

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 under the California**  
5 **Environmental Quality Act, to clarify procedures and to provide public notice of**  
6 **environmental documents.**

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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 SEC. 31.01. - AUTHORITY AND MANDATE.

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

20 (b) Any amendments to CEQA adopted subsequent to the effective date of this Chapter  
21 31 shall not invalidate any provision of this Chapter 31. Any amendments to CEQA that may  
22 be inconsistent with this Chapter 31 shall govern until such time as this Chapter 31 may be  
23 amended to remove such inconsistency. When state law is amended or the CEQA guidelines are  
24 modified in a manner that creates an inconsistency with Chapter 31, the City Attorney shall notify the  
25 Board of Supervisors within 30 days. Notwithstanding any other provision of law, the Clerk of the

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

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

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

11 SEC. 31.02. - POLICIES AND OBJECTIVES.

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

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

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

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

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

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

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

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

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

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

7 SEC. 31.04. - RESPONSIBILITY.

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

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

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

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

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

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

8 SEC. 31.10. INITIAL EVALUATION OF PROJECTS.

9 (a) Upon receiving an environmental evaluation application for a project, or upon  
10 referral of a project by the board, commission or department that is to carry out or approve the  
11 project, the Environmental Review Officer shall determine whether such project is exempt  
12 from environmental review. If not exempt, the Environmental Review Officer shall complete an  
13 initial study to determine the level of environmental analysis required. In the event it is clear at  
14 the outset that an environmental impact report is required, the Environmental Review Officer  
15 may, with the consent of the applicant, make an immediate determination and dispense with  
16 the initial study. Each environmental evaluation application or referral shall include a project  
17 description using as its base the environmental information form set forth as Appendix H of  
18 the CEQA Guidelines, which form shall be supplemented to require additional data and  
19 information applicable to a project's effects, including consistency with the environmental  
20 issues included in the Eight Priority Policies set forth in Section 101.1 of the Planning Code  
21 and incorporated into the General Plan, shadow impacts, including the analysis set forth in  
22 Planning Code Section 295, and such other data and information specific to the urban  
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1 environment of San Francisco or to the specific project. Each environmental evaluation  
2 application or referral shall be certified as true and correct by the applicant or referring board,  
3 commission or department. Each initial study shall include an identification of the  
4 environmental effects of a project using as its base the environmental checklist form set forth  
5 in Appendix G of the CEQA Guidelines and addressing each of the questions from the  
6 checklist form that are relevant to a project's environmental effects; provided that the checklist  
7 form shall be supplemented to address additional environmental effects, including consistency  
8 with the environmental issues included in the Eight Priority Policies set forth in Section 101.1  
9 of the Planning Code and incorporated into the General Plan, shadow impacts, including the  
10 analysis set forth in Planning Code Section 295, and such other environmental effects specific  
11 to the urban environment of San Francisco or to the specific project.  
12

13 (b) The initial study shall provide data and analysis regarding the potential for the  
14 project to have a significant effect on the environment. The basic criteria for determination of  
15 significant effect shall be consistent with the provisions set forth in CEQA.  
16

17 (c) The applicant or the board, commission or department that is to carry out or  
18 approve the project shall submit to the Environmental Review Officer such data and  
19 information as may be necessary for the initial study. If such data and information are not  
20 submitted, the Environmental Review Officer may suspend work on the initial evaluation.  
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22 (d) During preparation of the initial study, the Environmental Review Officer may  
23 consult with any person having knowledge or interest concerning the project. In cases in  
24 which the project is to be carried out or approved by more than one government agency and  
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1 the City is the lead agency, the Environmental Review Officer shall solicit input from all other  
2 government agencies that are to carry out or approve the project.

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

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

10  
11 ~~————— (f) ——— Based on the analysis and conclusions in the initial study, the Environmental~~  
12 ~~Review Officer shall determine, based on the requirements of CEQA, whether the project could have a~~  
13 ~~significant effect on the environment, and whether a negative declaration or environmental impact~~  
14 ~~report shall be prepared.~~

15 Section 5. The San Francisco Administrative Code is hereby amended by amending Section  
16 31.11, to read as follows:

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

19 (a) When the Environmental Review Officer determines that a ~~any~~ negative declaration is  
20 the appropriate level of environmental review, it shall be prepared by or at the direction of the  
21 Environmental Review Officer. The negative declaration shall describe the project proposed,  
22 include the location of the property, preferably shown on a map, and the name of the project  
23 proponent, state the proposed finding that the project could not have a significant effect on the  
24 environment, and have attached to it a copy of the initial study documenting reasons to  
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1 support that finding. The negative declaration shall also indicate mitigation measures, if any,  
2 included in the project to avoid potentially significant effects.

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

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

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

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

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

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

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



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

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

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

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

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

7 SEC. 31.13. - DRAFT ENVIRONMENTAL IMPACT REPORTS.

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

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

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

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

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

20 SEC. 31.14. - CONSULTATIONS AND COMMENTS.

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

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

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

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

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

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

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

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

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

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

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

23 SEC. 31.15. - FINAL ENVIRONMENTAL IMPACT REPORTS.

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

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

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

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

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

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

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

1           SEC. 31.16. APPEAL OF ENVIRONMENTAL DOCUMENTS.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 By: \_\_\_\_\_  
24 Kate Herrmann Stacy  
25 Deputy City Attorney