

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

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

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

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

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

21 Section 2. The Administrative Code Chapter 31 is hereby amended by amending
22 Sections 31.04, 31.05, 31.06, 31.08, 31.09, 31.10, 31.11, 31.12, 31.13, 31.14, ~~and~~ 31.15, and
23 31.19 to read as follows:

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

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, or an individual or organization requests notice in hard copy form, a City official may
8 provide any mailed notice required by this Chapter using electronic mail transmission whenever the
9 City official has an email address for the individual or organization.

10 (h) Definitions.

11 “Approval Action” means:

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

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

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

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

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

24 (A) The first approval of the project in reliance on the exemption by a City
25 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 (i) The Planning Department or other City department as authorized by Section
23 31.08(d), when rendering a CEQA decision, shall identify the Approval Action for the project
24 and provide that information to the public prior to or at the time of project approval. The
25 information shall be posted on Planning Department’s website and also may be provided in an

1 environmental review document or exemption determination, in information posted by the
2 Planning Department at its offices or on its website, or in a notice about the project or the
3 CEQA decision provided to the public by the Planning Department or other City department.

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

5 (a) An Office of Environmental Review is hereby created in the Planning
6 Department, which shall be responsible, acting through the Director of Planning, for the
7 administration *of those actions ~~of~~in* this Chapter 31 assigned to the Planning Department by Section
8 31.04.

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

13 (c) In addition to the powers and duties conferred below, the Environmental Review
14 Officer may, upon delegation by the Planning Commission as to specific projects, take
15 testimony at supplemental public hearings on draft environmental impact reports, in addition
16 to, and not in lieu of, the hearing held by the Planning Commission as set forth in section
17 31.14 of this Chapter, and shall report to, and make all such testimony available to, the
18 Planning Commission at a public hearing.

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

24 (e) All projects *that are not excluded or categorically exempt from CEQA* shall be
25 referred to the Environmental Review Officer except those exempt projects covered by a delegation

1 agreement with the Environmental Review Officer as provided for in Section 31.08(d) of this Chapter.

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

5 (f) The Environmental Review Officer shall be responsible for assuring that the City
6 is carrying out its responsibilities set forth in CEQA. In addition, when the City is to carry out or
7 approve a project and some other public agency is the "lead agency," as defined by CEQA,
8 and where projects are to be carried out or approved by the State and Federal governments,
9 the Environmental Review Officer shall provide consultation and comments for the City to the
10 other government agencies when appropriate.

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

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

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

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

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

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

5 CEQA provides that certain kinds of projects may be subject to CEQA. Some of these
6 projects may be excluded or ~~categorically~~ exempt from CEQA. If not excluded or ~~categorically~~
7 exempt, CEQA provides a process whereby an initial study is completed, then a determination
8 is made as to whether a negative declaration, mitigated negative declaration, or an
9 environmental impact report ("EIR") should be prepared. In accordance with the requirements
10 of CEQA and as specified herein, the Planning Commission and/or the Environmental Review
11 Officer shall determine when CEQA applies to a project, when the project is excluded or
12 exempt, or when a negative declaration, mitigated negative declaration, or environmental impact
13 report is required.

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

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

1 collectively refer to statutory exemptions, categorical exemptions, community plan exemptions and
2 general rule exclusions.

3 (b) For categorical exemptions:

4 (1) Each public agency must list the specific activities that fall within each
5 such class, subject to the qualification that these lists must be consistent with both the letter
6 and the intent of the classes set forth in CEQA. ~~Except as provided in this section 31.08, projects~~
7 ~~that are categorically exempt are not subject to the requirements of this Chapter 31.~~

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

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

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

1 ~~(e)(d)~~ The Environmental Review Officer shall advise other departments of ~~the~~
2 ~~the categorical~~ exemptions. The Environmental Review Officer may delegate the determination
3 whether a project is ~~categorically~~ exempt from CEQA to other departments, provided that other
4 departments shall consult with the Environmental Review Officer regarding the application of
5 ~~the categorical~~ exemptions. Further, at the time of each exemption determination, such other
6 departments shall inform and, if written, provide a copy, of the exemption determination to the
7 Environmental Review Officer, and provided further that the Environmental Review Officer
8 shall be responsible for all determinations so delegated to other departments. When the
9 Planning Department or other City department determines that a project is exempt from CEQA, the
10 issuance of the exemption determination shall be considered an exemption determination by the
11 Planning Department. The Environmental Review Officer shall post on its website the same
12 information about exemption determinations issued by other departments as it provides for
13 exemption determinations issued by the Planning Department.

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

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

23 (2) Shall provide notice to the public ~~shall be provided~~ for all such
24 determinations involving the following types of projects: ~~(1)(A)~~ any historical resources, ~~as~~
25 defined ~~in CEQA, including without limitation, as~~ any buildings and sites listed individually or

1 located within districts (i) listed ~~(i)~~ in Planning Code Articles 10 or 11, ~~(ii) in City-recognized~~
2 ~~historical surveys,~~ (iii) on an historic resource survey that has been adopted or officially recognized by
3 the City, on the California Register or determined eligible for listing on the California Register by the
4 State Historical Resources Commission, including, without limitation, any location, ~~or (iv)~~ on the
5 National Register of Historic Places, or (ii) a resource that the Environmental Review Officer
6 determines, based on substantial evidence, to be a historical resource under Public Resources Code
7 Section 5024.1; ~~(2)(B)~~ any Class 31 categorical exemption; ~~(3)(C)~~ any demolition as defined in
8 Planning Code Section 317 of an existing structure; or, ~~(4)(D)~~ any Class 32 categorical
9 exemption. ~~Written determinations of categorical exemptions~~ All exemption determinations for these
10 types of projects shall be in writing, posted in the offices of the Planning Department and on the
11 Planning Department's website, and ~~shall be~~ mailed to any individuals or organizations that have
12 previously requested such notice in writing.

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

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

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

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

23 (C) Inform the public that under CEQA, in a later court challenge a litigant
24 may be limited to raising only those issues previously raised at a hearing on the project or in written
25

1 correspondence delivered to the Planning Department or other City department at, or prior to, such
2 hearing, or as part of the appeal hearing process, if any, on the CEQA determination.

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

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

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

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

16 (g) A City board, commission, department or official that grants the Approval Action for a
17 project of the type defined in Section 31.16(f)(e)(2)(B) of this Chapter, which Approval Action is taken
18 without a noticed public hearing as provided for in Section 31.08(f) of this Chapter, shall thereafter
19 arrange for the Planning Department to post on the Planning Department's website a written decision
20 or written notice of the Approval Action for the project that informs the public of the first date of
21 posting on the website and advises the public that the exemption determination may be appealed to the
22 Board of Supervisors as provided in Section 31.16(f)(e)(2)(B) of this Chapter within 30 days after the
23 first date of posting of the notice. When the Environmental Review Officer, or any other department to
24 which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e)
25 above, has determined that a project is excluded or categorically exempt from CEQA, the

1 *Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by*
2 *posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the*
3 *applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and*
4 *to any individuals or organizations who have previously requested such notice in writing.*

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

11 *(i) The Environmental Review Officer has the authority under Section 31.19(b) to re-*
12 *evaluate the application of an exemption to a project in the event that a project changes after the*
13 *Approval Action for the project. As provided for in Section 31.19(b), the Environmental Review*
14 *Officer shall consider the modified project relative to the project description as provided in the*
15 *original application submitted to the Planning Department and the project description in the*
16 *exemption determination. If, upon this consideration, the Environmental Review Officer*
17 *concludes that the project as modified exceeds the scope of the original project for any aspect*
18 *of the project regulated under the Planning Code, or introduces a new use not previously*
19 *included in the project, then the Environmental Review Officer shall issue a new exemption*
20 *determination or, if the project would no longer be eligible for an exemption, the*
21 *Environmental Review Officer shall inform the project sponsor that an initial study will be*
22 *required. If the modified project requires a new CEQA decision, the Planning Department will*
23 *require payment of fees as defined in the Department's fee schedule for the applicable type of*
24 *environmental review. If the Planning Commission or Planning Department renders a new CEQA*
25 *exemption determination decision for a project after the Approval Action, as provided for in*

1 Section 31.19(b), and the City takes a new Approval Action for the project in reliance on the new
2 CEQA determination decision, the new CEQA determination decision may be appealed in
3 accordance with the provisions of Section 31.16 of this Chapter, as to those issues associated with the
4 project changes since the original exemption determination.

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

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

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

18 (a) Upon receiving an environmental evaluation application for a project, or upon referral
19 of a project by the board, commission or department that is to carry out or approve the project, the
20 Environmental Review Officer shall determine whether such project is exempt from environmental
21 review. If not exempt, the Environmental Review Officer shall complete an initial study to determine the
22 level of environmental analysis required. In the event it is clear at the outset that an environmental
23 impact report is required, the Environmental Review Officer may, with the consent of the applicant,
24 make an immediate determination and dispense with the initial study. Each environmental
25 evaluation application or referral shall include a project description using as its base the

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

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

21 (c) The applicant or the board, commission or department that is to carry out or
22 approve the project shall submit to the Environmental Review Officer such data and
23 information as may be necessary for the initial study. If such data and information are not
24 submitted, the Environmental Review Officer may suspend work on the initial evaluation.

25

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

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

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

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

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

20 (3) Prepare an environmental impact report if the Planning Department determines
21 based on substantial evidence in the record that the project may have a significant effect on the
22 environment. In other words, if the Planning Department is presented with a fair argument that a
23 project may have a significant effect on the environment, the Planning Department shall prepare an
24 environmental impact report even though it may also be presented with other substantial evidence that
25 the project will not have a significant effect.

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

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

8 **SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE**
9 **DECLARATIONS.**

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

22 (b) The Environmental Review Officer shall first prepare a negative declaration on a
23 preliminary basis, and shall post a copy of the proposed negative declaration in the offices of
24 the Planning Department and on the Planning Department website. ~~and mail notice thereof to the~~
25 ~~applicant and the board(s), commission(s) or department(s) that will carry out or approve the project.~~

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

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

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

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

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

19 (d) The notice of intent shall specify the period during which comments are to be
20 received, the date, time and place of any public hearings on the project when known to the
21 Planning Department at the time of the notice, a brief description of the project and its location,
22 ~~and~~ the address where copies of the negative declaration and all documents referenced in the
23 negative declaration are available for review, and shall include a statement that no appeal of the
24 negative declaration to the Board of Supervisors under Section 31.16 of this Chapter will be permitted

1 unless the appellant first files an appeal of the preliminary negative declaration to the Planning
2 Commission, and any other information as required by CEQA.

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

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

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

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

1 approving the project. A public notice of the proposed action to adopt the negative declaration and
2 take the Approval Action for the project shall advise the public of its appeal rights to the Board of
3 Supervisors with respect to the negative declaration following the Approval Action in reliance on the
4 negative declaration and within the time frame specified in Section 31.16 of this Chapter. All

5 decision-making bodies shall review and consider the negative declaration and make findings
6 as required by CEQA prior to approving the project.

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

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

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

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

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

6 **SEC. 31.13. DRAFT ENVIRONMENTAL IMPACT REPORTS.**

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

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

18 (c) During preparation of the draft EIR, the Environmental Review Officer may
19 consult with any person having knowledge or interest concerning the project. If he/she has not
20 already done so in accordance with Section 31.10 above, in cases in which the project is to be
21 carried out or approved by more than one public agency, the Environmental Review Officer
22 shall consult with all other public agencies that are to carry out or approve the project.

23 (d) When the draft EIR has been prepared, the Environmental Review Officer shall
24 file a notice of completion of such draft with the California Office of Planning and Research as
25 required by CEQA and make the draft EIR available through the State Clearinghouse if and as

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

9 **SEC. 31.14. CONSULTATIONS AND COMMENTS.**

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

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

24 (b) ~~In sending such copies, the Environmental Review Officer shall request comments on the~~
25 ~~draft EIR from such agencies and persons, with particular focus upon the sufficiency of the draft EIR in~~

1 ~~discussing possible effects on the environment, ways in which adverse effects may be minimized, and~~
2 ~~alternatives to the project.~~

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

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

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

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

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

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

1 time beyond the original period for comments, but such extension shall not prevent with the holding of
2 any hearing on the draft EIR for which notice has already been given.

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

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

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

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

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

24 ~~(1) (d) Public participation, both formal and informal, shall be encouraged at all~~
25 ~~stages of review, and written comments shall be accepted at any time up to the conclusion of~~

1 the public comment period. The Environmental Review Officer may give public notice at any
2 formal stage of the review process, beyond the notices required by this Chapter 31 and CEQA,
3 in any manner ~~the Environmental Review Officer~~ may deem appropriate, ~~and may maintain a~~
4 ~~public log as the status of all projects under formal review. Members of the general public shall be~~
5 ~~encouraged to submit their comments in writing as early as possible.~~

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

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

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

24 SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.

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

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

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

14 (d) When the final EIR has been prepared and in the judgment of the Planning
15 Commission it is adequate, accurate and objective, reflecting the independent judgment and
16 analysis of the Planning Commission, the Planning Commission shall certify its completion in
17 compliance with CEQA. The notice of the Planning Commission hearing on the certification of the
18 final EIR shall inform the public of the expected Date of the Approval Action on the project and of its
19 appeal rights to the Board of Supervisors with respect to the final EIR after such date and within the
20 time frame specified in Section 31.16 of this Chapter. The certification of completion shall contain
21 a finding as to whether the project as proposed will, or will not, have a significant effect on the
22 environment.

23 (e) After the City has decided to carry out or approve the project and the project is
24 considered finally approved as provided for in Section 31.16(e)(b)(11), in accordance with CEQA
25 procedures and upon the payment of required fees by the project sponsor, the Environmental

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

4 **SEC. 31.19. EVALUATION OF MODIFIED PROJECTS.**

5
6 (a) After evaluation of a proposed project has been completed pursuant to this
7 Chapter, a substantial modification of the project may require reevaluation of the proposed
8 project.

9 (b) ~~Where such a modification occurs as to a project that has been determined to~~
10 ~~be excluded or categorically exempt pursuant to this Chapter, a new determination shall be~~
11 ~~made as provided in this Chapter.~~ For a project that the Planning Department has determined
12 is exempt, when a project changes and a City department re-refers the project application to
13 the Planning Department for review, such review shall include the Environmental Review
14 Officer. The Environmental Review Officer shall consider the modified project relative to the
15 project description as provided in the original application submitted to the Planning
16 Department and the project description in the exemption determination.

17 (1) If the Environmental Review Officer determines that the project as
18 modified is still within the scope of the previous original project for any aspect of the project
19 regulated under the Planning Code, and does not introduce a new use not previously included
20 in the project, the Environmental Review Officer shall note this determination in writing in the
21 case record and no further evaluation shall be required by this Chapter. The Planning
22 Department shall post a notice of the determination in the offices of the Planning Department
23 and on the Planning Department website, and mail such notice to the applicant, the board(s),
24 commission(s) or department(s) that will carry out or approve the project, and to any
25 individuals or organizations that have previously requested such notice in writing.

1 (2) If the Environmental Review Officer determines that the project as
2 modified is no longer within exceeds the scope of the previous original project for any aspect
3 of the project regulated under the Planning Code, or introduces a new use not previously
4 included in the project, the Environmental Review Officer shall issue a new CEQA decision.

5 ~~(1)(A)~~ If the modified project is again determined to be excluded or
6 categorically exempt, ~~no further evaluation shall be required by~~ the Environmental Review
7 Officer shall issue a new exemption determination in accordance with this Chapter.

8 ~~(2)(B)~~ If the modified project is determined not to be excluded or
9 categorically exempt, an initial study shall be conducted as provided in this Chapter.

10 (C) The Planning Department may issue guidance to other City
11 departments in determining the type of project modification that might occur after an Approval
12 Action that would require additional CEQA review. The guidance may also advise on the
13 process and considerations that the Planning Department would use in such cases to
14 determine whether to issue a new exemption determination or undertake further
15 environmental review.

16 * * * *

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

19 ***SEC. 31.16. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORTS.***

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

24 ~~—— (1) — A letter of appeal shall be submitted to the Clerk of the Board within twenty (20)~~
25 ~~calendar days after the Planning Commission's certification of the EIR, stating the specific grounds for~~

1 ~~appeal, and accompanied by a fee, as set forth in Section 31.22 herein, payable to the Clerk of the~~
2 ~~Board. The grounds for appeal shall be limited to issues related to the adequacy, accuracy and~~
3 ~~objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an~~
4 ~~informational document and the correctness of its conclusions, and the correctness of the findings~~
5 ~~contained in the Planning Commission's certification of the EIR. The appellant shall submit a copy of~~
6 ~~the letter of appeal to the Environmental Review Officer at the time appellant submits a letter of appeal~~
7 ~~to the Clerk of the Board.~~

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

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

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

21 ~~(c) ——— The Board shall conduct its own independent review of the final EIR. The Board shall~~
22 ~~consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of~~
23 ~~the final EIR, including but not limited to the sufficiency of the final EIR as an informational document~~
24 ~~and the correctness of its conclusions, and the Planning Commission's certification of the EIR. The~~
25

1 ~~Board may consider new facts, evidence and/or issues that were not introduced before the Planning~~
2 ~~Commission or the Environmental Review Officer.~~

3 ~~(d) — The Board shall affirm the Planning Commission's certification of the final EIR only if~~
4 ~~the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct,~~
5 ~~and that the findings contained in the Planning Commission's certification are correct. The Board may~~
6 ~~affirm or reverse the action of the Planning Commission only by a vote of a majority of all members of~~
7 ~~the Board. If the Board reverses the Planning Commission's certification of the final EIR, it shall make~~
8 ~~specific findings and remand the final EIR to the Planning Commission for further action consistent~~
9 ~~with the Board's findings. The Board shall act by motion in affirming or reversing the Planning~~
10 ~~Commission's certification of the final EIR.~~

11 ~~(e) — The Board shall act on an appeal within thirty (30) days of appeal of the Planning~~
12 ~~Commission's certification of the EIR, provided that, if the full membership of the Board is not present~~
13 ~~on the last day on which said appeal is set or continued for hearing within such 30 days, the Board may~~
14 ~~postpone said hearing and decision thereon until, but not later than, the full membership of the Board~~
15 ~~is present; provided further, that the latest date to which said hearing and decision may be so~~
16 ~~postponed shall be not more than ninety (90) days from the date of filing the appeal. The date of~~
17 ~~certification of the final EIR shall be the date upon which the Planning Commission originally certified~~
18 ~~the final EIR if: (i) no appeal is filed; or (ii) an appeal is filed and the Planning Commission's~~
19 ~~certification of the final EIR is affirmed by action of the Board.~~

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

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

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

4 ~~(a) — **Decisions Subject to Appeal.** In accordance with the provisions set forth in this Section~~
5 ~~31.16, the following CEQA decisions may be appealed to the Board of Supervisors (the “Board”)~~
6 ~~where the Board is not otherwise the CEQA decision-making body for the project as provided~~
7 ~~below in Section 31.16(b): (1) certification of a final EIR by the Planning Commission; (2) adoption~~
8 ~~of a negative declaration by the first decision-making body; and (3) determination by the Planning~~
9 ~~Department or any other authorized City department that a project is exempt from CEQA.~~

10 ~~(b) — Board as CEQA Decision-Making Body.~~

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

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

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

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

22 ~~—— (C) — The Planning Department prepared the CEQA decision in support~~
23 ~~of a proposed ordinance.~~

24 ~~(3) — For any project for which the Board is the CEQA decision-making body as~~
25 ~~defined by this Section 31.16, any person may raise objections to the CEQA decision in~~

1 writing prior to or at a public hearing on the project held by the Board or a committee of the
2 Board. The Board shall consider any written or oral objections raised prior to the close of the
3 public hearing on the project. Procedures for the submittal of materials to the Board by the
4 public or the preparation of a response by the Planning Department to any objections raised
5 shall be as set forth by the Board in its Rules of Order, provided, however, that before the
6 Board takes action to approve the project, the Board shall provide the Planning Department
7 with an adequate opportunity to submit a written response to any objections to the CEQA
8 decision raised by the public prior to the close of the public hearing.

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

13 (e)(b) Appeal Procedures. In addition to the applicable requirements of Section 31.16 (d)(c)
14 pertaining to EIRs, Section 31.16(e)(d) pertaining to negative declarations or Section 31.16 (f)(e)
15 pertaining to exemption determinations, the following requirements shall apply to an appeal of any of
16 the decisions listed in Section 31.16(a).

17 (1) The appellant shall submit a letter of appeal along with all written materials in
18 support of the appeal to the Clerk of the Board within the time frames set forth in Sections 31.16 (c),
19 (d), or (e), or (f), as applicable. The letter of appeal shall state the specific grounds for appeal, and
20 shall be accompanied by a fee, as set forth in Section 31.22 of this Chapter, payable to the San
21 Francisco Planning Department. The appellant shall sign the letter of appeal, or may have an agent,
22 authorized in writing, file an appeal on his or her behalf. The appellant shall submit with the appeal a
23 copy of the CEQA EIR certification or the negative declaration approval by the Planning Commission,
24 or a copy of the exemption determination by the Planning Department that is being appealed and a
25 copy of the Approval Action taken for the project by a City board, commission, department or

1 ~~official.~~ The appellant shall submit a copy of the letter of appeal and ~~all~~any written materials in
2 support of the appeal to the Environmental Review Officer at the time appellant submits the letter of
3 appeal to the Clerk of the Board. ~~The Clerk of the Board shall have three business days from~~
4 ~~the time of submittal of the appeal to assess the appeal package for completeness and~~
5 ~~compliance with this subpart. If complete and compliant with this subpart, the Clerk shall~~
6 ~~process the appeal within the time limits from provisional acceptance.~~ An appeal shall be
7 accepted by the Clerk with notice given to the appellants that the acceptance is conditioned
8 upon the Planning Department determining that the appeal has been filed in a timely manner
9 and the Clerk otherwise determining that the appeal complies with the requirements of this
10 section. The Planning Department shall make such determination within three working days of
11 receiving the Clerk's request for review. Within seven working days of the filing of the appeal
12 the Clerk shall mail notice to the appellants of the acceptance or rejection of the appeal. ~~The~~
13 ~~Clerk of the Board may reject an appeal if appellant fails to comply with this Section 31.16(e)(b)(1).~~

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

17 (3) For projects that require multiple City approvals, after the Clerk has
18 scheduled the appeal for hearing while the appeal is pending, and until the CEQA determination
19 is affirmed by the Board, (A) the Board may not take action to approve the project but may hold
20 hearings on the project and pass any pending approvals out of committee without a
21 recommendation for the purpose of consolidating project approvals and the CEQA appeal
22 before the full Board, and (B) other City boards, commissions, departments and officials ~~may~~ shall
23 not carry out or consider further the approval of the project that is the subject of the CEQA
24 determination on appeal but shall not undertake activities to implement the project that
25 physically change the environment except activities that are essential to abate hazards to the public

1 health and safety, including abatement of hazards on a structure or site determined by the appropriate
2 City official, including but not limited to the Director of Building Inspection, the Director of Public
3 Works, the Director of Public Health, the Fire Marshal or the Port Chief Engineer, to be an emergency
4 presenting an imminent hazard to the public and requiring immediate action.

5 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
6 Board or as otherwise provided by the Board in its Rules of Order. The Clerk shall schedule the
7 hearing no less than 30 and no less than 30 and no more than 45 days following expiration of the
8 time frames set forth in Sections 31.16 (c), (d), or (e), or (f), as applicable, for filing an appeal. The
9 Planning Department shall assist the Clerk in determining when the time period for filing an
10 appeal of a particular project has expired. If more than one person submits a letter of appeal,
11 the Board shall consolidate such appeals so that they are heard simultaneously. The Clerk
12 shall provide notice of the appeal by mail to the appellant or appellants and to all organizations and
13 individuals who have previously requested such notice in writing. The Clerk shall provide such notice
14 no less than 14 days prior to the date the appeal is scheduled to be heard by the Board. The Planning
15 Department shall provide to the Clerk of the Board the list of individuals and organizations that have
16 commented on the decision or determination in a timely manner, or requested notice of an appeal, no
17 less than 20 days prior to the scheduled hearing.

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

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

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

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

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

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

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

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

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

10 (2) The appellant of a final EIR shall submit a letter of appeal and written materials
11 in support of the appeal to the Clerk of the Board after the Planning Commission certifies the final
12 EIR as complete and no later than within 30 days after the Date of the Approval Action for the
13 project following the Planning Commission's certification of the EIR.

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

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

20 (5) The Board shall reverse the Planning Commission's certification of the EIR if the
21 Board finds that the EIR does not comply with CEQA or is not adequate, accurate and objective or
22 does not reflect the independent judgment and analysis of the City. If the Board reverses the Planning
23 Commission's certification of the final EIR, it shall remand the final EIR to the Planning Commission
24 for further action consistent with the Board's findings. Any further appeals of the EIR shall be limited
25 only to the portions of the EIR that the Planning Commission has revised and any appellant shall have

1 commented on the revised EIR at or before a public hearing held on the revised EIR or the project, if
2 any. The Board's subsequent review, if any, also shall be limited to the portions of the EIR that the
3 Planning Commission has revised including, without limitation, new issues that have been addressed.
4 Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.

5 (e)(d) **Appeal of Negative Declarations.** In addition to those requirements set forth in Section
6 31.16(e)(b) above, the following requirements shall apply only to appeals of negative declarations.

7 (1) Any person or entity that has filed an appeal of the preliminary negative
8 declaration with the Planning Commission during the public comment period provided by this Chapter
9 31 for filing comments on the preliminary negative declaration may appeal the Planning Commission's
10 approval of the final negative declaration.

11 (2) The appellant of a negative declaration shall submit a letter of appeal to the
12 Clerk of the Board after the Planning Commission approves the final negative declaration and
13 within 30 days after the Date of the Approval Action for the project taken in reliance on the negative
14 declaration.

15 (3) The grounds for appeal of a negative declaration shall be limited to whether, in
16 light of the whole record before the Board, the negative declaration conforms to the requirements of
17 CEQA and there is no substantial evidence to support a fair argument that the project may have a
18 significant effect on the environment, including in the case of a mitigated negative declaration, the
19 adequacy and feasibility of the mitigation measures.

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

23 (5) The Board shall reverse the Planning Commission approval of the negative
24 declaration if it finds that the negative declaration does not conform to the requirements of CEQA or
25 there is substantial evidence to support a fair argument that the project may have a significant

1 effect on the environment that has not been avoided or mitigated to a less than significant level by
2 mitigation measures or project modifications agreed to by the project sponsor or incorporated into the
3 project. If the Board reverses the decision of the Planning Commission, it shall remand the negative
4 declaration to the Planning Department for further action consistent with the Board's findings.

5 (A) In the event the Board remands the negative declaration to the Planning
6 Department for revision, the Environmental Review Officer shall finalize the revised negative
7 declaration and send notice to the public, as set forth in Section 31.11 of this Chapter, of the
8 availability of the revised negative declaration. No appeal to the Planning Commission of the revised
9 negative declaration shall be required. In the event an organization or individual wishes to appeal the
10 revised negative declaration, such appeal shall be made directly to the Board of Supervisors within 30
11 days of publication of the revised negative declaration and shall comply with the procedures set forth
12 in this Section 31.16. The Board's subsequent review, if any, shall be limited to the portions of the
13 negative declaration that the Planning Department has revised.

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

19 (f)(e) **Appeal of Exemption Determinations.** In addition to those requirements set forth in
20 Section 31.16(e)(b) above, the following requirements shall apply to appeals of exemption
21 determinations.

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

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

4 (A) For a private project seeking a permit, license or other entitlement for
5 use for which the City otherwise provides an appeal process for the entitlement, the appeal of an
6 exemption determination shall be filed after the Planning Department issues the exemption
7 determination and within 30 days after the Date of the Approval Action, regardless of whether the
8 Approval Action is subject to a shorter appeal period. Departments that issue permits or entitlements
9 supported by exemption determinations shall take steps as they determine appropriate to advise
10 applicants seeking permits, licenses or other entitlements for use of the 30-day appeal period for the
11 exemption determination.

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

13 (i) If the Approval Action is taken following a noticed public hearing
14 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
15 filed after the Planning Department issues the exemption determination and within 30 days after
16 the Date of the Approval Action.

17 (ii) If the Approval Action is taken without a noticed public hearing
18 as provided for in Section 31.08(f) of this Chapter, the appeal of an exemption determination shall be
19 filed after the Planning Department issues the exemption determination an approval of the
20 project in reliance on the exemption determination and within 30 days after the first date the
21 Planning Department posts on the Planning Department's website a notice as provided in Section
22 31.08(g) of this Chapter.

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

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

3 (5) The Board shall reverse the exemption determination if it finds that the project
4 does not conform to the requirements set forth in CEQA for an exemption. If the Board finds that the
5 project does not conform to the requirements set forth in CEQA for an exemption, the Board shall
6 remand the exemption determination to the Planning Department for further action consistent with the
7 Board's findings. In the event the Board reverses the exemption determination of any City department
8 other than the Planning Department, the exemption determination shall be remanded to the Planning
9 Department, and not the City department making the original exemption determination, for
10 consideration of the exemption determination in accordance with the Board's directions.

11 Section 4. As stated in San Francisco Administrative Code, Chapter 31, the purpose
12 of Chapter 31 is to provide procedures for San Francisco to carry out its responsibilities as a
13 lead agency under the California Environmental Quality Act ("CEQA"), a State statute that has
14 played a key role in protecting the environment. As stated in Chapter 31, Section 31.01,
15 CEQA provides for the orderly evaluation of projects and preparation of environmental
16 documents, and requires adoption of corresponding objectives, criteria and procedures by
17 local agencies. By adopting this ordinance, the Board of Supervisors intends to reaffirm the
18 policies and objectives stated in Chapter 31, Section 31.02, including without limitation,
19 providing decision makers and the public with meaningful information regarding the
20 environmental consequences of proposed activities, identifying ways that environmental
21 damage can be avoided or significantly reduced, providing public input in the environmental
22 review process, bringing environmental considerations to bear at an early stage in the
23 planning process, avoiding unnecessary delays or undue complexity of review and providing
24 procedural direction on implementation of CEQA by the City. Nothing in this ordinance is
25 intended to change the policies and objectives of CEQA, to limit any rights of appeal provided

1 to the public under CEQA, or to limit the authority of the San Francisco Board of Supervisors
2 or the San Francisco Planning Commission to hear and decide CEQA appeals as provided in
3 this Chapter.

4 Section 45. Effective Date. This ordinance shall become effective 30 days from the
5 date of passage.

6 Section 6. Operative Date. This ordinance shall become operative on the later date of
7 September 1, 2013, or five business days after the Secretary of the Planning Commission
8 provides a memorandum to the Clerk of the Board of Supervisors advising that the Planning
9 Commission has held a public hearing at which the Planning Department has demonstrated to
10 the Planning Commission that it has updated its website to provide up-to-date information to
11 the public about each CEQA exemption determination in a format searchable by location,
12 such as through the "Active Permits In My Neighborhood" tool now used by the Planning
13 Department and the Building Department.

14 Section 57. This section is uncodified. In enacting this Ordinance, the Board intends to
15 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
16 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
17 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
18 and Board amendment deletions in accordance with the "Note" that appears under the official
19 title of the legislation.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 ELAINE C. WARREN
25 Deputy City Attorney

n:\legana\as2013\1200175\00845451.doc