

BOARD of SUPERVISORS



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November 18, 2020

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On November 10, 2020, Mayor Breed introduced the following legislation:

File No. 201284

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: Rich Hillis, Director
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Legislative Affairs
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
Aaron Starr, Manager of Legislative Affairs
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Major Environmental Analysis

1 [Administrative Code - CEQA Appeals]

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3 **Ordinance amending the Administrative Code to allow certain projects to proceed while**
4 **an appeal of the project's determination under the California Environmental Quality Act**
5 **(CEQA) is pending before the Board of Supervisors, and modifying requirements for**
6 **appeals to the Board of Supervisors for certain projects under CEQA.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **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 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

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

13

14 Section 1. Findings.

15 (a) In San Francisco, Chapter 31 of the Administrative Code implements the California
16 Environmental Quality Act, California Public Resources Code Sections 21000 et seq., and the
17 Guidelines for Implementation of the California Environmental Quality Act, Title 14, Division 6,
18 Chapter 3 of the California Code of Regulations (collectively, "CEQA").

19 (b) Administrative Code Section 31.16 authorizes and sets forth a process for
20 appealing certain CEQA decisions to the Board of Supervisors (the "Board"). Under that
21 section, once a CEQA decision is scheduled for an appeal hearing, all City boards,
22 commissions, and departments are prohibited from taking any action to carry out or further
23 consider approval of the appealed project, except in specified emergency circumstances.

24

25

1 (c) It is in the public interest that the CEQA appeal process not be used to delay or
2 obstruct projects undertaken by City departments to protect the public health, safety, or
3 property, or that involve temporary or reversible actions.

4 (d) It is also in the public interest that CEQA appeals to the Board for projects within
5 the Municipal Transportation Authority's or the Port's exclusive jurisdiction under the Charter
6 be limited in situations where the Board of Supervisors may not otherwise have any review
7 authority for the projects themselves.

8 (e) The Planning Commission, in Resolution No. _____, adopted findings
9 recommending approval of this ordinance. A copy of said Resolution is on file with the Clerk
10 of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

11
12 Section 2. Chapter 31 of the Administrative Code is hereby amended by revising
13 Section 31.16, to read as follows:

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

15 (a) **Decisions Subject to Appeal.** In accordance with the provisions set forth in this
16 Section 31.16, the following CEQA decisions may be appealed to the Board of Supervisors
17 (the "Board"): (1) certification of a final EIR by the Planning Commission; (2) adoption of a
18 negative declaration by the first decision-making body; and (3) determination by the Planning
19 Department or any other authorized City department that a project is exempt from CEQA.

20 (b) **Appeal Procedures.** In addition to the applicable requirements of Section 31.16(c)
21 pertaining to EIRs, Section 31.16(d) pertaining to negative declarations, or Section 31.16(e)
22 pertaining to exemption determinations, the following requirements shall apply to an appeal of
23 any of the decisions listed in Section 31.16(a).

24 (1) The appellant shall submit a letter of appeal to the Clerk of the Board within
25 the time frames set forth in Sections 31.16(c), (d), or (e), as applicable. The letter of appeal

1 shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in
2 Section 31.22 of this Chapter, payable to the San Francisco Planning Department. The
3 appellant shall sign the letter of appeal, or may have an agent, file an appeal on ~~his or her~~the
4 appellant's behalf. The appellant shall submit with the appeal a copy of the CEQA decision
5 being appealed, if available, and otherwise shall submit it when available. The appellant shall
6 submit a copy of the letter of appeal and any other written materials submitted to the Clerk in
7 support of the appeal to the Environmental Review Officer at the time the appellant submits
8 the letter of appeal to the Clerk of the Board. The submission to the Environmental Review
9 Officer may be made by electronic means. An appeal shall be accepted by the Clerk with
10 notice given to the appellants that the acceptance is conditioned upon the Planning
11 Department determining that the appeal of the CEQA decision, whether rendered by the
12 Planning Department or another City commission, department, agency or official, has been
13 filed in a timely manner, and the Clerk otherwise determining that the appeal complies with
14 the requirements of this section 31.16(b)(1). The Planning Department shall make such
15 determination within three working days of receiving the Clerk's request for review. Within
16 seven working days of the filing of the appeal the Clerk shall mail notice to the appellants of
17 the acceptance or rejection of the appeal. The Clerk of the Board may reject an appeal if the
18 appellant fails to comply with this ~~§~~section 31.16(b)(1).

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

23 (3) For projects that require multiple City approvals, after the Clerk has
24 scheduled the appeal for hearing and until the CEQA decision is affirmed by the Board,;

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1 (A) the Board may not take action to approve the project but may hold
2 hearings on the project and pass any pending approvals out of committee without a
3 recommendation for the purpose of consolidating project approvals and the CEQA appeal
4 before the full Board; and

5 (B) other City boards, commissions, departments, and officials shall not
6 carry out or consider further the approval of the project that is the subject of the CEQA
7 decision on appeal, except for the following activities:

8 _____ (i) actions that are essential to abate hazards to the public health
9 and safety, including abatement of hazards on a structure or site determined by the
10 appropriate City official, including but not limited to the Director of Building Inspection, the
11 Director of Public Works, the Director of Public Health, the Fire Marshal, or the Port Chief
12 Engineer, to be an emergency presenting an imminent hazard to the public and requiring
13 immediate action; or

14 (ii) actions that are undertaken by the San Francisco Municipal
15 Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or
16 the Recreation and Parks Department, and the appropriate commission or department head or their
17 designee has determined in writing that the action is one of the following:

18 a. a safety, health, or remedial measure necessary to protect the
19 public, public employees, or public property or to allow the existing use of public property to continue;
20 or

21 b. a temporary activity that will be removed or will cease within
22 180 days following the commencement of said activity; or

23 c. a reversible action wholly implemented and operated by a City
24 department or agency, or a City department's or agency's contractor, that either does not involve
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1 physical construction activities or is limited to additions that can be removed or reconditioned without
2 damage to the site.

3 The appropriate department head or their designee shall provide their written
4 determination about the project's characterization as a safety, health, or remedial measure, a
5 temporary activity, or a reversible action, as described above in subsections (ii)a, (ii)b, and (ii)c,
6 respectively, to the Environmental Review Officer.

7 (4) The Clerk of the Board shall schedule a hearing on the appeal before the full
8 Board. The Clerk shall schedule the hearing no less than 21 and no more than 45 days
9 following expiration of the time frames set forth in Sections 31.16(c), (d), or (e), as applicable,
10 for filing an appeal. If more than one person submits a letter of appeal, the Board President
11 may consolidate such appeals so that they are heard simultaneously. The Clerk shall provide
12 notice of the appeal by mail to the appellant or appellants and to all organizations and
13 individuals who previously have requested such notice in writing. The Clerk shall provide such
14 notice no less than 14 days prior to the date the appeal is scheduled to be heard by the
15 Board. The Planning Department shall provide to the Clerk of the Board the list of individuals
16 and organizations that have commented on the decision or determination in a timely manner,
17 or requested notice of an appeal, no less than 20 days prior to the scheduled hearing.

18 (5) Members of the public, appellant, and real parties in interest or City
19 agencies sponsoring the proposed project, may submit written materials to the Clerk of the
20 Board no later than noon, 11 days prior to the scheduled hearing. The Clerk will distribute any
21 written document submitted by noon, eight days prior to the scheduled hearing to the Board
22 through the Board's normal distribution procedures.

23 (6) The Board shall conduct its own independent review of whether the CEQA
24 decision adequately complies with the requirements of CEQA. The Board shall consider anew
25 all facts, evidence, and issues related to the adequacy, accuracy, and objectiveness of the

1 CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the
2 correctness of its conclusions.

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

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

21 (9) If the Board affirms the CEQA decision, the date of the final EIR, the final
22 negative declaration, or *the* final exemption determination shall be the date upon which the
23 Planning Commission, Planning Department, Environmental Review Officer, or other
24 authorized City department, as applicable, first certified the EIR, adopted the negative
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1 declaration, or issued the exemption determination and any actions approving the project
2 made prior to the appeal decision shall be deemed valid.

3 (10) If the Board reverses the CEQA decision, the prior CEQA decision and any
4 actions approving the project in reliance on the reversed CEQA decision, shall be deemed
5 void.

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

9 (12) For projects that the San Francisco Municipal Transportation Agency sponsors or
10 approves pursuant to its exclusive authority in Charter Section 8A.102(b)(1)-(9) and which are not
11 subject to review by the Board of Supervisors under Transportation Code Section 10.1, or for any
12 transit service changes approved by the San Francisco Municipal Transportation Agency that do not
13 constitute route abandonment pursuant to Charter Section 8A.108, a CEQA document or determination
14 may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the
15 Board of Supervisors subscribe to the notice of appeal. The signature on the appeal of members of the
16 Board of Supervisors shall not be deemed to be any indication of their position on the merits of the
17 appeal but rather shall indicate only that they believe there is sufficient public interest and concern in
18 the matter to warrant a hearing by the Board of Supervisors. All such appeals shall comply with all
19 other requirements for an appeal set forth in this Section 31.16, except that members of the Board of
20 Supervisors shall not be required to submit comments on an EIR or file an appeal of a preliminary
21 negative declaration to the Planning Commission as provided in Sections 31.16(c) and (d) in order to
22 subscribe to the notice of appeal of such negative declaration.

23 (13) For leases of property under the jurisdiction of the Port Commission for maritime
24 uses, which are not subject to Board of Supervisors review under Charter Section 9.118, a CEQA
25 document or determination may be appealed to the Board of Supervisors only if 50 San Francisco

1 residents or five Members of the Board of Supervisors subscribe to the notice of appeal. The signature
2 on the appeal of members of the Board of Supervisors shall not be deemed to be any indication of their
3 position on the merits of the appeal but rather shall indicate only that they believe there is sufficient
4 public interest and concern in the matter to warrant a hearing by the Board of Supervisors. All such
5 appeals shall comply with all other requirements for an appeal set forth in this Section 31.16, except
6 that members of the Board of Supervisors shall not be required to submit comments on an EIR or file
7 an appeal of a preliminary negative declaration to the Planning Commission as provided in Sections
8 31.16(c) and (d) in order to subscribe to the notice of appeal of such negative declaration.

9 * * * *

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11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the “Note” that appears under
20 the official title of the ordinance.

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

23 By: /s/
24 KATE H. STACY
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - CEQA Appeals]

Ordinance amending the Administrative Code to allow certain projects to proceed while an appeal of the project's determination under the California Environmental Quality Act (CEQA) is pending before the Board of Supervisors, and modifying requirements for appeals to the Board of Supervisors for certain projects under CEQA.

Existing Law

Administrative Code Chapter 31.16 provides the procedures for appeal of environmental documents and determinations under the California Environmental Quality Act ("CEQA"). Among other things, Section 31.16 provides that once the Clerk has scheduled the appeal hearing for a CEQA decision, the Board may not approve a project and other City boards, commissions, and departments may not carry out or consider further the approval of the project except activities that are essential to abate hazards to the public health and safety, until the CEQA decision is affirmed by the Board.

Section 31.16 further provides who may appeal CEQA determinations: (1) any person who submitted written or oral comments to the Planning Commission or the Environmental Review Officer on a draft EIR may appeal the Planning Commission's certification of the final EIR; (2) any person who filed an appeal of a preliminary negative declaration with the Planning Commission may appeal the Planning Commission's approval of the final negative declaration; and (3) any person may appeal an exemption determination by the Planning Department or other authorized City department to the Board.

Amendments to Current Law

The proposed legislation would change these provisions of Section 31.16 in two ways. First, the legislation would allow additional kinds of decisions and work to move forward while an appeal is pending at the Board of Supervisors. These additional actions include the following: (1) actions that are undertaken by the San Francisco Municipal Transportation Agency, the Airport, Port, Public Utilities Commission, San Francisco Public Works, or the Recreation and Parks Department, where the appropriate commission or department head or their designee has determined in writing that the action is (a) a safety, health, or remedial measure necessary to protect the public, public employees, or public property or to allow the existing use of public property to continue, (b) a temporary activity that will be removed or will cease within 180 days following its commencement, or (c) a reversible action wholly implemented and operated by a City department or agency that either does not involve physical construction activities or is limited to additions that can be removed or reconditioned without damage to the site. The department head or their designee would provide their

written determination about the project's characterization as a safety, health, or remedial measure, a temporary activity, or a reversible action, to the Environmental Review Officer.

Second, the legislation would limit who may appeal specific CEQA determinations. For projects that the San Francisco Municipal Transportation Agency sponsors or approves under its exclusive authority in Charter Section 8A.102(b)(1)-(9) and which are not subject to review by the Board of Supervisors under Transportation Code Section 10.1, or for any transit service changes approved by the San Francisco Municipal Transportation Agency that do not constitute route abandonment pursuant to Charter Section 8A.108, a CEQA document or determination may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the Board of Supervisors subscribe to the notice of appeal.

Similarly, under the proposed legislation, for leases of property under the jurisdiction of the Port Commission for maritime uses, which are not subject to Board of Supervisors review under Charter Section 9.118, a CEQA document or determination may be appealed to the Board of Supervisors only if 50 San Francisco residents or five Members of the Board of Supervisors subscribe to the notice of appeal.

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