	4	12	23	20	14	24	97
Appeals Denied	3	3	8	13	9	16	52
<i>% of Total Appeals</i>	75%	25%	35%	65%	64%	67%	54%
Appeals Upheld	0	1	4	0	2	0	7
<i>% of Total Appeals</i>	0%	8%	17%	0%	14%	0%	7%
Pending	0	0	0	1	0	6	7
<i>% of Total Appeals</i>	0%	0%	0%	5%	0%	25%	7%
Withdrawn	1	8	11	6	3	2	31
<i>% of Total Appeals</i>	25%	67%	48%	30%	21%	8%	32%
Total Exemptions		4200	4600	5000	5500	2005	21,305
<i>% change</i>			10%	9%	10%	-64%	
Appeals as % of Exemptions		0.3%	0.5%	0.4%	0.3%	1.2%	0.5%
<i>% change</i>			75%	-20%	-36%	370%	

* 2020 data updated through October only

- During this time period, the data available showed that the Planning Department granted 21,305 categorical exemptions.
- Only 97 appeals were filed. This was ½ of 1% (or only .5 percent) of the total number of exemptions given. This is hardly an overwhelming number of appeals for the BOS to handle in its weekly meetings.
- In fact, it is apparent that the large number of categorical exemptions needs to be looked at more closely if a further study is done of the CEQA process in San Francisco.

* * * * *

¹² Data source, SF Planning Department, through BOS request.

Delays in process seen in the early stages of COVID, have been addressed.

"The proposed Ordinance supports the Community Safety Element's goal to comply with current life safety standards by allowing the City to respond to future emergencies more quickly. . . "
[The Planning Department's Executive Summary]. ¹³

Concerns:

- The timeframe for appeals was delayed by the COVID virus; it took time to put a new remote system in place. But BOS hearings are now done online; this system can be reactivated quickly in the future, should we be so unfortunate as to have to go through another pandemic.
- CEQA allows for waiving certain requirements during emergencies. The CEQA determination was appealed and the appeal was rejected by the BOS on those grounds. This is how CEQA should work.

* * * * *

The Racial and Social Equity Analysis in the Planning Report does not support the requirement for 50 signatures.

"The Ordinance, however, does increase the barriers to filing a CEQA appeal, and this could disproportionately impact communities that are less organized and knowledgeable about City process. Raising the CEQA appeal filing requirement from one resident to 50 residents potentially poses a greater task in neighborhoods that do not have active neighborhood associations. Further, the other appeal path, requiring five Supervisors to subscribe to the notice of appeal, may also hinder those less versed in navigating San Francisco's political landscape. This is particularly true when reaching out to Supervisors outside their district; however, such issues could be mitigated if the District Supervisor advocates on the concerned resident's behalf. "
[The Planning Department's Executive Summary] ¹⁴

"Overall though, the projects that would be subject to additional appeal barriers are limited to a small subset of projects. " [Planning Department's Executive summary] ¹⁵

Concerns:

- We agree completely with the Planning Department that this legislation puts up barriers to underserved communities. This in itself is a reason this legislation should not be approved.
- ". . . are limited to a small subset of projects" Short of acquiring a crystal ball, the City has no idea of the number or type of projects that could be approved under this legislation in the future. Adding 'additional appeal barriers' is not acceptable for underserved communities in San Francisco

* * * * *

The General Plan Compliance section in the Planning report leaves out Policy 1.4 - environmental standards.

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan: ¹⁶ [Planning Dept General Plan Compliance Section]

¹³ op. cit., SF Planning Department, General Plan Compliance, page 4

¹⁴ Ibid. page, Executive Summary, page 4

¹⁵ Ibid.

¹⁶ Ibid., SF Planning Dept, General Plan. Compliance, page 8 (under Planning Commission Draft Resolution)

Concerns:

- The following section of the General Plan policy is completely left out of the Planning Department's analysis. [Planning Department's Draft Resolution]

POLICY 1.4

Assure that all new development meets strict environmental quality standards and recognizes human needs.

In reviewing all proposed development for probable environmental impact, careful attention should be paid to upholding high environmental quality standards. Granted that growth provides new economic and social opportunities, uncontrolled growth can also seriously aggravate environmental deterioration. Development projects, therefore, should not disrupt natural or ecological balance, degrade the visual character of natural areas, or otherwise conflict with the objectives and policies of the General Plan. ¹⁷

- Certainly, Policy 1.4 should be over-riding when the City makes decisions about how to approach environmental reviews.

* * * * *

Planning Code Section 101 Findings ¹⁸ assume future projects will not entail environmental damage.

The Planning Department Findings lists current benefits from this ordinance that would happen, giving examples of current 'beneficial' projects and stating that therefore all will be well in the future.

Concerns:

- Without knowing the specifics of the projects that will be proposed in the future, there is no way of saying that they will all have positive results.
- Not all of the projects that have been installed during COVID without environmental review have been either 100% beneficial or positive experiences for the neighborhoods. On the contrary, in many cases there have been negative results from the short-cuts that various City departments have taken under COVID
 - The Slow Streets program has had a partially negative effect on the neighborhood character of the Twin Peaks area, with increased crowding, vandalism, and a news cameraman being robbed at gunpoint.
 - The neighborhood surrounding the Great Highway has been severely impacted by the closure of the Great Highway. There has been a tremendous increase in traffic in the surrounding neighborhoods, speeding, more accidents, and loss of neighborhood parking to an influx of visitors. The problems have been so severe, that the District Supervisor has had to demand that the City look further into extensive traffic calming and crowd control measures. Many of these problems could have been avoided and solutions worked out before there were problems, if there had been a healthy environmental review process.

* * * * *

¹⁷ https://generalplan.sfplanning.org/I6_Environmental_Protection.htm#ENV_GEN_1_4

¹⁸ op. cit., SF Planning Dept. Planning Code sections findings, page 9

The financial Impact of appeals has not been justified with hard figures

Statements from Supervisor Haney's office, the sponsor of the legislation, discuss the cost to the City of CEQA appeals.¹⁹ Cost concerns were discussed in interviews with MUNI Director Jeff Tumlin in the SF Chronicle.²⁰ Various statements were quoted in that interview, including: "

" . . . each Safe Streets appeal will cost about 100 hours of work by his staff, "

" . . . each hearing at the Board of Supervisors . . . costs a combined \$10,000 in city officials' and attorneys' time. " and

" . . . each appeal is taking more time and money than it took to create the emergency programs in the first place."

Concerns:

- In an effort to get more details on these figures, a member of the public submitted Disclosure Requests to MUNI for the spreadsheets and other reports that led to the figures quoted in the interviews. The only response to three exhaustive requests for back-up data was:

" There's no detailed SFMTA spreadsheet or financial analysis. It's simply an estimate of staff hours x fully burdened hourly rate for staff time. " ²¹

- In other words, the claims made in the SF Chronicle were guesses as to the costs involved. If the City does its research properly to arrive at a categorical exemption, then it should have already done most of the work necessary to defend a categorical exemption. The incremental cost to defend the City's decision should not be that large.

Environmental review is too important to be held hostage to minor, undocumented claims, especially in a city with a budget of over \$13.7 billion dollars. Furthermore, the impact of environmentally-damaging projects can be much more costly in the long run, both in terms of remediation and, even more importantly, impacts on human and environmental health.

¹⁹ "Common Sense CEQA Appeal Procedures for Public Projects," Office of Supervisor Haney, December 2020. "Prevent Costly....Delays." page 2.

²⁰ SF Chronicle, 9-13-20, Heather Knight.

²¹ Emails from SFMTA in response to Disclosure Request. Please request copies.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Nagasundaram, Sekhar \(BOS\)](#); [Major, Erica \(BOS\)](#)
Subject: FW: Subject: OPPOSE CEQA Legislation - BOS File 201284
Date: Thursday, May 13, 2021 4:47:41 PM

From: Marlayne Morgan <marlayne16@gmail.com>

Sent: Thursday, May 13, 2021 3:19 PM

To: ChanStaff (BOS) <chanstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Subject: OPPOSE CEQA Legislation - BOS File 201284

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May 13, 2021

Dear President Melgar and Supervisors:

Please oppose the amendments to the CEQA appeals process in San Francisco. Allowing a city department to proceed without a rigorous environmental review may lead to long lasting environmental damage. This legislation will affect thousands of acres of San Francisco City owned properties - our parks, streets, the Port properties, the airport, and SFPUC lands - all will be put at risk. Once this precedent has been set, it may be used to argue for extending the same practice to private projects.

This legislation also raises barriers to the public's participation in environmental review by requiring 50 signatures for certain types of public projects. Forcing residents to find 50 neighbors to sign a CEQA appeal is burdensome to all San Franciscans. Underserved communities already face many day-to-day challenges; this will add to their difficulty in protecting their neighborhoods through an accessible CEQA process.

Over the last five years, CEQA appeals in San Francisco comprised only .5% (or ½ of 1%) of all the categorical exemptions. This is not an onerous burden for City government. In addition, no figures have been provided that show this is a financial burden for a City budget of billions of dollars. In fact, the impact of environmentally-damaging projects can be much more costly in the long run, both in terms of remediation and, even more importantly, impacts on human and environmental health.

No one can predict the kinds of projects that will be proposed in the future. Even one bad project can do severe environmental damage. The best way to protect the City and its residents from environmentally damaging projects is to maintain a consistent and rigorous CEQA process accessible to all San Franciscans. To do this, the Board of Supervisors should reject this legislation.

Best regards,

/s/

Marlayne Morgan, President
Cathedral Hill Neighborhood Association

BOARD of SUPERVISORS



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

November 18, 2020

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On November 10, 2020, Mayor Breed introduced the following legislation:

File No. 201284

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

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 and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: Rich Hillis, Director
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Legislative Affairs
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
Aaron Starr, Manager of Legislative Affairs
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Major Environmental Analysis

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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MEMORANDUM

TO: Jeffrey Tumlin, Executive Director, Municipal Transportation Agency
Dr. Grant Colfax, Director, Department of Public Health
Alaric Degrafinried, Interim Director, Public Works
Patrick O'Riordan, Director, Department of Building Inspection
Jeanine Nicholson, Chief, Fire Department
Elaine Forbes, Executive Director, Port Department
Amy Quesada, Commission Secretary, Port Commission
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Phil Ginsburg, General Manager, Recreation and Parks Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: November 18, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on November 10, 2020:

File No. 201284

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

If you have 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 or by email at: erica.major@sfgov.org.

cc: Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Joel Ramos, Municipal Transportation Agency
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
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David Steinberg, Public Works
Jeremy Spitz, Public Works
Lena Liu, Public Works
Patty Lee, Department of Building Inspection
John Murray, Department of Building Inspection
Theresa Ludwig, Fire Department
Boris Delepine, Port Department
Juliet Ellis, Public Utilities Commission
Donna Hood, Public Utilities Commission
John Scarpulla, Public Utilities Commission
Sarah Madland, Recreation and Parks Department
Margaret McArthur, Recreation and Parks Department