



# SAN FRANCISCO PLANNING DEPARTMENT

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March 18, 2013

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

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Re: Transmittal of Planning Case Number 2012.1329U  
BF No. 12-1019: California Environmental Quality Act Procedures**

**Recommendation: that the Commission hereby recommends that the Board adopt the proposed Ordinance with the following two modifications: 1) Increase the window of appeal for all CEQA documents to 30 days and 2) Provide increased clarity for the process where the Board acts as the CEQA decision-making body.**

Dear Supervisor Wiener and Ms. Calvillo,

On March 14, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 12-1019v3.

At the hearing, the Commission voted 5-2 to recommend that the Board of Supervisors approve the proposed Ordinance with the two modifications listed above. The attached materials provide more detail about the Commission's action.

Supervisor Wiener, if you would like to incorporate the recommendations of the Commission please instruct the City Attorney to make the modifications.

Sincerely,

A handwritten signature in black ink, appearing to read "AM-Rodgers", with a long horizontal line extending to the right.

AnMarie Rodgers  
Manager of Legislative Affairs

Cc:  
City Attorneys Jon Giver and Elaine Warren

Attachment (one copy of the following):  
Planning Commission Resolution No. 18826  
Executive Summary





# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18826 Administrative Code Text Change PLANNING COMMISSION HEARING DATE: MARCH 14, 2013

*Project Name:* California Environmental Quality Act Procedures  
*Case Number:* 2012.1329U [Board File No. 12-1019]  
*Initiated by:* Supervisor Wiener  
*Introduced:* October 16, 2012  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* Sarah Jones, Acting Environmental Review Officer  
sarah.jones@sfgov.org, 415-575-9034

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

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Fax:  
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE, CHAPTER 31, TO REFLECT REVISIONS IN THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND TO UPDATE AND CLARIFY CERTAIN PROCEDURES PROVIDED FOR IN CHAPTER 31, INCLUDING WITHOUT LIMITATION: CODIFYING PROCEDURES FOR APPEALS OF EXEMPTIONS AND NEGATIVE DECLARATIONS; PROVIDING FOR THE BOARD TO MAKE THE FINAL CEQA DECISION ON PROJECTS REQUIRING BOARD LEGISLATIVE ACTION, NEGATING THE NEED TO FILE FORMAL CEQA APPEALS; REVISING NOTICING PROCEDURES FOR ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS FOR PLAN AREA PROJECTS EXCEEDING 20 ACRES; EXPANDING NOTICING REQUIREMENTS FOR CERTAIN EXEMPT PROJECTS; AND CLARIFYING EXISTING NOTICING REQUIREMENTS FOR EXEMPT PROJECTS AND THAT THE PROPOSED ORDINANCE BE AMENDED WITH TWO MODIFICATIONS: 1) INCREASE THE WINDOW OF APPEAL FOR ALL CEQA DOCUMENTS TO 30 DAYS AND 2) PROVIDE INCREASED CLARITY FOR THE PROCESS WHERE THE BOARD ACTS AS THE CEQA DECISION-MAKING BODY THROUGH ESTABLISHMENT OF TIME FRAMES FOR SUBMITTAL OF ISSUES AND DEPARTMENT RESPONSES.

### PREAMBLE

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

Whereas, on November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted a duly noticed public hearing at a regularly scheduled

meeting to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code.

Whereas, the Historic Preservation Commission's recommendations are recorded in Resolution Number 694; and

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

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

Whereas, on March 13, 2013, the PC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

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

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

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

Whereas, the PC has reviewed the proposed Ordinance; and **MOVED, that the Commission hereby recommends that the Board adopted the proposed Ordinance with the following two modifications:**

- 1) **Increase the window of appeal for all CEQA documents to 30 days; and**
- 2) **Provide increased clarity for the process where the Board acts as the CEQA decision-making body.**

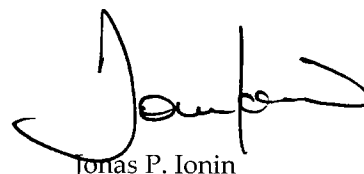
## **FINDINGS**

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

1. In 2006, the Planning Commission considered a similar Ordinance. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. In 2010, the Planning Commission and the Historic Preservation Commission considered another Ordinance that incorporated the changes recommended by the Planning Commission in 2006 and would also establish procedures for certain CEQA appeals. In 2010, both the PC, with Resolution 18116, and the HPC, with Motion 649, recommended approval of the proposed Ordinance with modifications.

3. The proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification.
4. The establishment of the proposed rules, will improve for appellants resulting in more valid appeals and reducing the number of attempted appeals that are found to be invalid.
5. The proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA.
6. The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delays that can have unintended consequences for project viability.
7. The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine validity and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.
8. The codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on March 14, 2013.



Jonas P. Ionin  
Acting Commission Secretary

AYES: Fong, Antonini, Borden, Hillis, and Sugaya

NAYS: Moore, Wu

ABSENT:

ADOPTED: March 14, 2013





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary

### Administrative Code Text Change

PLANNING COMMISSION HEARING DATE: MARCH 14, 2013

HISTORIC PRESERVATION COMMISSION HEARING DATE: MARCH 20, 2013

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* California Environmental Quality Act Procedures  
*Case Number:* 2012.1329U [Board File No. 12-1019, Version 3]  
*Initiated by:* Supervisor Wiener  
*Introduced:* October 16, 2012, substituted on 1/29/13  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Reviewed by:* Sarah Jones, Acting Environmental Review Officer  
sarah.b.jones@sfgov.org, 415-575-9034

*Recommendation:* Approval with modifications.

## ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Wiener would amend Administrative Code Chapter 31 provisions to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations.

### Background:

On November 7, 2012, the San Francisco Historic Preservation Commission (hereinafter "Historic Preservation Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 12-1019. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code. The Historic Preservation Commission recommendation to Supervisor Wiener was that the Commission was: "seeking additional time or if no additional time is provided, (the Commission was) recommending that the Board of Supervisors adopt a proposed Ordinance with modifications that amends Administrative Code Chapter 31 provisions to reflect revisions in the California Environmental Quality Act and to update and clarify certain procedures provided for in Chapter 31, including appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amending the provisions for public notice of such decisions and determinations." Specifically, the Historic Preservation Commission's recommended modifications were as follows:

- 1) The Historic Preservation Commission agrees with the two previous recommendations from the Department:

- a. Provide the adequate opportunity for all parties to provide written materials to the Board.
  - b. All Sections- Increase consistency concerning "Date of Decision".
- 2) The Historic Preservation Commission believes that the appeal window should generally be 30 days for all CEQA documents. The HPC believes that once the "date of decision" on the first approval has started the countdown on the ability to appeal, the proposed 20 days may not provide sufficient time for appellants to prepare their appeal.
  - 3) Amend the definitions of Historic Resources that would require notice. The proposed Ordinance would amend Section 31.08(e)(2) to require that notice be given for certain types of historical resources. The HPC believes that this section should be revised to clarify that all historic resources found in any adopted survey, regardless of the age of that survey, would require notice.
  - 4) Lastly, the Historic Preservation Commission directs staff to ensure that notices posted on the website must be provided in a clear and obvious manner.

On November 29, 2012, the San Francisco Planning Commission (hereinafter "Planning Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) to make advisory recommendations to Supervisor Wiener concerning the proposed Ordinance which would amend the Administrative Code. The Planning Commission recommendation to Supervisor Wiener was as follows:

- 1) engage the public;
- 2) consider this Commission's recommendations, including
  - a. define the "first discretionary action",
  - b. consider extending appeal period, and
  - c. default to a longer appeal period for actions that are not noticed; and then
- 3) bring the proposal back to the Planning Commission so that a revised Ordinance which takes public and Commission input into account may be reviewed.

On December 5, 2012, the Historic Preservation Commission conducted a second hearing to consider the proposed Ordinance. At the hearing, the Commission voted 6-0 (1 commissioner absent) in favor of the following recommendation to Supervisor Wiener:

- 1) Support the Planning Commission resolution (summarized above);
- 2) Conduct outreach to the public, particularly the historic preservation community; and
- 3) Bring the proposal back the Historic Preservation Commission so that a revised Ordinance may be reviewed.

Since the Commission hearings, the Supervisor has conducted three large public outreach meetings with the participation of Planning Staff. Groups represented at these meetings include:

January 9<sup>th</sup>, 2013

- Coalition for San Francisco Neighborhoods
- Cole Valley Improvement Association
- Sierra Club
- D-5 Action



- SF Green Party/Our City
- ENUF
- Arc-Ecology
- San Francisco Tomorrow
- SaveMuni.com
- Community Economic Development Clinic – UC Hastings

January 24<sup>th</sup>, 2013 Morning Meeting

- Community Economic Development Clinic – UC Hastings
- San Francisco Beautiful
- Sierra Club
- Wild Equity Institute
- SF Preservation Consortium

January 24<sup>th</sup>, 2013 Afternoon Meeting

- Russian Hill Neighbors
- Coalition for San Francisco Neighborhoods
- SF Ocean Edge
- Planning Association for the Richmond
- Pacific Heights Residents Association
- Haight Ashbury Neighborhood Association
- Sierra Club
- Parkmerced Action Coalition
- Glen Park Association
- Friends of Noe Valley
- Marina Community Association
- San Francisco Tomorrow
- SF Preservation Consortium
- Community Economic Development Clinic – UC Hastings

March 1<sup>st</sup>, 2013 Meeting

- Coalition for San Francisco Neighborhoods
- Planning Association for the Richmond
- Parkmerced Action Coalition
- Glen Park Association
- San Francisco Tomorrow
- SF Preservation Consortium
- Community Economic Development Clinic – UC Hastings
- San Francisco Green Party
- Aquatic Park Neighbors
- SF Beautiful

For a complete list of attendees for the March 1, 2013 meeting please see Exhibit H

In addition to these large public meetings, private meetings with a variety of stakeholders meetings including affordable housing developers, neighborhood organizations and others throughout the month of January.

As a result of this outreach, Supervisor Wiener introduced Version 3 on January 29<sup>th</sup>, 2013. The Supervisor has provided time for the public to review Version 3 and he held an open meeting for the public on March 1, prior to the commission hearings.

#### **The Way It Is Now Summary:**

In San Francisco, the Board of Supervisors considers appeals because the California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body *if* a non-elected decision-making body approves the CEQA document. Since the Planning Commission and Planning Department are not elected bodies, CEQA provides that CEQA documents approved by the Commission and Department are appealable to the Board. CEQA Guidelines clarify that such appeal is allowed after the project is approved. Case law has clarified that where the elected decision-making body approves the CEQA document itself, no appeal is required.

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

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

#### **The Way It Would Be Summary:**

The proposed Ordinance would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors and update and revise other provisions in Chapter 31.

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<sup>1</sup> The current procedures for appeal of an EIR are set forth in Administrative Code Section 31.16.

<sup>2</sup> The full title of the memorandum is "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations/Determining Whether Appeals Are Ripe for Review and Timely Filed". It is posted on the Clerk's web page.

The Ordinance would amend Section 31.08, which now establishes procedures for categorical exemptions, so that the procedures would apply to all exemptions (including statutory exemptions and community plan exemptions) and not just categorical exemptions. It would also expand noticing provisions related to exemptions, none of which are required by CEQA. The Ordinance would delete Section 31.16 in its entirety, which now provides a process for EIR appeals only, and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and all exemptions. This section would establish that when the Board of Supervisors (Board) must approve a project, it is the CEQA decision making body and there would not be a separate appeal process. Instead, the public could raise CEQA issues through the normal Board hearing process and the Board would need to affirm the CEQA documents approved by Planning as part of its approval of the project. In addition, the legislation would clarify the public notice requirements for neg decs and draft EIRs in Sections 31.12-31-15, and remove the current Chapter 31 requirement that Planning provide mailed notices of draft CEQA EIRs and neg decs to properties within and near project areas that are citywide in scope or that affect 20 acres or more.

In addition to the summary above, the Department published an informational memorandum that described the differences between Version Two of the proposed Ordinance and the current version, Version Three. This comparison is available upon request and on the Department website at: <http://commissions.sfplanning.org/cpcpackets/2012.1329Uv4.pdf>.

## **ISSUES AND CONSIDERATIONS**

CEQA seeks to achieve five crucial objectives prior to project approval: 1) disclose environmental impacts; 2) prevent or reduce environmental damage; 3) disclose agency decisions; 4) promote interagency coordination; and 5) encourage public participation. While state law establishes the framework for CEQA, it provides for lead agencies to establish their own local procedures for carrying out the CEQA process within their jurisdictions. Currently, our local law establishes rules for appeal of EIRs but not negative declarations or exemptions, to our elected Board of Supervisors. This lack of rules for appeals of other CEQA documents harms both potential appellants and project sponsors.

Where the Administrative Code establishes a process for appeals, for EIR documents, the appeal process is administered both more quickly and more effectively. From 2010-2013, EIRs typically have been brought to public hearing for appeals within 48 days of certification by the Planning Commission. This compares to the lengthy average of 208 days that transpired between issuance of an exemption and its appeal before the Board. While this delay is inefficient and costly for the project sponsor, the process appears to not benefit the appellant either – in this time period, all of the filed EIR appeals where procedures are codified were found to be timely appeals whereas, 23% (nearly 1/4) of all exemption appeals were determined to be not timely.

<i>types of CEQA documents*<sup>3</sup></i>	<i>no. of appeals filed 2010-2013</i>	<i>No. of appeals that went to hearing</i>	<i>average length of time btw CEQA document issuance and CEQA appeal</i>	<i>no. of untimely appeals</i>	<i>% of appeals that were not ripe/timely</i>
<i>Exemptions</i>	30	20	208	7	23%
<i>Neg Dec</i>	1	1	82	0	0%
<i>EIR</i>	19	17	48	0	0%
<b>TOTALS</b>	<b>50</b>	<b>38</b>	<b>143</b>	<b>7</b>	<b>14%</b>

*The current process seems to disadvantage both appellants and project sponsors. Where rules are established for appeals, the hearing happens significantly faster. Where rules are not established, about a quarter of appellants are frustrated to find their appeal does not qualify for hearing.*

The proposed Ordinance seeks to correct both issues by codifying rules and by increasing public notification.

After two HPC hearings, one hearing at the PC and several informal meetings and discussions, much of the proposal has been discussed at length. It seems all parties can agree that increased notice and added clarity would improve our local CEQA appeal process. Attachment C summarizes the breadth of the topics discussed and responds to each generalized comment with an assessment as to whether this topic has been addressed in the current proposed Ordinance.

The current version of the proposal addressed a key concern from last fall by increasing certainty and defining all “first approval actions” that would open the window for appeals. See Exhibit F for a flow chart of the proposed appeal process for Exemptions. At this time, the Department believes the following issues are the most debated:

1. 20-Day window of appeal;
2. Board as the CEQA decision-making body; and
3. For area plans involving rezoning of 20 acres or more, removal of a local mailed notice requirement that is largely duplicative of the mailed notice otherwise already required for rezoning actions.

Looking at these issues in more detail:

- **20-Day Appeal Window.** The current proposal seeks to create a uniform appeal window for all CEQA documents by applying the existing 20-day window for appeal of EIRs to Neg Decs and

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<sup>3</sup> There also were 4 appeals filed for items for which CEQA does not provide an appeal process: letters in which Planning advised a City department that an action was not a project as defined by CEQA (2), an EIR addendum (1) and a NEPA document (1).

Exemptions. While a consistent time frame is laudable, there has been concern that circumstances of an EIR (more notification, longer process) are different from that of the other documents, and therefore the 20 days adequate for an EIR might not be adequate for these other documents, and therefore, the 20 days adequate for an EIR might not be adequate for these other documents that have less ongoing notice and process.. Further, there are current discrepancies between other related appeal deadlines; the deadline for appeal of a building permit is 15-days and the appeal deadline of a conditional use authorization is 30-days. In addition to the length of the appeal window, there is some public concern around the question of the first approval action rather than the final approval action as the “trigger” for the appeal period.

- **Appeals where the Board is the CEQA decision-making body.** As described earlier, CEQA provides a right of appeal only where a non-elected decision-making body, such as the Planning Commission, renders the final decision about the adequacy of a CEQA document. (CEQA Section 21151(c)). Proposed Section 31.16(b) clarifies that when the Board is required to approve a project before it can be implemented, the Board must affirm the CEQA decision rendered by the Department or Planning Commission and no separate appeal process is required. The public would have the ability to raise CEQA questions before the Board through the Board’s existing public hearing process, which usually is carried out at a committee, but can involve a hearing before the full Board. To understand how this would function, below are three questions are frequently raised about the process and answers.
  - First, when is the Board established as the CEQA decision-making body?
  - Answer: The potential CEQA projects for which the Board would be the decision-making body include all projects that require the Board to approve an ordinance or resolution, including establishing a SUD or approving a zoning change, appropriating funds, or entering into contracts where Board approval of the contract is required.
  - Second, how are the CEQA-related concerns raised before the Board?
  - Answer: The simplest answer to this question is that the proposed ordinance leaves this decision to the Board as the Board sets out its procedures in the Board’s Rules of Order. The proposal states, “any person may raise objections to the CEQA decision at a public hearing on the project held by the Board or a committee of the Board”. To try to anticipate how the Board may resolve CEQA concerns that arise at the Board, consider these two scenarios.
    - 1) **Public comment at a Board committee:** Under the Board of Supervisors Rules of Order 3.3 and 4.22, the Board generally considers public comment regarding particular legislative matters only at Board committee meetings, not at meetings of the full Board. After a Board committee considers a matter—and after the committee hears public comment on that matter—the committee generally forwards a recommendation for approval or disapproval on the underlying action to the full Board. The full Board then considers the whole item, including any CEQA affirmation in the legislation. In these circumstances, the Board does not invite additional public comment on the matter after it has been heard in committee. The Board’s committee hearing process would satisfy the hearing requirement in the proposal here. The Board also would retain the ability to affirm or deny the CEQA decision by a separate resolution prior to considering the project. Of course, denial of the CEQA decision would prevent further approvals.
    - 2) **Public comment before the Board seated as a Committee of the Whole.** Instead of, or in addition to, allowing public comment in committee, the Board could allow public comment on CEQA-related concerns at meetings of the full Board. Either

the Board could allow public comment on a case-by-case basis by deciding to sit as a Committee of the Whole for particular matters, or the Board could amend its Rules of Order to provide a process for public comment at the full Board on such matters. As noted above, the proposal leaves the Board discretion as to how it would handle these matters.

- Third, how would related procedures for this process work?
- Answer: As there is no specific CEQA appeal for these matters, the underlying resolutions and/or ordinances would proceed under standard Board procedures. While this may benefit the concerned public in that CEQA issues may be raised without the need to file an appeal, it does create uncertainty for the Department and the project sponsor. For instance, the proposed Ordinance does not establish a schedule for when materials shall be submitted to the Board. The underlying Board actions would proceed through the Board's normal procedures, without a separate opportunity to assess and respond to CEQA-related issues as provided through the regular appeal procedures. The Department does have concerns as to its ability to respond to any CEQA issues raised.
- **Removal of individual mailed notice for rezonings affecting areas of 20 acres or more.** Under the current proposal City-sponsored projects that both involve rezonings, area plans, or other General Plan amendments *and* that are either citywide in scope or where the total area of land that is part of the project (excluding public streets) is twenty (20) acres or more would not need to provide mailed notice of availability of an EIR and an intent to adopt a Neg Dec. These mailed notices currently required by the Administrative Code may be deleted as the notices are largely duplicative with the mailed noticed required in Planning Code Section 306 et. Seq. which also requires mail notice to owners within 300 feet of all exterior boundaries of an area to be rezoned and to those owners within the potential rezoning. Other forms of notice, such as newspaper advertisements, mailing to those requesting such notice, and mailing to responsible and trustee agencies, would continue. The current version of the proposal increases the requirement that the land be at least 20 acres over the previous proposal for just land over 5 acres. The intent of this provision was to address area plans and citywide plans, and not individual projects on large sites (which might exceed 5 acres in size); most of the Department's area plans are, in fact, over 20 acres.

## POTENTIAL COMMISSION ACTION

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

## RECOMMENDATION

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

### Recommended Modifications

While the Department recommends support of the proposed Ordinance, there are two modifications that may improve the proposal. The proposed modifications include:

- Increase the window of appeal for all CEQA documents to 30 days and
- Provide increased clarity for the process where the Board acts as the CEQA decision-making body.

## BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with two additional modifications. The Planning Commission considered similar proposed Ordinances in 2006 and 2010. In both instances, the Planning Commission recommended approval with modifications via Resolution Numbers 17335 and 18116. While the Historic Preservation Commission (HPC) was not in existence to review the 2006 proposal, in 2010 the HPC passed Motion 649 approving the proposed Ordinance with modifications. (See prior PC and HPC Resolutions and Motions in Exhibit C) Both the 2006 and 2010 CEQA Reform Ordinances were heard and amended by the Land Use Committee of the Board, however, neither was forwarded to the Full Board. Although the Administrative Code has not been substantively amended concerning CEQA appeals the intervening years, there have been changes and clarifications to the City's CEQA appeals process, including the City Attorney memorandum from February 22, 2008 and the 2007 Amended CEQA Guidelines. The current proposal incorporates many of the earlier changes recommended by the Commissions.

Further, when the Commissions both considered earlier versions of the current proposal in Fall of 2012. This fall the Commissions requested the following:

- 1) define the "first discretionary action";
- 2) consider extending appeal period;
- 3) default to a longer appeal period for actions that are not noticed;
- 4) conduct further outreach; and
- 5) revise the proposal based upon that outreach.

With regard to each of these requests, the Department finds the following:

- 1) **define the "first discretionary action"**. The current proposal defines each potential "approval action<sup>4</sup>" that would open the window for CEQA appeal.

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<sup>4</sup> Section 31.01(h) establishes that "Approval Action" means:

- (1) For a private project that is determined to be exempt from CEQA:
  - (A) The first approval of the project by the Planning Commission or the Zoning Administrator following a noticed public hearing, including, a discretionary review hearing; or
  - (B) The first approval of the project by another City commission, board or official following a noticed public hearing granting an entitlement; or
  - (C) If a Building Permit or other Entitlement of Use for the Whole of the Project is issued in reliance on the exemption without being preceded by a publicly notice approval hearing, the issuance of the Building Permit or other Entitlement of Use for the Whole of the Project.
- (2) For public projects determined to be exempt from CEQA:
  - (A) The first approval of the project in reliance on the exemption by a City decision-making body at a noticed public hearing, or
  - (B) If approved without a noticed public hearing, the decision by a City department or official in reliance on the exemption that commits the City to a definite course of action in regard to a project intended to be carried out by any person.
- (3) For all projects determined to require a Neg Dec, the approval of the project by the first City decision-making body that adopts the Neg Dec or mitigated Neg Dec as provided in Section 31.11(h).

- 1) **consider extending appeal period.** The current proposal does not extend the appeal period. As proposed, there would be a 20-day window for all CEQA document types.
- 2) **default to a longer appeal period for actions that are not noticed.** For City projects that do not have an associated public hearing, the “clock” to end the appeal period *does not begin until* a notification of the exemption is posted on the Department’s website as provided in Section 31.08(g). This is a change from the previous version which asked for but did not require posting on the website—in these cases the appeal period was 30-days regardless of whether the notice occurred. Under the revised proposal, if there is no notice of these City projects then there is no appeal window cutoff. Further, under the current proposal private projects subject to notification under *Planning Code* Sections 311 and 312 will also require notice about the underlying CEQA determination and about how to appeal both the building permit and the CEQA determination. The cumulative effect of the current proposal would be that the vast majority of projects that are currently the subject of CEQA appeals (those which are either City projects or those that are required to provide 311/312 notification) will now have a requirement to notice the CEQA determination and related appeal process.
- 3) **conduct further outreach.** Pages three through four of this report detail the additional outreach that has been conducted since this Commission request in Fall 2012.
- 4) **revise the proposal based upon that outreach.** While not all of the public or the Commission’s requests have been accommodated, the vast majority of these requests have been responded to with clarifications made in either the second version (11/20/12) or third and current version (1/29/13). See Exhibit C for a summary listing of requests and responses.

The proposed modifications include:

- **Increase the window of appeal for all CEQA documents to 30 days.** While the current 20-day appeal window for EIRs appears to be effective and functional for all parties, there is typically a much greater public process for EIRs than for other CEQA document types, and therefore public knowledge of the project and the process might be more extensive than for a project receiving an exemption. That said, in keeping with the overall goal of the legislation to increase consistency and clarity in the appeal process, the Department recommends extending the period of appeal for EIRs so that under the proposal all CEQA document types would have the same 30-day window of appeal.
- **Provide increased clarity for the process around CEQA concerns where the Board acts as the CEQA decision-making body.** As noted earlier in this report under “Issues and Considerations” there is some uncertainty about how the Board will chose to respond to CEQA issues that are raised where the Board is the decision-making body. For this reason, the Department recommends codifying procedures for submitting CEQA-related concerns when the Board is the decision-making body that are consistent with the Clerk’s rules for preparing the packet for Committee hearings. This would ensure that Board Committee Members, City agencies, and the public would be aware of potential CEQA issues prior to the hearing Committee hearing. This would ensure that City agencies come to the hearing prepared to discuss the potential CEQA concerns and could enable the Board to schedule the matter before the Full Board if it desires.

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(4) For all projects determined to require an EIR, the approval of the project by the first City decision-making body following the certification of completion of the EIR by the Planning Commission as provided in Section 31.15(d).



The Department finds that the proposal with the two recommended modifications would greatly improve local administration of CEQA by establishing a defined appeal process and increasing public notification. Through the establishment of the proposed rules (and with our two recommended modifications), the Department believes that the process will improve for appellants resulting in more timely appeals and reducing the number of attempted appeals that are found to be untimely. Similarly, the proposal is anticipated to reduce the amount of time between the issuance of a CEQA Exemption and appeal of that Exemption, thereby increasing certainty for project sponsors and allowing a project to proceed logically and in a manner consistent with the intent of CEQA

The proposed ordinance would also allow (at the project sponsor's risk) necessary approvals to proceed concurrently with consideration of a CEQA appeal, provided they do not allow any physical actions to occur. This provision would avoid delayGs that can have unintended consequences for project viability.

The costs for the City will be reduced in two ways: first each filed appeal will no longer need City Attorney review to determine timelines and second, the establishment of procedures for submittal of materials to the Clerk will increase clarity of the appellant's arguments allowing the City to respond specifically to those issues of interest to the appellant.

In summary, the Planning Department believes that the codification of noticing requirements and time frames for all aspects of the CEQA appeals will make the process more transparent, comprehensive, and implementable for appellants, project sponsors and staff.

## **ENVIRONMENTAL REVIEW**

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

## **PUBLIC COMMENT**

Since the fall hearings, the Planning Department received one letter, which is attached.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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