

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

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

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

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

12 Section 1. The San Francisco Administrative Code is hereby amended by amending
13 Section 31.08, to read as follows:

14 SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.

15 (a) CEQA provides that certain kinds of projects are statutorily exempt from
16 CEQA and that certain classes of projects generally do not have a significant effect on the
17 environment and therefore are categorically exempt from CEQA, in accordance with the letter
18 and the intent expressed in the classes of categorical exemptions specified in CEQA, and that a
19 common sense exemption applies under the general rule that only projects with the potential for
20 causing a significant-effect on the environment are subject to CEQA, as set forth in CEQA Guidelines
21 Section 15061(b)(3) (referred to in this Chapter 31 as the "general rule exclusion"). For categorical
22 exemptions, each public agency must list the specific activities that fall within each such class,
23 subject to the qualification that these lists must be consistent with both the letter and the intent
24 of the classes set forth in CEQA. ~~Except as provided in this section 31.08, projects that are~~
25 ~~categorically exempt are not subject to the requirements of this Chapter 31.~~

1 (b) The Environmental Review Officer shall maintain the required list of types
2 of projects ~~that~~ ~~which~~ are categorically exempt, and such list shall be kept posted in the offices
3 of the Planning Department. Such list shall be kept up to date in accordance with any
4 changes in CEQA and any changes in the status of local projects. The initial list and any
5 additions, deletions and modifications thereto shall be adopted as administrative regulations
6 by resolution of the Planning Commission after public hearing, according to the procedure set
7 forth in Section 31.04(c) of this Chapter.

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

13 (d) The Environmental Review Officer may adopt necessary forms, checklists
14 and processing guidelines to aid the Planning Department and other departments in
15 determining that a project may be statutorily exempt, categorically exempt or subject to a general
16 rule exclusion, in accordance with the letter and the intent expressed in ~~the classes of categorical~~
17 ~~exemptions specified in~~ CEQA and with the administrative regulations adopted by the Planning
18 Commission.

19 (e) The Environmental Review Officer shall advise other departments of the
20 statutory exemptions, categorical exemptions and general rule exclusions. The Environmental
21 Review Officer may delegate the determination whether a project is subject to a general rule
22 exclusion, statutory exemption or categorical exemption from CEQA to other departments,
23 provided that other departments shall consult with the Environmental Review Officer regarding
24 the application of the general rule exclusion, statutory exemption and categorical exemption, and
25 provided further that the Environmental Review Officer shall be responsible for all

1 determinations so delegated to other departments. When the Planning Department or other City
2 department determines that a project is statutorily exempt from CEQA, categorically exempt from
3 CEQA, or covered by the general rule exclusion (hereinafter referred to in this Chapter 31 as the
4 "exemption determination"), the issuance of the exemption determination shall be considered an
5 exemption determination by the Environmental Review Officer.

6 (f) ~~When the Environmental Review Officer, or any other department to which the~~
7 ~~Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above, or such~~
8 ~~other department has determined that a project is excluded or categorically exempt from CEQA, The~~
9 ~~Environmental Review Officer shall issue a Certificate of Determination of Exemption from~~
10 ~~Environmental Review and provide written notice thereof to the public shall be provided for all such~~
11 ~~exemption~~ determinations involving the following types of projects: (1) any historical resources
12 as defined in CEQA, including without limitation, any buildings and sites listed individually or
13 located within districts listed (i) in Planning Code Articles 10 or 11, (ii) in City-recognized
14 historical surveys, (iii) on the California Register, or (iv) on the National Register of Historic
15 Places; (2) any Class 31 categorical exemption; (3) any demolition, as defined in Planning Code
16 Section 1005(f), of an existing structure; ~~or~~, (4) any Class 32 categorical exemption; or, (5) any
17 alterations to a building fifty (50) years or older. ~~Written determinations of categorical exemptions All~~
18 ~~exemption determinations~~ for these types of projects shall be in writing and shall be posted in the
19 offices of the Planning Department and on the Planning Department's website, and shall be
20 mailed to any individuals or organizations that have previously requested such notice in
21 writing.

22 (g) Except for those Certificates of Determination of Exemption required pursuant to
23 Section 31.08(f) above, when ~~When~~ the Environmental Review Officer, or any other
24 department to which the Environmental Review Officer has delegated responsibility pursuant
25 to Section 31.08(e) above, has made an exemption determination, the Environmental Review

1 Officer may issue a Certificate of Determination of Exemption from Environmental Review
2 which shall be posted in the offices of the Planning Department and on the Planning
3 Department website, and shall be mailed to the applicant, the board(s), commission(s) or
4 department(s) that will carry out or approve the project, and shall be mailed to any individuals
5 or organizations that have previously requested such notice in writing.

6 (h) In addition to the notice requirements set forth in subsections (f) and (g) above,
7 when the Planning Department or other City department provides any public notice of a proposed
8 approval action related to a project that is the subject of an exemption determination and advises the
9 public of a scheduled public hearing before the Planning Commission, the Zoning Administrator or
10 other City board or commission, as applicable, the notice shall (1) inform the public of the exemption
11 determination, including the nature of the exemption determination, and (2) provide information as to
12 how the public may obtain a copy of the exemption determination and (3) inform the public that any
13 person who wishes to object to the exemption determination may raise such objection before the
14 Planning Commission, the Zoning Administrator, or other City board or commission, as applicable.

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17 (h)(i) The Planning Commission, the Historic Preservation Commission, the Zoning
18 Administrator or other City board or commission, as applicable, may shall be required to take
19 testimony on any ~~categories~~ exemption determination at the public hearing, if any, in connection
20 with the Planning Commission's consideration of on the project that is the subject of the ~~categories~~
21 exemption determination. Testimony on the exemption determination, if any is requested, shall be
22 allowed prior to and separate from the consideration of the project.

23
24 (j) Following the issuance of the final discretionary permit or other final approval of
25 the project that is the subject of an exemption determination, the Environmental Review Officer may

1 issue a Notice of Exemption. Any such Notice of Exemption which shall be posted as required by
2 CEQA, shall be posted in the offices of the Planning Department and on the Planning Department
3 website, shall be mailed to the applicant, the board(s), commission(s) or department(s) that will carry
4 out or approve the project, and shall be mailed to any individuals or organizations that have previously
5 requested such notice in writing. A Notice of Exemption shall not be filed until after project approval
6 and after any CEQA appeals that may have been filed following such project approval have
7 been resolved and the project approval becomes effective. ~~the final discretionary project~~
8 ~~approval and the appeal period for the exemption determination has expired or any appeals~~
9 ~~have has been finally resolved and the exemption determination becomes final.~~

11 Section 2. The San Francisco Administrative Code is hereby amended by deleting
12 Section 31.16 in its entirety and adding new Section 31.16, to read as follows:

13 SEC. 31.16. APPEAL OF ENVIRONMENTAL DETERMINATIONS.

14 (a) In accordance with the provisions set forth in this Section 31.16, the following
15 CEQA determinations by any City commission, department, agency, or official may be appealed to the
16 Board of Supervisors (the "Board"): (1) Certification of a Final EIR by the Planning Commission; (2)
17 Adoption of a negative declaration or mitigated negative declaration (collectively referred to as a
18 "negative declaration") by the first decision-making body; (3) Determination that a project is
19 categorically exempt from CEQA, (4) Determination that a project is statutorily exempt from CEQA
20 and (5) Determination that a general rule exclusion applies to a project, as set forth in CEQA
21 Guidelines Section 15061(b)(3).

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

1 (1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set
2 forth in Subsections 31.16(c), (d) or (e), as applicable. The letter of appeal shall state the specific
3 grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section
4 31.22, payable to the San Francisco Planning Department. Appellants shall sign the letter of appeal,
5 or may have an authorized agent , ~~authorized in writing~~, file an appeal on their behalf. Appellants
6 shall submit with the appeal a copy of the CEQA determination or CEQA decision that is being
7 appealed. Appellants shall submit a copy of the letter of appeal and any written materials in support of
8 the appeal to the Environmental Review Officer at the time appellants submit a letter of appeal to the
9 Clerk of the Board. The Clerk of the Board may reject an appeal if Appellants fail to comply with this
10 subsection 31.16(b)(1).

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

14 (3) While the appeal is pending, the City shall not consider the approval of, or issue any
15 permits for, a project that is the subject of the appeal, provided that activities may be undertaken ~~that~~
16 only to the extent that they are essential to abate hazards to the public health and safety, including
17 abatement of hazards on a structure or site determined by the appropriate City official, including but
18 not limited to the Director of Building Inspection, the Director of Public Works, the Director of Public
19 Health, the Fire Marshal or the Port Chief Engineer, to be an emergency presenting an imminent
20 hazard to the public and requiring immediate action. In the event the Historic Preservation
21 Commission is in the process of considering a nomination of the project, or an area that includes the
22 project, as a landmark or historic district, the nomination and designation may proceed during the
23 pendency of the appeal to the Board of Supervisors.

24 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full Board,
25 without regard to any rule or policy of the Board requiring a 30-day review period. The hearing shall

1 be held no less than twenty (20) and no more than thirty (30) days following the date upon which the
2 Clerk determines that the appeal is valid. If more than one person submits a letter of appeal on the
3 same decision or determination, the Board President may consolidate such appeals so that they are
4 heard simultaneously, and up to three (3) individual appellants shall have his or her own time for
5 testimony as if such appeals were not being heard simultaneously. Where the appeals are consolidated,
6 the Board shall provide appellants the same total time for testimony at the public hearing as provided
7 to the Applicant or Project Sponsor. The Board may coordinate its hearing on the CEQA appeal with
8 other hearings on the project, provided that the CEQA appeal is heard prior to and separate from the
9 other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and to
10 all organizations and individuals who have previously requested such notice in writing, no less than ten
11 (10) days prior to the date the appeal is scheduled to be heard by the Board. The Planning Department
12 shall provide to the Clerk of the Board the list of individuals and organizations that have commented on
13 the decision or determination in a timely manner, no less than fifteen (15) days prior to the scheduled
14 hearing.

15 (5) Appellants shall submit written materials pertaining to the appeal to the Board and the
16 Environmental Review Officer no later than noon, fifteen (15) days prior to the scheduled hearing. The
17 Planning Department shall submit a written response to the Board no later than noon, ten (10) days
18 prior to the scheduled hearing. Additional written materials submitted no later than noon seven (7)
19 days prior to the scheduled hearing by members of the public, real parties in interest or City agencies
20 sponsoring the proposed project will be distributed to the Supervisors prior to the hearing as a part of
21 their hearing materials. Any written documents submitted after these deadlines and up to the close of
22 the hearing will be part of the record but will not be able to be distributed to the Supervisors prior to
23 the hearing as part of their hearing materials.

24 (6) The Board shall conduct its own independent review of the CEQA document including
25 the correctness of the findings contained in the determination. The Board shall consider anew all facts,

1 evidence and/or issues related to the adequacy, accuracy and objectiveness of the environmental
2 review and the CEQA determination and decision regarding such environmental review, including but
3 not limited to the sufficiency of the CEQA determination as an informational document and the
4 correctness of its conclusions. The Board shall consider the record before the Planning Commission,
5 the Environmental Review Officer or other City department, and shall also consider any new facts,
6 evidence and/or issues presented to it prior to the close of the appeal hearing.

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

15 (8) The Board may affirm or reverse any CEQA decision or determination by a vote of a
16 majority of all members of the Board. If the Board affirms the CEQA decision or
17 determination, ~~negative declaration or EIR, the negative declaration or EIR decision or~~
18 determination, shall be final and may not be appealed again. A tie vote shall be deemed to be
19 disapproval of the CEQA decision or determination; provided, however, that in the event of a tie vote
20 the Board may continue its decision on the appeal to the next meeting at which the full Board will be
21 present to consider the appeal. The Board shall act by motion. The Board shall adopt findings in
22 support of its decision, and may adopt or reject findings made by the Planning Commission,
23 Environmental Review Officer or other City commission, agency, department or official authorized to
24 act on the CEQA decision or determination below. If the Board reverses the CEQA decision or
25 determination, the Board shall adopt specific findings setting forth the reasons for its decision to

1 reverse the decision or determination, which may include adoption and/or incorporation of the
2 Appellant's written materials or proposed findings in whole or part.

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

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

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

1 exemption determination, negative declaration or EIR shall be the date upon which the Board acts to
2 approve the exemption determination, negative declaration or EIR.

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

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

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

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

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

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

23 (1) Appeal of a negative declaration shall be by submission of a letter of appeal to the Clerk
24 of the Board within twenty (20) days after the adoption of the negative declaration. The grounds for
25 appeal of a negative declaration shall be limited to raising issues related to the adequacy and

1 completeness of the Initial Study, the environmental analysis, the correctness of the finding that the
2 project could not have a significant effect on the environment, and the adequacy and feasibility of any
3 proposed mitigation measures.

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

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

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

24 (1) Any person or entity may appeal an exemption determination within twenty (20)
25 days of the date that decision approving a discretionary permit for which notice is given

1 pursuant to Section 31.08(h) of the issuance of a public hearing to consider a discretionary
2 permit for the project. If no notice is provided, any person or entity may appeal an project's
3 exemption determination no later than twenty (20) days of after the final discretionary permit to be
4 issued for the project, provided that there is an appeal process for such discretionary permit and
5 provided further that such appeal shall be filed prior to the conclusion of any appeal period for such
6 discretionary permit, even if such the appeal period for the discretionary permit is less than twenty
7 (20) days. In no event shall such twenty (20) days commence to run before the date of an
8 approval action following the conclusion of any public hearing before the Planning
9 Commission, Zoning Administrator or other City commission or board for which the Planning
10 Department or other City department provided a public notice of an intent to rely on the
11 exemption determination for the project approval action and advised the public of an
12 opportunity for a public hearing on the proposed project. For purposes of a determination made
13 with respect to an ordinance, the full Board shall consider the Planning Department's recommended
14 exemption determination at a public hearing as the Board's CEQA determination, and shall affirm or
15 reject the CEQA determination prior to and separate from, as part of its consideration of the
16 ordinance and no separate appeal shall be required.

17 (2) The Board shall affirm an exemption determination only if it finds, as applicable, that
18 the project conforms to the requirements set forth in CEQA for the exemption determination. The
19 Board may provide additional analysis of the determination, provided that the Environmental
20 Review Officer recommends such additional analysis and provided further that CEQA does
21 not require additional public notice, an additional public hearing or further public review for
22 such additional analysis. The Board may refer the determination to the Planning Department for
23 revisions or reconsideration, or may overrule the determination and request preparation of specified
24 environmental documentation. If the Board finds that the project does not conform to the requirements
25 set forth in CEQA for the exemption determination, the Board shall make specific findings to overturn

1 the exemption determination and remand the CEQA determination to the Planning Department for
2 environmental review consistent with the Board's findings, including the preparation of a negative
3 declaration or an EIR, as appropriate.

4 (3) In the event the Board reverses the exemption determination of any City department,
5 agency or official other than the Planning Department, the exemption determination shall be remanded
6 to the Planning Department, and not the City department, agency or official that made the original
7 exemption determination, for environmental review in accordance with the Board's directions.

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

10 By: _____
11 KATE HERRMANN STACY
12 Deputy City Attorney