

1 [Administrative Code - California Environmental Quality Act Procedures, Appeal of Exempt  
2 Project Modification]

3 **Ordinance amending Administrative Code, Chapter 31, to provide for appeal to the**  
4 **Environmental Review Officer to reconsider a determination of the Environmental**  
5 **Review Officer that an exempt project modification does not require a new decision**  
6 **under the California Environmental Quality Act; and making environmental findings.**

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8 NOTE: Additions to Codes are in *single-underline italics Times New Roman font*.  
9 Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.  
10 Board amendment additions are in double-underlined Arial font.  
11 Board amendment deletions are in ~~strikethrough Arial font~~.

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

13 Section 1. The Planning Department has determined that the actions contemplated in  
14 this ordinance comply with the California Environmental Quality Act (California Public  
15 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the  
16 Board of Supervisors in File No. 130464 and is incorporated herein by reference.

17 Section 2. The Administrative Code is hereby amended by adding new Section  
18 31.08(k), to read as follows:

19 **SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.**

20 \* \* \* \*

21 **(j) Appeal of a Determination That Change in Exempt Project is Not A Substantial**  
22 **Modification.**

23 (1) Within 10 days of the posting of the notice of a determination that a change in an  
24 exempt project is not a substantial modification as defined in 31.08(i), an appeal may be filed with the  
25 Environmental Review Officer, who is provided for in Section 31.05, including subsection (k).

1 requesting that the Environmental Review Officer reverse the determination and render a new CEQA  
2 decision for the project. Such an appeal is not an appeal of a CEQA decision under the California  
3 Environmental Quality Act and shall not delay or suspend any permit approval or other  
4 discretionary approval authorizing the change in the project, or suspend any construction  
5 activity.

6 (2) If such an appeal is filed when a regularly scheduled meeting of the Planning  
7 Commission will be held within 20 days of the filing of the appeal, the Environmental Review Officer  
8 shall hold a noticed public hearing on the day of a Planning Commission meeting held within such 20  
9 day period, unless the period between the filing of the appeal and the Planning Commission  
10 meeting is insufficient to notice the public hearing. If no Planning Commission meeting is held  
11 within the 20 day period, or the period between the filing of appeal and the Planning  
12 Commission meeting within 20 days of the appeal is insufficient to notice the public hearing,  
13 the hearing shall take place on the day of one of the next two regularly scheduled Planning  
14 Commission meetings after such 20-day period.

15 (3) At the public hearing, the Environmental Review Officer shall reconsider the  
16 prior determination in light of all information provided by all parties present, including any project  
17 sponsor, as well as written information submitted at or before the public hearing.

18 (4) If after such reconsideration, the Environmental Review Officer determines that  
19 the original determination was in error, the Environmental Review Officer shall render a new CEQA  
20 decision for the project in accordance with the requirements of CEQA and this Chapter 31. Any prior  
21 permit approval or other discretionary approval authorizing the change in the project shall be  
22 suspended by the decision-maker who approved the project until the Environmental Review  
23 Officer issues a new CEQA decision. If the Environmental Review Officer determines that the  
24 project as modified is exempt from CEQA and makes a new exemption determination in  
25 accordance with this Chapter 31, any suspended approval shall be reinstated and valid as of

1 the date of the original approval. However, if the Environmental Review Officer identifies a  
2 suspended approval as the Approval Action for the modified project, the date of the Approval  
3 Action for the modified project, for purposes of this Chapter 31 only, shall be the date the  
4 approval is reinstated. If the Environmental Review Officer determines that the modified  
5 project is not exempt, and an initial study is required, any prior approval for the modified  
6 project shall be void.

7 (5) If after such reconsideration, the Environmental Review Officer determines that  
8 the original decision was not in error, the original determination of the Environmental Review Officer  
9 shall be final and no further appeal to any body of the City and County of San Francisco of the  
10 determination that the change in the project is not a substantial modification shall be granted,  
11 including without limitation, the Board of Appeals.

12 (6) The Environmental Review Officer shall issue a written decision on the appeal  
13 within 14 days of the public hearing, and an oral report of the decision shall be provided to the  
14 Planning Commission at the next possible meeting after such decision.

15 (7) To the extent feasible, and subject to the budgetary and fiscal provisions of the  
16 Charter, such hearing shall be video-recorded and broadcast by the official television channel of the  
17 City and County of San Francisco. At a minimum, such hearing shall be video-recorded and made  
18 available on the website of the City and County of San Francisco.

19 (8) The Planning Department may adopt additional procedures for such appeals.

20 Section 3. Effective Date. This ordinance shall become effective 30 days from the  
21 date of passage.

22 Section 4. Operative Date. This ordinance shall become operative on the later date of  
23 September 1, 2013, or five business days after the Secretary of the Planning Commission  
24 provides a memorandum to the Clerk of the Board of Supervisors advising that the Planning

1 Commission has held a public hearing at which the Planning Department has demonstrated to  
2 the Planning Commission that it has updated its website to provide up-to-date information to  
3 the public about each CEQA exemption determination in a format searchable by location,  
4 such as through the “Active Permits In My Neighborhood” tool now used by the Planning  
5 Department and the Building Department.

6 Section 45. This section is uncodified. In enacting this Ordinance, the Board intends  
7 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
8 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
9 are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
10 and Board amendment deletions in accordance with the "Note" that appears under the official  
11 title of the legislation.

12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14 By: \_\_\_\_\_  
15 ELAINE WARREN  
16 Deputy City Attorney

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