

1 [Administrative Code - California Environmental Quality Act Procedures]

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

13 NOTE: Additions are *single-underline italics Times New Roman*;  
 14 deletions are *strike-through italics Times New Roman*.  
 15 Board amendment additions are double-underlined;  
 16 Board amendment deletions are ~~strike-through normal~~.

16

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

18 Section 1. The Planning Department has determined that the actions contemplated in  
 19 this ordinance comply with the California Environmental Quality Act (California Public  
 20 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
 21 Board of Supervisors in File No. 121019 and is incorporated herein by reference.

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

25 **SEC. 31.04. RESPONSIBILITY AND DEFINITIONS.**

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

6 (b) The administrative actions required by CEQA with respect to the preparation of  
7 environmental documents, giving of notice and other activities, as specified in this Chapter,  
8 shall be performed by the San Francisco Planning Department as provided herein, acting for  
9 the City. When CEQA requires posting of a notice by the county clerk of the county in which the  
10 project will be located, the Planning Department shall transmit the required notice to the applicable  
11 county clerk, and instruct the county clerk on the length of time the notice shall be posted and when the  
12 posting shall commence.

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

16 (d) For proposed projects that the Environmental Review Officer of the Planning  
17 Department has determined may have an impact on historic or cultural resources, the Historic  
18 Preservation Commission may review and comment on such environmental documents and  
19 determinations in a manner consistent with CEQA and this Chapter 31.

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

9 (h) Definitions.

10 “Approval Action” means:

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

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

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

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

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

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

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

4                                    (3) For all projects determined to require the preparation of a negative declaration,  
5 the approval of the project by the first City decision-making body that adopts the negative declaration  
6 or mitigated negative declaration as provided for in Section 31.11(h) of this Chapter.

7                                    (4) For all projects determined to require the preparation of an environmental  
8 impact report, the approval of the project by the first City decision-making body following the  
9 certification of completion of the environmental impact report by the Planning Commission as provided  
10 for in Section 31.15(d) of this Chapter.

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

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

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

22                                    **SEC. 31.05. OFFICE OF ENVIRONMENTAL REVIEW.**

23                                    (a) An Office of Environmental Review is hereby created in the Planning  
24 Department, which shall be responsible, acting through the Director of Planning, for the  
25

1 administration of those actions ~~of~~in this Chapter 31 assigned to the Planning Department by Section  
2 31.04.

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

7 (c) In addition to the powers and duties conferred below, the Environmental Review  
8 Officer may, upon delegation by the Planning Commission as to specific projects, take  
9 testimony at supplemental public hearings on draft environmental impact reports, in addition  
10 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section  
11 31.14 of this Chapter, and shall report to, and make all such testimony available to, the  
12 Planning Commission at a public hearing.

13 (d) The Environmental Review Officer shall also take such measures, within his or  
14 her powers, as may be necessary to assure compliance with this Chapter 31 by persons  
15 outside the Planning Department, and shall periodically review the effectiveness and  
16 workability of the provisions of this Chapter 31 and recommend any refinements or changes  
17 that he or she may deem appropriate for improvement of such provisions.

18 (e) All projects ~~that are not excluded or categorically exempt from CEQA~~ shall be  
19 referred to the Environmental Review Officer except those exempt projects covered by a delegation  
20 agreement with the Environmental Review Officer as provided for in Section 31.08(d) of this Chapter.

21 All other officials, boards, commissions, departments, bureaus and offices of the City shall  
22 cooperate with the Environmental Review Officer in the exercise of his/her responsibilities,  
23 and shall supply necessary information, consultations and comments.

24 (f) The Environmental Review Officer shall be responsible for assuring that the City  
25 is carrying out its responsibilities set forth in CEQA. In addition, when the City is to carry out or

1 approve a project and some other public agency is the "lead agency," as defined by CEQA,  
2 and where projects are to be carried out or approved by the State and Federal governments,  
3 the Environmental Review Officer shall provide consultation and comments for the City to the  
4 other government agencies when appropriate.

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

10 (h) Adoption and/or revision of administrative regulations to implement CEQA shall  
11 be by resolution of the Planning Commission after a public hearing. The Environmental  
12 Review Officer may adopt necessary forms, checklists and processing guidelines to  
13 implement CEQA and this Chapter 31 without a public hearing.

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

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

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

23 **SEC. 31.06. COVERAGE OF STATE LAW.**

24 CEQA provides that certain kinds of projects may be subject to CEQA. Some of these  
25 projects may be excluded or  ~~categorically~~ exempt from CEQA. If not excluded or  ~~categorically~~

1 exempt, CEQA provides a process whereby an initial study is completed, then a determination  
2 is made as to whether a negative declaration, mitigated negative declaration, or an  
3 environmental impact report ("EIR") should be prepared. In accordance with the requirements  
4 of CEQA and as specified herein, the Planning Commission and/or the Environmental Review  
5 Officer shall determine when CEQA applies to a project, when the project is excluded or  
6 exempt, or when a negative declaration, mitigated negative declaration, or environmental impact  
7 report is required.

8 **SEC. 31.08. CATEGORICAL EXEMPTIONS.**

9 (a) CEQA provides that certain ~~classes projects are exempt from CEQA because: the~~  
10 project is exempt by statute ("statutory exemption"); the project is in a class of projects that generally  
11 do not have a significant effect on the environment and therefore are categorically exempt from  
12 CEQA ("categorical exemption"); CEQA streamlining procedures allow reliance on a prior  
13 environmental document prepared on a zoning or planning level decision, for example, as provided in  
14 community plan areas and for specified urban infill projects ("community plan exemption"); or the  
15 activity is covered under the general rule that CEQA applies only to projects that have the potential for  
16 causing a significant effect on the environment, thus, where it can be seen with certainty that there is no  
17 possibility that the activity in question may have a significant effect on the environment, the activity is  
18 not subject to CEQA ("general rule exclusion"). Unless otherwise specifically stated, reference in this  
19 Chapter 31 to "exemptions" or "exempt from CEQA" or an "exemption determination" shall  
20 collectively refer to statutory exemptions, categorical exemptions, community plan exemptions and  
21 general rule exclusions.

22 (b) For categorical exemptions:

23 (1) Each public agency must list the specific activities that fall within each  
24 such class, subject to the qualification that these lists must be consistent with both the letter  
25

1 and the intent of the classes set forth in CEQA. ~~Except as provided in this section 31.08, projects~~  
2 ~~that are categorically exempt are not subject to the requirements of this Chapter 31.~~

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

10 (e)(3) CEQA provides for public agencies to request additions, deletions and  
11 modifications to the classes of projects listed as categorically exempt in CEQA. The Planning  
12 Commission shall make any such requests, after a public hearing thereon held according to  
13 the procedure specified in Section 31.04(e)(e) of this Chapter for adoption of administrative  
14 regulations.

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

20 (e)(d) The Environmental Review Officer shall advise other departments of ~~the~~  
21 ~~categorical~~ exemptions. The Environmental Review Officer may delegate the determination  
22 whether a project is ~~categorically~~ exempt from CEQA to other departments, provided that other  
23 departments shall consult with the Environmental Review Officer regarding the application of  
24 ~~the categorical~~ exemptions, and provided further that the Environmental Review Officer shall  
25 be responsible for all determinations so delegated to other departments. When the Planning



1 Department or other City department determines that a project is exempt from CEQA, the issuance of  
2 the exemption determination shall be considered an exemption determination by the Planning  
3 Department.

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

8 (1) May issue a Certificate of Exemption from Environmental Review by posting a  
9 copy in the offices of the Planning Department and on the Planning Department website, and by  
10 mailing copies to the applicant, the board(s), commission(s) or department(s) that will carry out or  
11 approve the project, and to any individuals or organizations who previously have requested such notice  
12 in writing.

13 (2) Shall provide notice to the public ~~shall be provided~~ for all such  
14 determinations involving the following types of projects: ~~(1)(A)~~ any historical resources, ~~as~~  
15 defined ~~in CEQA, including without limitation, as~~ any buildings and sites listed individually or  
16 located within districts (i) listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-recognized~~  
17 ~~historical surveys, (iii) on an historic resource survey that has been adopted or officially recognized by~~  
18 the City, on the California Register or determined eligible for listing on the California Register by the  
19 State Historical Resources Commission, including, without limitation, any location, ~~or (iv)~~ on the  
20 National Register of Historic Places, or (ii) a resource that the Environmental Review Officer  
21 determines, based on substantial evidence, to be a historical resource under Public Resources Code  
22 Section 5024.1; ~~(2)(B)~~ any Class 31 categorical exemption; ~~(3)(C)~~ any demolition as defined in  
23 Planning Code Section 317 of an existing structure; or, ~~(4)(D)~~ any Class 32 categorical  
24 exemption. ~~Written determinations of categorical exemptions~~ All exemption determinations for these  
25 types of projects shall be in writing, posted in the offices of the Planning Department and on the

1 Planning Department's website, and ~~shall be~~ mailed to any individuals or organizations that have  
2 previously requested such notice in writing.

3 ~~(g)(f)~~ Informing the public of the Approval Action for a project as part of public hearing  
4 notice.

5 (1) When the Planning Department or other City department provides notice of a  
6 public hearing on the Approval Action for a project that it has determined to be exempt from CEQA,  
7 the notice shall:

8 (A) Inform the public of the exemption determination and how the public may  
9 obtain a copy of the exemption determination;

10 (B) Inform the public of its appeal rights to the Board of Supervisors with  
11 respect to the CEQA exemption determination following the Approval Action and within the time frame  
12 specified in Section 31.16 of this Chapter; and

13 (C) Inform the public that under CEQA, in a later court challenge a litigant  
14 may be limited to raising only those issues previously raised at a hearing on the project or in written  
15 correspondence delivered to the Planning Department or other City department at, or prior to, such  
16 hearing, or as part of the appeal hearing process, if any, on the CEQA determination.

17 (2) Additionally, when the Planning Department provides a notice under Planning  
18 Code Section 311 or Section 312 of the opportunity to request a discretionary review hearing before  
19 the Planning Commission on a Building Permit application, the notice shall:

20 (A) Contain the information required by this Section 31.08(f) in addition to  
21 any notice requirements in the Planning Code;

22 (B) Inform the notification group that if a discretionary review hearing is  
23 requested before the Planning Commission, the Approval Action for the project under this Chapter 31  
24 will occur upon the Planning Commission's approval of the Building Permit application, if such  
25 approval is granted; and

1                    (C) Inform the notification group that if a discretionary review hearing is not  
2 requested, the Approval Action for the project will occur upon the issuance of a Building Permit by the  
3 Department of Building Inspection, if such permit is granted. The notice also shall advise the  
4 notification group of how to request information about the issuance of the Building Permit.

5                    (g) A City board, commission, department or official that grants the Approval Action for a  
6 project of the type defined in Section 31.16(f)(2)(B) of this Chapter, which Approval Action is taken  
7 without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, shall thereafter  
8 arrange for the Planning Department to post on the Planning Department's website a written decision  
9 or written notice of the Approval Action for the project that informs the public of the first date of  
10 posting on the website and advises the public that the exemption determination may be appealed to the  
11 Board of Supervisors as provided in Section 31.16(f)(2)(B) of this Chapter within 30 days after the first  
12 date of posting of the notice.~~When the Environmental Review Officer, or any other department to which~~  
13 ~~the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above, has~~  
14 ~~determined that a project is excluded or categorically exempt from CEQA, the Environmental Review~~  
15 ~~Officer may issue a Certificate of Exemption from Environmental Review by posting a copy thereof in~~  
16 ~~the offices of the Planning Department, and by mailing copies thereof to the applicant, the board(s),~~  
17 ~~commission(s) or department(s) that will carry out or approve the project, and to any individuals or~~  
18 ~~organizations who have previously requested such notice in writing.~~

19                    (h) After the City has decided to carry out or approve the project and the project is  
20 considered finally approved as provided for in Section 31.16(c)(11), in accordance with CEQA  
21 procedures, the Environmental Review Officer may file a notice of exemption with the county clerk in  
22 the county or counties in which the project is to be located. The Planning Commission may take  
23 testimony on any categorical exemption at the public hearing, if any, in connection with the Planning  
24 Commission's consideration of the project that is the subject of the categorical exemption.

1            (i) The Environmental Review Officer has the authority to re-evaluate the application of an  
2 exemption to a project in the event that a project changes after the Approval Action for the project. If  
3 the Planning Commission or Planning Department renders a new CEQA exemption determination for a  
4 project after the Approval Action, and the City takes a new Approval Action for the project in reliance  
5 on the new CEQA determination, the new CEQA determination may be appealed in accordance with  
6 the provisions of Section 31.16 of this Chapter, as to those issues associated with the project changes  
7 since the original exemption determination.

8            **SEC. 31.09. DETERMINATION OF NEED FOR EVALUATION.**

9            Upon receiving an environmental evaluation application for a project; upon referral of a  
10 project by the board, commission or department that is to carry out or approve the project; or through  
11 such other process for rendering an exemption determination as the Environmental Review Officer  
12 shall authorize, the Environmental Review Officer shall determine whether such project is exempt from  
13 environmental review. For all ~~All~~ projects that are not ~~statutorily excluded or categorically~~ exempt  
14 from CEQA ~~shall be referred to the Environmental Review Officer~~, prior to the City's decision as to  
15 whether to carry out or approve the project, ~~the Environmental Review Officer shall conduct for an~~  
16 initial study to establish whether a negative declaration or an environmental impact report is  
17 required. ~~In the event it is clear at the outset that an environmental impact report is required, the~~  
18 Environmental Review Officer may make an immediate determination and dispense with the initial  
19 study.

20            **SEC. 31.10. INITIAL EVALUATION OF PROJECTS.**

21            (a) ~~Upon receiving an environmental evaluation application for a project, or upon referral~~  
22 of a project by the board, commission or department that is to carry out or approve the project, the  
23 Environmental Review Officer shall determine whether such project is exempt from environmental  
24 review. ~~If not exempt, the Environmental Review Officer shall complete an initial study to determine the~~  
25 level of environmental analysis required. ~~In the event it is clear at the outset that an environmental~~

1 ~~impact report is required, the Environmental Review Officer may, with the consent of the applicant,~~  
2 ~~make an immediate determination and dispense with the initial study.~~ Each environmental  
3 evaluation application or referral shall include a project description using as its base the  
4 environmental information form set forth as Appendix H of the CEQA Guidelines, which form  
5 shall be supplemented to require additional data and information applicable to a project's  
6 effects, including consistency with the environmental issues included in the Eight Priority  
7 Policies set forth in Section 101.1 of the Planning Code and incorporated into the General  
8 Plan; shadow impacts, including the analysis set forth in Planning Code Section 295; and  
9 such other data and information specific to the urban environment of San Francisco or to the  
10 specific project. Each environmental evaluation application or referral shall be certified as true  
11 and correct by the applicant or referring board, commission or department. Each initial study  
12 shall include an identification of the environmental effects of a project using as its base the  
13 environmental checklist form set forth in Appendix G of the CEQA Guidelines and addressing  
14 each of the questions from the checklist form that are relevant to a project's environmental  
15 effects; provided that the checklist form shall be supplemented to address additional  
16 environmental effects, including consistency with the environmental issues included in the  
17 Eight Priority Policies set forth in Section 101.1 of the Planning Code and incorporated into  
18 the General Plan, shadow impacts, ~~including the analysis set forth in Planning Code Section 295,~~  
19 and such other environmental effects specific to the urban environment of San Francisco or to  
20 the specific project.

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

24 (c) The applicant or the board, commission or department that is to carry out or  
25 approve the project shall submit to the Environmental Review Officer such data and

1 information as may be necessary for the initial study. If such data and information are not  
2 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

3 (d) During preparation of the initial study, the Environmental Review Officer may  
4 consult with any person having knowledge or interest concerning the project. In cases in  
5 which the project is to be carried out or approved by more than one government agency and  
6 the City is the lead agency, the Environmental Review Officer shall solicit input from all other  
7 government agencies that are to carry out or approve the project.

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

11 (f) Based on the analysis and conclusions in the initial study, the Environmental  
12 Review Officer shall:

13 (1) Prepare a negative declaration if there is no substantial evidence, in light of the  
14 whole record before the Planning Department, that the project may have a significant effect on the  
15 environment.

16 (2) Prepare a mitigated negative declaration if the initial study identified potentially  
17 significant effects, but (A) revisions in the project plans or proposals made by or agreed to by the  
18 applicant before a proposed mitigated negative declaration and initial study are released for public  
19 review would avoid the effects or mitigate the effects to a point where clearly no significant effects  
20 would occur, and (B) there is no substantial evidence, in light of the whole record before the Planning  
21 Department, that the project as revised may have a significant effect on the environment.

22 (3) Prepare an environmental impact report if the Planning Department determines  
23 based on substantial evidence in the record that the project may have a significant effect on the  
24 environment. In other words, if the Planning Department is presented with a fair argument that a  
25 project may have a significant effect on the environment, the Planning Department shall prepare an

1 environmental impact report even though it may also be presented with other substantial evidence that  
2 the project will not have a significant effect.

3 ~~determine, based on the requirements of CEQA, whether there is a "fair argument" that the~~  
4 ~~project could have a significant effect on the environment, and whether a negative declaration or~~  
5 ~~environmental impact report shall be prepared.~~

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

10 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**  
11 **DECLARATIONS.**

12 (a) When the Environmental Review Officer determines that a ~~any~~ negative declaration  
13 or a mitigated negative declaration is the appropriate level of environmental review required by  
14 CEQA, such determination ~~shall~~ be prepared by or at the direction of the Environmental  
15 Review Officer. Unless otherwise specifically stated, reference in this Chapter 31 to "negative  
16 declaration" shall collectively refer to a negative declaration and a mitigated negative declaration.  
17 The negative declaration shall include the information required by CEQA and in any event shall  
18 describe the project proposed, include the location of the property, preferably shown on a  
19 map, and the name of the project proponent, state the proposed finding that the project could  
20 not have a significant effect on the environment, and have attached to it a copy of the initial  
21 study documenting reasons to support that finding. The negative declaration shall also  
22 indicate mitigation measures, if any, included in the project to avoid potentially significant  
23 effects.

24 (b) The Environmental Review Officer shall first prepare a negative declaration on a  
25 preliminary basis, and shall post a copy of the proposed negative declaration in the offices of

1 the Planning Department and on the Planning Department website. and mail notice thereof to the  
2 applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.

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

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

8 (2) ~~by publication~~ Publication in a newspaper of general circulation in the City.

9 (3) ~~by posting~~ Posting in the offices of the Planning Department and on the  
10 subject site.

11 (4) ~~by mail~~ Mail to the owners of all real property within the area that is the  
12 subject of the negative declaration and within 300 feet of all exterior boundaries of such area,  
13 and by mail to all organizations and individuals who have previously requested such notice in  
14 writing, sufficiently prior to adoption of the negative declaration to allow the public and  
15 agencies a review period of not less than ~~twenty (20)~~ days, or ~~thirty (30)~~ days if a 30-day  
16 circulation period is required by CEQA. In the case of City-sponsored projects that involve rezonings,  
17 Area Plans or General Plan amendments and are either citywide in scope or the total area of land that  
18 is part of the project, excluding the area of public streets and alleys, is 20 acres or more, the  
19 Environmental Review Officer shall not be required to provide notice by mail pursuant to this Section  
20 31.11(c)(4) except to all organizations and individuals who previously requested such notice in writing.

21 (d) The notice of intent shall specify the period during which comments are to be  
22 received, the date, time and place of any public hearings on the project when known to the  
23 Planning Department at the time of the notice, a brief description of the project and its location,  
24 ~~and~~ the address where copies of the negative declaration and all documents referenced in the  
25 negative declaration are available for review, and shall include a statement that no appeal of the



1 negative declaration to the Board of Supervisors under Section 31.16 of this Chapter will be permitted  
2 unless the appellant first files an appeal of the preliminary negative declaration to the Planning  
3 Commission, and any other information as required by CEQA.

4 (e) Within ~~twenty (20)~~ days, or ~~thirty (30)~~ days if required by CEQA, following the  
5 publication of ~~such~~ the notice of intent, any person may appeal the proposed negative  
6 declaration to the Planning Commission, specifying the grounds for such appeal, ~~or.~~ ~~Any~~  
7 ~~person may~~ submit comments on the proposed negative declaration.

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

15 (g) After holding such hearing the Planning Commission shall affirm the proposed  
16 negative declaration if it finds that the project could not have a significant effect on the  
17 environment, may refer the proposed negative declaration back to the Planning Department  
18 for specified revisions, or shall overrule the proposed negative declaration and order  
19 preparation of an environmental impact report if it finds based on substantial evidence that the  
20 project may have a significant effect on the environment.

21 (h) If the proposed negative declaration is not appealed as provided herein, or if it is  
22 affirmed on appeal, the negative declaration shall be considered final, subject to any  
23 necessary modifications. Thereafter, the first City decision-making body to act on approval of  
24 the project shall review and consider the information contained in the final negative  
25 declaration, together with any comments received during the public review process, and, upon

1 making the findings as provided in CEQA, shall adopt the negative declaration, prior to  
2 approving the project. A public notice of the proposed action to adopt the negative declaration and  
3 take the Approval Action for the project shall advise the public of its appeal rights to the Board of  
4 Supervisors with respect to the negative declaration following the Approval Action in reliance on the  
5 negative declaration and within the time frame specified in Section 31.16 of this Chapter. All  
6 decision-making bodies shall review and consider the negative declaration and make findings  
7 as required by CEQA prior to approving the project.

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

12 (j) After the City has decided to carry out or approve the project and the project is  
13 considered finally approved as provided for in Section 31.16(c)(11), in accordance with CEQA  
14 procedures, the Environmental Review Officer ~~may~~shall file a notice of determination with the  
15 county clerk in the county or counties in which the project is to be located. If required by  
16 CEQA, the notice of determination shall also be filed with the California Office of Planning and  
17 Research.

18 **SEC. 31.12. DETERMINATIONS THAT ENVIRONMENTAL IMPACT REPORTS ARE**  
19 **REQUIRED.**

20 When the Environmental Review Officer determines ~~If it is determined that a project may have a~~  
21 significant effect on the environment and that an environmental impact report is required by CEQA,  
22 the Environmental Review Officer shall distribute a notice of preparation in the manner and  
23 containing the information required by CEQA and provide such other notice as required by CEQA. In  
24 addition, the Environmental Review Officer shall prepare a notice advising the public of the notice of  
25 preparation and of any scheduled scoping meetings and publish the notice of preparation in a

1 newspaper of general circulation in the City, ~~shall~~ post the notice of preparation in the offices  
2 of the Planning Department and on the Planning Department website, and ~~shall~~ mail the notice of  
3 preparation to the applicant, the board(s), commission(s) or department(s) that will carry out  
4 or approve the project and to all organizations and individuals who have previously requested  
5 such notice in writing. The Environmental Review Officer shall provide such other notice as  
6 required by CEQA.

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.

24 (d) When the draft EIR has been prepared, the Environmental Review Officer shall  
25 file a notice of completion of such draft with the California Office of Planning and Research as

1 required by CEQA and make the draft EIR available through the State Clearinghouse if and as  
2 required by the California Office of Planning and Research. A copy of such notice, or a separate  
3 notice containing the same information, shall thereupon be posted in the offices of the Planning  
4 Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or  
5 department(s) that will carry out or approve the project, and to any individual or organization that has  
6 requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real  
7 property within the area that is the subject of the environmental impact report and within 300 feet of all  
8 exterior boundaries of such area. A copy of the draft EIR shall be provided to the applicant and to such  
9 board(s), commission(s) or department(s) and to any individual or organization that has so requested.

#### 10 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

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

18 (1) Send the notice to any public agencies with jurisdiction by law that CEQA  
19 requires the lead agency to consult with and request comments from on the draft EIR, and, in the  
20 discretion of the Environmental Review Officer, other persons with special expertise with respect to  
21 any environmental impact involved. as follows: after filing a notice of completion as required by  
22 CEQA, the Environmental Review Officer shall send a copy of the draft EIR to any public agencies as  
23 required by CEQA, and may send copies to and consult with persons who have special expertise with  
24 respect to any environmental impact involved.

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

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

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

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

11           (5) Mail the notice to the owners of all real property within the area that is the  
12 subject of the environmental impact report and within 300 feet of all exterior boundaries of such area.  
13 In the case of City-sponsored projects that involve rezonings, area plans or General Plan amendments  
14 and are either citywide in scope or the total area of land that is part of the project, excluding the area  
15 of public streets and alleys, is 20 acres or more, the Environmental Review Officer shall not be  
16 required to provide notice by mail pursuant to this Section 31.14(a)(5).

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

19           (1) State the starting and ending dates for the draft EIR review period during which  
20 the Environmental Review Officer will receive comments and if comments are not returned within that  
21 time it shall be assumed that the agency or person has no comment to make. The public review period  
22 shall not be less than 30 days nor more than 60 days except under unusual circumstances. When a draft  
23 EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall  
24 not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State  
25 Clearinghouse. The Planning Commission or the Environmental Review Officer may, upon the request

1 of an agency or person with special expertise from whom comments are sought, grant an extension of  
2 time beyond the original period for comments, but such extension shall not prevent with the holding of  
3 any hearing on the draft EIR for which notice has already been given.

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

6 (3) State that only commenters on the Draft EIR will be permitted to file an appeal of  
7 the certification of the Final EIR to the Board of Supervisors under Section 31.16 of this Chapter.

8 (c) The Planning Department shall make the draft EIR available to the public upon the  
9 filing of the notice of completion with the California Office of Planning and Research. The Planning  
10 Department shall post a copy of the draft EIR on the Planning Department website and provide a copy  
11 of the draft EIR to the applicant and to such board(s), commission(s) or department(s) and to any  
12 individuals or organizations that previously have requested a copy in writing, in electronic form on a  
13 diskette or by electronic mail transmission when an email address is provided, unless a printed hard  
14 copy is specifically requested.

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

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

1           (1)—(d) Public participation, both formal and informal, shall be encouraged at all  
2 stages of review, and written comments shall be accepted at any time up to the conclusion of  
3 the public comment period. The Environmental Review Officer may give public notice at any  
4 formal stage of the review process, beyond the notices required by this Chapter 31 and CEQA,  
5 in any manner ~~the Environmental Review Officer~~ may deem appropriate, ~~and may maintain a~~  
6 ~~public log as the status of all projects under formal review. Members of the general public shall be~~  
7 ~~encouraged to submit their comments in writing as early as possible.~~

8           (2)—~~The draft EIR shall be available to the general public upon filing of the notice of~~  
9 ~~completion.~~

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

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

1           **SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.**

2           (a)     A final EIR shall be prepared by, or at the direction of, the Environmental Review  
3 Officer, based upon the draft EIR, the consultations and comments received during the review  
4 process, and additional information that may become available.

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

10          (c)     A public record of proceedings shall be kept of each case in which an EIR is  
11 prepared, including all comments received in writing in addition to a record of the public  
12 hearing. The final EIR shall indicate the location of such record. The Environmental Review  
13 Officer shall cause the hearing record to be recorded by a phonographic reporter. Any transcription  
14 of a hearing record shall be at the expense of the person requesting such transcription.

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 notice of the Planning Commission hearing on the certification of the  
19 final EIR shall inform the public of the expected Date of the Approval Action on the project and of its  
20 appeal rights to the Board of Supervisors with respect to the final EIR after such date and within the  
21 time frame specified in Section 31.16 of this Chapter. The certification of completion shall contain  
22 a finding as to whether the project as proposed will, or will not, have a significant effect on the  
23 environment.

24          (e)     After the City has decided to carry out or approve the project and the project is  
25 considered finally approved as provided for in Section 31.16(c)(11), in accordance with CEQA



1 procedures, the Environmental Review Officer shall file a notice of determination with the county clerk  
2 in the county or counties in which the project is to be located. If required by CEQA, the notice of  
3 determination shall also be filed with the California Office of Planning and Research.

4 Section 3. The Administrative Code Chapter 31 is hereby amended by deleting  
5 Section 31.16 in its entirety and adding new Section 31.16 to read as follows:

6 **~~SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS.~~**

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

11 ~~—— (1) — A letter of appeal shall be submitted to the Clerk of the Board within twenty (20)~~  
12 ~~calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for~~  
13 ~~appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the~~  
14 ~~Board. The grounds for appeal shall be limited to issues related to the adequacy, accuracy and~~  
15 ~~objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an~~  
16 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~  
17 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~  
18 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~  
19 ~~to the Clerk of the Board.~~

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

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

1           (b) — ~~The Clerk of the Board shall promptly schedule a hearing on the appeal before the full~~  
2 ~~Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more~~  
3 ~~than one person submits a letter of appeal on a final EIR, the Board shall consolidate such appeals so~~  
4 ~~that they are heard simultaneously. The Board may consolidate or coordinate its hearing on the appeal~~  
5 ~~with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and~~  
6 ~~to all organizations and individuals who have previously requested such notice, not less than ten (10)~~  
7 ~~days prior to the date of the hearing.~~

8           (c) — ~~The Board shall conduct its own independent review of the final EIR. The Board shall~~  
9 ~~consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of~~  
10 ~~the final EIR, including but not limited to the sufficiency of the final EIR as an informational document~~  
11 ~~and the correctness of its conclusions, and the Planning Commission's certification of the EIR. The~~  
12 ~~Board may consider new facts, evidence and/or issues that were not introduced before the Planning~~  
13 ~~Commission or the Environmental Review Officer.~~

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

22           (e) — ~~The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~  
23 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~  
24 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~  
25 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~

1 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~  
2 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~  
3 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~  
4 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~  
5 ~~certification of the final EIR is affirmed by action of the Board.~~

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

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

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

15 ~~**(a) Decisions Subject to Appeal.** In accordance with the provisions set forth in this Section~~  
16 ~~31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the “Board”)~~  
17 ~~where the Board is not otherwise the CEQA decision-making body for the project as provided below in~~  
18 ~~Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption of a~~  
19 ~~negative declaration by the first decision-making body; and (3) determination by the Planning~~  
20 ~~Department or any other authorized City department that a project is exempt from CEQA.~~

21 ~~**(b) Board as CEQA Decision-Making Body.**~~

22 ~~(1) CEQA decisions are not appealable to the Board if the Board is the CEQA~~  
23 ~~decision-making body for the project because the Board of Supervisors must affirm the CEQA decision~~  
24 ~~of the Planning Commission or the Planning Department, prior to or as part of its approval of the~~  
25 ~~project.~~

1                   (2) For purposes of this Chapter 31, the Board is the CEQA decision-making body  
2 for the project if any of the following circumstances apply:

3                   (A) At the time an appeal is filed, the Board has affirmed the CEQA decision  
4 rendered by a non-elected body of the City and approved the project;

5                   (B) One or more proposed approval actions for the project are pending  
6 before the Board of Supervisors prior to the expiration of the time frames set forth in Sections 31.16  
7 (d),(e), or (f), as applicable, for filing the appeal; or

8                   (C) The Planning Department prepared the CEQA decision in support of a  
9 proposed ordinance.

10                  (3) For any project for which the Board is the CEQA decision-making body as  
11 defined by this Section 31.16, any person may raise objections to the CEQA decision in writing prior to  
12 or at a public hearing on the project held by the Board or a committee of the Board. The Board shall  
13 consider any written or oral objections raised prior to the close of the public hearing on the project.  
14 Procedures for the submittal of materials to the Board by the public or the preparation of a response by  
15 the Planning Department to any objections raised shall be as set forth by the Board in its Rules of  
16 Order, provided, however, that before the Board takes action to approve the project, the Board shall  
17 provide the Planning Department with an adequate opportunity to submit a written response to any  
18 objections to the CEQA decision raised by the public prior to the close of the public hearing.

19                  (4) For any project for which the Board is the CEQA decision-making body as  
20 defined by this Section 31.16, prior to or as part of its consideration of the project, the Board shall  
21 affirm or reject the CEQA decision for the project rendered by the Planning Commission or the  
22 Planning Department.

23                  (c) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16 (d)  
24 pertaining to EIRs, Section 31.16(e) pertaining to negative declarations or Section 31.16 (f) pertaining  
25

1 to exemption determinations, the following requirements shall apply to an appeal of any of the  
2 decisions listed in Section 31.16(a).

3 (1) The appellant shall submit a letter of appeal along with all written materials in  
4 support of the appeal to the Clerk of the Board within the time frames set forth in Sections 31.16 (d),(e),  
5 or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and shall be  
6 accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San Francisco  
7 Planning Department. The appellant shall sign the letter of appeal, or may have an agent, authorized in  
8 writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a copy of the  
9 CEQA EIR certification or the negative declaration approval by the Planning Commission, or a copy of  
10 the exemption determination by the Planning Department that is being appealed and a copy of the  
11 Approval Action taken for the project by a City board, commission, department or official. The  
12 appellant shall submit a copy of the letter of appeal and all written materials in support of the appeal to  
13 the Environmental Review Officer at the time appellant submits the letter of appeal to the Clerk of the  
14 Board. The Clerk of the Board may reject an appeal if appellant fails to comply with this Section  
15 31.16(c)(1).

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

19 (3) For projects that require multiple City approvals, while the appeal is pending,  
20 and until the CEQA determination is affirmed by the Board, other City boards, commissions,  
21 departments and officials may consider the approval of the project that is the subject of the CEQA  
22 determination on appeal but shall not undertake activities to implement the project that physically  
23 change the environment except activities that are essential to abate hazards to the public health and  
24 safety, including abatement of hazards on a structure or site determined by the appropriate City  
25 official, including but not limited to the Director of Building Inspection, the Director of Public Works,

1 the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency  
2 presenting an imminent hazard to the public and requiring immediate action.

3 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full  
4 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the  
5 hearing no less than 30 and no more than 45 days following expiration of the time frames set forth in  
6 Sections 31.16 (d),(e), or (f), as applicable, for filing an appeal. The Clerk shall provide notice of the  
7 appeal by mail to the appellant or appellants and to all organizations and individuals who have  
8 previously requested such notice in writing. The Clerk shall provide such notice no less than 14 days  
9 prior to the date the appeal is scheduled to be heard by the Board. The Planning Department shall  
10 provide to the Clerk of the Board the list of individuals and organizations that have commented on the  
11 decision or determination in a timely manner, or requested notice of an appeal, no less than 20 days  
12 prior to the scheduled hearing.

13 (5) Members of the public, real parties in interest or City agencies sponsoring the  
14 proposed project may submit written materials to the Clerk of the Board no later than noon, 11 days  
15 prior to the scheduled hearing. The Planning Department shall submit to the Clerk of the Board a  
16 written response to the appeal no later than noon, eight days prior to the scheduled hearing. Any  
17 written document submitted after these deadlines shall not be distributed to the Supervisors as part of  
18 their hearing materials.

19 (6) The Board shall conduct its own independent review of whether the CEQA  
20 decision adequately complies with the requirements of CEQA.

21 (7) The Board shall act on an appeal within 30 days of the date scheduled for the  
22 hearing, provided that if the full membership of the Board is not present on the last day on which the  
23 appeal is set for a decision within said 30 days, the Board may postpone a decision thereon until, but  
24 not later than, the full membership of the Board is present; and provided further, if the Board of  
25 Supervisors does not conduct at least three regular Board meetings during such 30 day period, the

1 Board of Supervisors shall decide such appeal within 40 days of the time set for the hearing thereon;  
2 and provided further that the latest date to which said decision may be so postponed under this Section  
3 shall be not more than 90 days from the expiration of the time frames set forth in Sections 31.16 (d),(e),  
4 or (f), as applicable, for filing an appeal.

5 (8) The Board may affirm or reverse the CEQA decision of the Planning  
6 Commission, Planning Department or other authorized City agency by a vote of a majority of all  
7 members of the Board. A tie vote shall be deemed to be disapproval of the CEQA decision. The Board  
8 shall act by motion. The Board shall adopt findings in support of its decision, which may include  
9 adoption or incorporation of findings made by the Planning Commission, Environmental Review  
10 Officer or other City department authorized to act on the CEQA decision below. If the Board reverses  
11 the CEQA decision, the Board shall adopt specific findings setting forth the reasons for its decision.

12 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final  
13 negative declaration, or final exemption determination shall be the date upon which the Planning  
14 Commission, Planning Department or other authorized City department, as applicable, first approved  
15 the EIR or negative declaration or issued the exemption determination and any actions approving the  
16 project made prior to the appeal decision shall be deemed valid.

17 (10) If the Board reverses the CEQA decision, the prior CEQA decision and any  
18 actions approving the project, including, but not limited to, any approvals of the project granted during  
19 the pendency of the appeal, shall be deemed void.

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

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

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

5           (2) The appellant of a final EIR shall submit a letter of appeal and written materials  
6 in support of the appeal to the Clerk of the Board within 30 days after the Date of the Approval Action  
7 for the project following the Planning Commission's certification of the EIR.

8           (3) The grounds for appeal of an EIR shall be limited to whether the EIR complies  
9 with CEQA, is adequate, accurate and objective, and reflects the independent judgment and analysis of  
10 the City.

11           (4) The Board shall affirm the Planning Commission's certification of the final EIR  
12 if the Board finds that the final EIR complies with CEQA, is adequate, accurate and objective, and  
13 reflects the independent judgment and analysis of the City.

14           (5) The Board shall reverse the Planning Commission's certification of the EIR if the  
15 Board finds that the EIR does not comply with CEQA or is not adequate, accurate and objective or  
16 does not reflect the independent judgment and analysis of the City. If the Board reverses the Planning  
17 Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission  
18 for further action consistent with the Board's findings. Any further appeals of the EIR shall be limited  
19 only to the portions of the EIR that the Planning Commission has revised and any appellant shall have  
20 commented on the revised EIR at or before a public hearing held on the revised EIR or the project, if  
21 any. The Board's subsequent review, if any, also shall be limited to the portions of the EIR that the  
22 Planning Commission has revised including, without limitation, new issues that have been addressed.  
23 Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.

24           (e) Appeal of Negative Declarations. In addition to those requirements set forth in Section  
25 31.16(c) above, the following requirements shall apply only to appeals of negative declarations.



1                   (1) Any person or entity that has filed an appeal of the preliminary negative  
2 declaration with the Planning Commission during the public comment period provided by this Chapter  
3 31 for filing comments on the preliminary negative declaration may appeal the Planning Commission's  
4 approval of the final negative declaration.

5                   (2) The appellant of a negative declaration shall submit a letter of appeal to the  
6 Clerk of the Board within 30 days after the Date of the Approval Action for the project taken in reliance  
7 on the negative declaration.

8                   (3) The grounds for appeal of a negative declaration shall be limited to whether, in  
9 light of the whole record before the Board, the negative declaration conforms to the requirements of  
10 CEQA and there is no substantial evidence that the project may have a significant effect on the  
11 environment, including in the case of a mitigated negative declaration, the adequacy and feasibility of  
12 the mitigation measures.

13                   (4) The Board shall affirm the Planning Commission approval of the negative  
14 declaration if it finds that the negative declaration conforms to the requirements of CEQA and the  
15 project could not have a significant effect on the environment.

16                   (5) The Board shall reverse the Planning Commission approval of the negative  
17 declaration if it finds that the negative declaration does not conform to the requirements of CEQA or  
18 that the project may have a significant effect on the environment that has not been avoided or mitigated  
19 to a less than significant level by mitigation measures or project modifications agreed to by the project  
20 sponsor or incorporated into the project. If the Board reverses the decision of the Planning  
21 Commission, it shall remand the negative declaration to the Planning Department for further action  
22 consistent with the Board's findings.

23                   (A) In the event the Board remands the negative declaration to the Planning  
24 Department for revision, the Environmental Review Officer shall finalize the revised negative  
25 declaration and send notice to the public, as set forth in Section 31.11 of this Chapter, of the

1 availability of the revised negative declaration. No appeal to the Planning Commission of the revised  
2 negative declaration shall be required. In the event an organization or individual wishes to appeal the  
3 revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30  
4 days of publication of the revised negative declaration and shall comply with the procedures set forth  
5 in this Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the  
6 negative declaration that the Planning Department has revised.

7 (B) In the event the Board determines that a project may have a significant  
8 effect on the environment that cannot be avoided or mitigated to a less than significant level and,  
9 therefore, an EIR is required, the Planning Department shall prepare an EIR in accordance with  
10 CEQA and this Chapter 31. Any subsequent appeal to the Board shall comply with the procedures set  
11 forth in this Section 31.16.

12 (f) **Appeal of Exemption Determinations.** In addition to those requirements set forth in  
13 Section 31.16(c) above, the following requirements shall apply to appeals of exemption determinations.

14 (1) Any person or entity may appeal the exemption determination by the Planning  
15 Department or other authorized City department to the Board.

16 (2) The appellant of an exemption determination shall submit a letter of appeal and  
17 written materials in support of the appeal to the Clerk of the Board within the following time frames as  
18 applicable:

19 (A) For a private project seeking a permit, license or other entitlement for  
20 use for which the City otherwise provides an appeal process for the entitlement, the appeal of an  
21 exemption determination shall be filed within 30 days after the Date of the Approval Action, regardless  
22 of whether the Approval Action is subject to a shorter appeal period. Departments that issue permits  
23 or entitlements supported by exemption determinations shall take steps as they determine appropriate  
24 to advise applicants seeking permits, licenses or other entitlements for use of the 30-day appeal period  
25 for the exemption determination.

1                                    (B) For all projects not covered by Section (A):

2                                    (i) If the Approval Action is taken following a noticed public hearing  
3 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be  
4 filed within 30 days after the Date of the Approval Action.

5                                    (ii) If the Approval Action is taken without a noticed public hearing  
6 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be  
7 filed after an approval of the project in reliance on the exemption determination and within 30 days  
8 after the first date the Planning Department posts on the Planning Department's website a notice as  
9 provided in Section 31.08(g) of this Chapter.

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

12                                   (4) The Board shall affirm the exemption determination if it finds that the project  
13 conforms to the requirements set forth in CEQA for an exemption.

14                                   (5) The Board shall reverse the exemption determination if it finds that the project  
15 does not conform to the requirements set forth in CEQA for an exemption. If the Board finds that the  
16 project does not conform to the requirements set forth in CEQA for an exemption, the Board shall  
17 remand the exemption determination to the Planning Department for further action consistent with the  
18 Board's findings. In the event the Board reverses the exemption determination of any City department  
19 other than the Planning Department, the exemption determination shall be remanded to the Planning  
20 Department, and not the City department making the original exemption determination, for  
21 consideration of the exemption determination in accordance with the Board's directions.

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

24                                   Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to  
25 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,

1 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
2 are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
3 and Board amendment deletions in accordance with the "Note" that appears under the official  
4 title of the legislation.

5

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

8 By: \_\_\_\_\_  
9 ELAINE C. WARREN  
Deputy City Attorney

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