

**Ordinance amending Administrative Code Chapter 31 to provide for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and providing public notice of such decisions and environmental documents.**

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough italics Times New Roman*~~. – Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by deleting Section 31.16 in its entirety and adding new Section 31.16, to read as follows:

SEC. 31.16. APPEAL OF CERTAIN ENVIRONMENTAL DETERMINATIONS.

(a) In accordance with the provisions set forth in this Section 31.16, the following determinations may be appealed to the Board of Supervisors (the "Board"): (1) Certification of a Final EIR by the Planning Commission; (2) Approval of a negative declaration or mitigated negative declaration (collectively referred to as a "negative declaration") by the Planning Commission; (3) Determination by the Planning Department or any other authorized City department that a project is categorically exempt from the California Environmental Quality Act ("CEQA"); (4) Determination by the Planning Department that a project is statutorily exempt or excluded from CEQA where such determination involves the discretionary application of factors set forth in CEQA; and (5) Determination by the Planning Department that a General Rule Exclusion applies to a project, as set forth in CEQA Guidelines Section 15061(b)(3).

(b) In addition to the applicable requirements of Section 31.16 (c), (d) or (e) below, the following requirements shall apply to an appeal of any of the determinations listed in Section

31.16(a).

(1) A letter of appeal shall be submitted to the Clerk of the Board within the time frames set forth in Subsections 31.16(c), (d) or (e), as applicable. The letter of appeal shall state the specific grounds for appeal, and shall be accompanied by a fee, as set forth in Administrative Code Section 31.22, payable to the Clerk of the Board. Appellant shall submit fifteen (15) copies of all written materials in support of the appeal with the letter of appeal. All Appellants must sign the letter of appeal and no appeal may be maintained on behalf of other individuals or entities without their express written consent. Appellants shall submit with the appeal a copy of the CEQA determination or CEQA decision that is being appealed. The grounds for appeal shall be limited to issues related to the adequacy of the environmental review, the completeness of the environmental analysis or the correctness of the determination being appealed as further set forth in subsections 31.16 (c), (d) or (e). The appellant shall submit a copy of the letter of appeal and all written materials in support of the appeal to the Environmental Review Officer at the time appellant submits a letter of appeal to the Clerk of the Board. The Clerk of the Board may reject an appeal if Appellant fails to comply with this subsection 31.16(b)(1).

(2) After receipt of the letter of appeal, the Environmental Review Officer shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make the administrative record available to the Board.

(3) While the appeal is pending, the City shall not carry out, consider the approval of, or make any other discretionary decision regarding, a project that is the subject of the appeal, provided that activities may be undertaken that are essential to abate hazards to the public health and safety, including abatement of hazards on a structure or site determined by the appropriate City official, including but not limited to the Director of Building Inspection, the Director of Public Works, the Director of Public Health, the Fire Marshall or the Port Chief Engineer, to be an emergency presenting an imminent hazard to the public and requiring immediate action.

(4) The Clerk of the Board shall promptly schedule a hearing on the appeal before the full Board, without regard to any rule or policy of the Board requiring a 30-day review period. If more than one person submits a letter of appeal on the same decision or determination, the Board shall consolidate such appeals so that they are heard simultaneously. Where the appeals are consolidated, the Board shall allot to appellants the same total time for testimony at the public hearing as the Board allots to the Applicant or Project Sponsor. The Board may consolidate or coordinate its hearing on the appeal with other hearings on the project. Notice of the appeal shall be provided by mail to the appellants and to all organizations and individuals who have previously requested such notice in writing, no less than fifteen (15) days prior to the date the appeal is scheduled to be heard by the Board. At its discretion, the Planning Department may mail additional notice to individuals and organizations that have commented on the decision or determination.

(5) Appellants, members of the public, the Planning Department, or other City agency sponsoring the proposed project or responsible for environmental review, shall submit fifteen (15) copies of all written materials pertaining to the appeal to the Board no later than noon, seven (7) days prior to the scheduled hearing. A copy of all written materials pertaining to the appeal shall be provided to the Environmental Review Officer or other City department authorized to make environmental determinations at the same time such materials are submitted to the Board.

(6) The Board shall conduct its own independent review of the CEQA determination. The Board shall consider anew all facts, evidence and/or issues related to the adequacy, accuracy and objectiveness of the environmental review and the CEQA determination and decision regarding such environmental review, including but not limited to the sufficiency of the information and the correctness of the conclusions of the Planning Commission, the Environmental Review Officer or the authorized City department. The Board shall consider the record before the Planning Commission, the Environmental Review Officer or other City department, and may, at its discretion, consider new facts, evidence and/or issues that were not

introduced before the Planning Commission, the Environmental Review Officer, or other City department authorized to make environmental determinations.

(7) The Board shall act on an appeal within forty-five (45) days of the date of filing the appeal, provided that if the full membership of the Board is not present on the last day on which said appeal is set or continued for hearing within such 45 days, the Board may postpone said hearing and decision thereon until, but not later than, the full membership of the Board is present; provided further, that the latest date to which said hearing and decision may be so postponed shall be not more than ninety (90) days from the date of filing the appeal.

(8) The Board may affirm or reverse the decision or determination of the Planning Commission, Planning Department or other authorized City agency by a vote of a majority of all members of the Board. A tie vote shall be deemed to be disapproval of the decision or determination; provided, however, that in the event of a tie vote the Board may continue its decision on the appeal to the next meeting at which the full Board will be present to consider the appeal. The Board shall act by motion. The Board shall adopt findings in support of its decision, which may include adoption and/or incorporation of findings made by the Planning Commission, Environmental Review Officer or other City department authorized to act on the environmental review decision or determination below. If the Board reverses the decision or determination, the Board shall adopt specific findings setting forth the reasons for its decision to reverse the decision or determination.

(9) In the event the Board reverses the environmental determination, the Board shall remand the environmental determination or decision to the Planning Commission or Planning Department. The Planning Commission or Planning Department shall take such action as may be required by the specific findings made by the Board and consider anew the remanded portions of its environmental determination. Any further appeal shall be limited to the portions of the environmental decision or determination that have been revised by the Planning Commission or Planning Department, and appellant shall have commented on the revised environmental decision or determination to the Planning Commission or Environmental Review

Officer. The Board's subsequent review, if any, also shall be so limited to the portions of the environmental decision or determination that have been revised by the Planning Commission or Planning Department. Any additional appeals to the Board shall comply with the procedures set forth in this Section 31.16.

(10) The Board may reject an appeal if it finds the appeal fails to comply with this Section 31.16. The Board shall act by motion in rejecting an appeal.

(11) The date of the final EIR, the final negative declaration, the statutory exclusion, categorical exemption or General Rule Exclusion shall be the date upon which the Planning Commission, Planning Department or other authorized City department, as applicable, originally approved the environmental document or issued the determination if an appeal is filed and the Board affirms the action of the Planning Commission, Planning Department or other authorized City department, and the City approved the project prior to the filing of the appeal. If the City has not approved the project prior to the filing of an appeal of a negative declaration or an EIR, the date of the negative declaration or EIR shall be the date upon which the Board acts to approve the negative declaration or EIR.

(12) If the Board reverses the environmental decision or determination, the prior environmental decision or determination, and approval actions for the project, shall be deemed void.

(c) In addition to those requirements set forth in Section 31.16(b) above, the following requirements shall apply to appeals of EIRs.

(1) In order to appeal the Planning Commission's certification of an EIR to the Board, any appellant shall have submitted comments to the Planning Commission or the Environmental Review Officer on a draft EIR, either in writing during the public review period, or orally or in writing at a public hearing on the EIR.

(2) Appellant of a final EIR shall submit a letter of appeal to the Clerk of the Board within twenty (20) days after the Planning Commission's certification of the EIR.

(3) The grounds for appeal of an EIR shall be limited to issues related to the

adequacy, accuracy and objectiveness of the final EIR, including but not limited to the sufficiency of the final EIR as an informational document and the correctness of its conclusions, and the correctness of the findings contained in the Planning Commission's certification of the EIR.

(4) The Board shall affirm the Planning Commission's certification of the final EIR if the Board finds that the final EIR is adequate, accurate and objective, that its conclusions are correct, and that the findings contained in the Planning Commission's certification are correct. The Board may reverse the Planning Commission's certification of the EIR. If the Board reverses the Planning Commission's certification of the final EIR, it shall make specific findings and remand the final EIR to the Planning Commission for further action consistent with the Board's findings.

(d) In addition to those requirements set forth in Section 31.16(b) above, the following requirements shall apply to appeals of negative declarations.

(1) In order to appeal the Planning Commission's approval of a negative declaration to the Board, any Appellant shall have appealed the preliminary negative declaration to the Planning Commission. In the event a preliminary negative declaration is not appealed to the Planning Commission, the negative declaration may not be appealed to the Board.

(2) Appellant of a negative declaration shall submit a letter of appeal to the Clerk of the Board within twenty (20) days after the Planning Commission's approval of the negative declaration. The grounds for appeal of a negative declaration shall be limited to raising issues related to the adequacy of the analysis, the Planning Commission's finding that the project could not have a significant effect on the environment, including in the case of a mitigated negative declaration, the adequacy and feasibility of the mitigation measures.

(3) When the Board makes its determination on the appeal of a negative declaration, the Board shall affirm a negative declaration if it finds that the project could not have a significant effect on the environment. The Board may overturn the Planning Commission's approval of the negative declaration and make specific findings and remand the negative

declaration to the Planning Commission for further action consistent with the Board's findings.

(4) In the event a negative declaration is remanded to the Planning Commission, the Planning Commission shall take action consistent with the Board's direction. If the Planning Department revises a negative declaration pursuant to the Board's direction, the revised negative declaration shall be scheduled for hearing at the Planning Commission. The Environmental Review Officer shall not be required to comply with the procedures set forth in Administrative Code Section 31.11(b), (c), (d) or (e) prior to the Planning Commission hearing. The revised negative declaration shall be available for review by the public at least twenty (20) days prior to the Planning Commission hearing. The Environmental Review Officer shall provide notice to the public that the revised negative declaration is available for review and provide notice of the date of the Planning Commission hearing in the manner set forth in Administrative Code Section 31.11(f).

(e) In addition to those requirements set forth in Section 31.16(b) above, the following requirements shall apply to appeals of statutory exclusions or exemptions, categorical exemptions, or a General Rule Exclusion.

(1) Any person or entity may appeal the determination by the Planning Department or other authorized City department that a statutory exclusion from CEQA applies, that the project is categorically exempt from CEQA, or that a General Rule Exclusion as set forth in CEQA Guidelines Section 15061(b)(3) applies; provided, however, that if the Planning Department or other authorized City department provided public notice of intent to rely on any such a determination in accordance with Section 31.08(f), the appellant shall have objected to the determination before the Planning Commission, the Zoning Administrator, or other City commission or board, as applicable, in order to appeal the determination to the Board. If the Planning Department or other City department did not provide a public notice of intent to rely on such a determination and advise the public in the notice of the requirement to object to the determination before the Planning Commission, the Zoning Administrator or other City board or commission, as applicable, in order to preserve a right of appeal to the Board, then no objection

to the CEQA determination before the Planning Commission, Zoning Administrator or other City commission or board is required before the determination may be appealed to the Board. Any appeal shall be made within twenty (20) days of the date the first permit for the project is issued or the first approval of the project is granted, provided, however, in no event shall such twenty (20) days commence to run before the date of an approval action following the conclusion of any public hearing before the Planning Commission, Zoning Administrator or other City commission or board for which the Planning Department or other City department provided a public notice of an intent to rely on the CEQA determination for the project approval action and advised the public of an opportunity for a public hearing on the determination in accordance with the requirements of Section 31.08(f). For purposes of a determination made with respect to an ordinance, the first approval shall be the Planning Commission's decision to recommend the ordinance, or, in the event there is no action by the Planning Commission on an ordinance, the Board shall consider, and affirm or reject, the Planning Department's recommended CEQA determination as the Board's CEQA determination as part of its consideration of the ordinance and no separate appeal shall be required.

(2) The Board shall affirm any determination if it finds, as applicable, that the project conforms to the requirements set forth in CEQA for statutory exemptions, categorical exemptions, or a General Rule Exclusion. The Board may provide additional analysis of the determination, provided that the Environmental Review Officer recommends such additional analysis and provided further that CEQA does not require additional public notice, an additional public hearing or further public review for such additional analysis. The Board may refer the determination to the Planning Department for revisions or reconsideration, or may overrule the determination and request preparation of specified environmental documentation. If the Board finds that the project does not conform to the requirements set forth in CEQA for statutory exemptions, categorical exemptions, or a General Rule Exclusion, the Board shall make specific findings and remand the CEQA determination to the Planning Department for further action consistent with the Board's findings.



(3) In the event the Board reverses the environmental determination of any City department other than the Planning Department, the environmental determination shall be remanded to the Planning Department, and not the City department making the original environmental determination, for consideration of the environmental determination in accordance with the Board's directions.

Section 2. Administrative Code Section 31.08 is hereby amended as follows.

SEC. 31.08. ~~CATEGORICAL~~ EXEMPTIONS.

(a) CEQA provides that certain kinds of projects are statutorily excluded from CEQA, that certain classes of projects generally do not have a significant effect on the environment and therefore are categorically exempt from CEQA, and that a common sense exemption applies under the general rule that only projects with the potential for causing a significant effect on the environment are subject to CEQA (referred to in this section as the "General Rule Exclusion"). For categorical exemptions, each public agency must list the specific activities that fall within each such class, subject to the qualification that these lists must be consistent with both the letter and the intent of the classes set forth in CEQA. Except as provided in this section 31.08, projects that are ~~categorically~~ exempt are not subject to the requirements of this Chapter 31.

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

(c) CEQA provides for public agencies to request additions, deletions and modifications to the classes of projects listed as categorically exempt in CEQA. The Planning Commission shall make any such requests, after a public hearing thereon

held according to the procedure specified in Section 31.04(c) of this Chapter for adoption of administrative regulations.

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

(e) The Environmental Review Officer shall advise other departments of the statutory exclusions and categorical exemptions. The Environmental Review Officer may delegate the determination whether a project is statutorily excluded or categorically exempt from CEQA to other departments, provided that other departments shall consult with the Environmental Review Officer regarding the application of the statutory exclusions and categorical exemptions, and provided further that the Environmental Review Officer shall be responsible for all determinations so delegated to other departments. When the Planning Department or other City department determines that a project is statutorily excluded from CEQA, categorically exempt from CEQA or covered by the General Rule Exclusion (referred to in this Chapter 31 as the "exemption determination") the issuance of the exemption determination shall be considered an exemption determination by the Planning Department.

(f) When the Environmental Review Officer, or any other department to which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above, has determined that a project is excluded or categorically exempt from CEQA, notice to the public shall be provided for all such determinations involving the following types of projects: (1) any historical resources as defined in CEQA, including without limitation, any buildings and sites listed individually or located within districts listed (i) in Planning Code Articles 10 or 11, (ii) in City-recognized

historical surveys, (iii) on the California Register, or (iv) on the National Register of Historic Places; (2) any Class 31 categorical exemption; (3) any demolition of an existing structure; ~~or~~ (4) any Class 32 categorical exemption or (5) any project for which the Planning Code or other City code or regulation requires public notice of any proposed approval action related to the proposed project. Written determinations of categorical exemptions for these types of projects shall be posted in the offices of the Planning Department and shall be mailed to any individuals or organizations that have previously requested such notice in writing. In addition, when the Planning Department or other City department provides any public notice of a proposed approval action related to the project and advises the public of a scheduled public hearing, or the opportunity to request a public hearing, before the Planning Commission, the Zoning Administrator or other City board or commission, as applicable, the notice shall: (1) inform the public of the written CEQA determination, and (2) advise the public that any person who wishes to object to the CEQA determination shall raise such objection before the Planning Commission, the Zoning Administrator, or other City board or commission, as applicable, in order to preserve the opportunity to appeal the determination to the Board of Supervisors as provided in Section 31.16.

(g) When the Environmental Review Officer, or any other department to which the Environmental Review Officer has delegated responsibility pursuant to Section 31.08(e) above, has determined that a project is excluded or categorically exempt from CEQA, the Environmental Review Officer may issue a Certificate of Exemption from Environmental Review by posting a copy thereof in the offices of the Planning Department, and by mailing copies thereof to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individuals or organizations who have previously requested such notice in writing.

~~(h) —The Planning Commission may take testimony on any categorical exemption at the public hearing, if any, in connection with the Planning Commission's consideration of the project that is the subject of the categorical exemption.—~~

Section 3. Administrative Code Section 31.11 is hereby amended to read as follows:

SEC. 31.11. NEGATIVE DECLARATIONS OR MITIGATED NEGATIVE DECLARATIONS.

(a) When any negative declaration is required, it shall be prepared by or at the direction of the Environmental Review Officer. The negative declaration shall describe the project proposed, include the location of the property, preferably shown on a map, and the name of the project proponent, state the proposed finding that the project could not have a significant effect on the environment, and have attached to it a copy of the initial study documenting reasons to support that finding. The negative declaration shall also indicate mitigation measures, if any, included in the project to avoid potentially significant effects.

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

(c) The Environmental Review Officer shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration by publication in a newspaper of general circulation in the City, by posting in the offices of the Planning Department and on the subject site, by mail to the owners of all real property within the area that is the subject of the negative declaration and within 300 feet of all exterior boundaries of such area, and by mail to all organizations and individuals who have previously requested such notice in writing, sufficiently prior to adoption of the negative declaration to allow the public and agencies a review period of not less than twenty (20) days, or thirty (30) days if required by CEQA. In the case of projects that either are citywide in scope or where the total area of land that is part of the project, excluding the area of

public streets and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of the project area.

(d) The notice of intent shall specify the period during which comments are to be received, a brief description of the project and its location, and the address where copies of the negative declaration and all documents referenced in the negative declaration are available for review.

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

(f) The Planning Commission shall hold a public hearing on any such appeal within not less than twenty-one (21) nor more than ninety (90) days after the close of the appeal period. Notice of such hearing shall be posted in the offices of the Planning Department, and shall be mailed to the appellant, to the applicant, to the board(s), commission(s) or department(s) that will carry out or approve the project, to any individual or organization that has submitted comments on the proposed negative declaration, and to any other individual or organization that has requested such notice in writing.

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

(h) If the proposed negative declaration is not appealed as provided herein, or if it is affirmed on appeal, the negative declaration shall be considered final,

subject to any necessary modifications. Thereafter, the first City decision-making body to act on approval of the project shall review and consider the information contained in the final negative declaration, together with any comments received during the public review process, and, upon making the findings as provided in CEQA, shall adopt the negative declaration, prior to approving the project. All decision-making bodies shall review and consider the negative declaration and make findings as required by CEQA prior to approving the project.

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

(j) After the City has decided to carry out or approve the project, the Environmental Review Officer may file a notice of determination with the county clerk in the county or counties in which the project is to be located. If required by CEQA, the notice of determination shall also be filed with the California Office of Planning and Research.

Section 4. Administrative Code Section 31.13 shall be amended to read as follows:

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

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

(b) The applicant or the board, commission or department that is to carry out or approve the project shall submit to the Environmental Review Officer such data and information as may be necessary to prepare the draft EIR. If such data and information are not submitted, the Environmental Review Officer may suspend work on the draft EIR. The data and information submitted shall, if the Environmental Review

Officer so requests, be in the form of all or a designated part or parts of the proposed draft EIR itself, although the Environmental Review Officer shall in any event make his or her own evaluation and analysis and exercise his or her independent judgment in preparation of the draft EIR for public review.

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

(d) When the draft EIR has been prepared, the Environmental Review Officer shall file a notice of completion of such draft as required by CEQA. A copy of such notice, or a separate notice containing the same information, shall thereupon be posted in the offices of the Planning Department and on the subject site, and mailed to the applicant, the board(s), commission(s) or department(s) that will carry out or approve the project, and to any individual or organization that has requested such notice in writing. The notice of completion shall be sent by mail to the owners of all real property within the area that is the subject of the environmental impact report and within 300 feet of all exterior boundaries of such area. In the case of projects that either are citywide in scope or where the total area of land that is part of the project, excluding the area of public streets and alleys, is 5 acres or more, the Environmental Review Officer shall not be required to mail notice to the owners within 300 feet of all exterior boundaries of the project area. A copy of the draft EIR shall be provided to the applicant and to such board(s), commission(s) or department(s) and to any individual or organization that has so requested.

Section 5. Administrative Code Section 31.15 shall be amended to read as follows:

## SEC. 31.15. FINAL ENVIRONMENTAL IMPACT REPORTS.

(a) A final EIR shall be prepared by, or at the direction of, the Environmental Review Officer, based upon the draft EIR, the consultations and comments received during the review process, and additional information that may become available. The final EIR shall be made available to the public no less than ten (10) days prior to the Planning Commission hearing to consider certification of the final EIR.

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

(c) A public record shall be kept of each case in which an EIR is prepared, including all comments received in writing in addition to a record of the public hearing. The final EIR shall indicate the location of such record. Any transcription of a hearing record shall be at the expense of the person requesting such transcription.

(d) When the final EIR has been prepared and in the judgment of the Planning Commission it is adequate, accurate and objective, reflecting the independent judgment and analysis of the Planning Commission, the Planning Commission shall certify its completion in compliance with CEQA. The certification of completion shall contain a finding as to whether the project as proposed will, or will not, have a significant effect on the environment.

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

By: \_\_\_\_\_  
Kate Herrmann Stacy  
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