



# SAN FRANCISCO PLANNING DEPARTMENT

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July 14, 2010

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Re: Transmittal of Planning Case Number 2010.0336U to the Board of Supervisors File No. 10-0495: Appeals of Certain Environmental Determinations and Providing Public Notice**

**Recommendation: BOTH THE PLANNING COMMISSION AND THE HISTORIC PRESERVATION COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT AMENDS ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

Dear Ms. Calvillo,

On June 24, 2010, the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance would amend Administrative Code Chapter 31 provisions for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amend the provisions for public notice of such decisions and determinations.

**At the June 24<sup>th</sup> hearing, the PC voted 6-1 to recommend that the Board of Supervisors (herinafter "The Board") adopt the Ordinance with ten proposed modifications.**

On July 7, 2010, the San Francisco Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the same proposed Ordinance.

At the July 7<sup>th</sup> hearing, the HPC voted 5-0 (2 absent) to recommend that The Board adopt the Ordinance with ten proposed modifications recommended by the PC and requested that four additional points of concern be addressed through additional modifications.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rahaim", followed by a horizontal line.

John Rahaim  
Director of Planning

Attachments (one copy of the following):

Planning Commission Resolution No. 18069

Historic Preservation Commission Resolution No. 649

Planning Department Executive Summary for Case No. 2010.0336U



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18116 Administrative Code Text Change

HEARING DATE: JUNE 24, 2010

1650 Mission St.  
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Information:  
**415.558.6377**

*Project Name:* **Appeals of Certain Environmental Determinations and  
Providing Public Notice**

*Case Number:* 2010.0336U [Board File No. 10-0495]

*Initiated by:* Supervisor Alioto-Pier

*Introduced:* April 20, 2010

*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT AMEND ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

### **PREAMBLE**

Whereas, on November 3, 2009, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0495 which would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors by amending the Administrative Code. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.; and

Whereas, on May 27, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed Administrative Code amendment has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the legislative sponsor, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommends *approval with modification of the proposed Ordinance* and adopts the Resolution to that effect.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission considered a similar Ordinance in 2006. At that time, the Commission recommended approval with modification in Resolution Number 17335;
2. The proposed Ordinance considered by the Commission today has incorporated the changes recommended by the Commission in 2006;
3. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies;
4. The proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale;
5. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

### **I. ENVIRONMENTAL PROTECTION ELEMENT**

#### **OBJECTIVE 1**

ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

#### **OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

#### **OBJECTIVE 7**

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT

BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

6. The proposed Ordinance is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance with the recommended modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance not affect affordable housing supply..*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance will not impact the City's parks and open space.*

7. The proposed Ordinance is exempt from CEQA per CEQA Guidelines Section 15060(c)(2).  
8. The Commission therefore recommends *approval with modifications described below*:

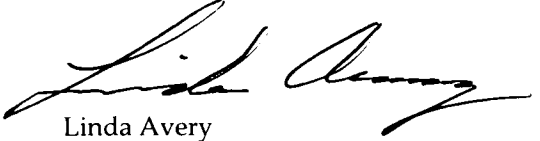
#### **Recommended Modifications**

1. **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
2. **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the "Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period". This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
3. **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to the Planning Commission is that this number is subject to change over time. We recommend leaving this matter to the more malleable "Procedures of the Clerk" rather than to fixing the number through legislation.
4. **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Department would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.

5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.
7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “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.” The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

11. Change "Approval" to "Adoption" as suggested by the City Attorney. References to NegDec "approvals" by the Planning Commission should be changed to "adoption" throughout the proposed Ordinance to more accurately represent the action taken by the Commission.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on June 24, 2010.



Linda Avery  
Commission Secretary

AYES: Miguel, Olague, Antonini, Borden, Lee, and Moore

NAYS: Sugaya

ABSENT:

ADOPTED: June 24, 2010





# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Resolution No. 649 Administrative Code Text Change HEARING DATE: JULY 7, 2010

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT AMENDS ADMINISTRATIVE CODE CHAPTER 31 PROVISIONS FOR APPEALS TO THE BOARD OF SUPERVISORS OF ENVIRONMENTAL DECISIONS AND DETERMINATIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AMEND THE PROVISIONS FOR PUBLIC NOTICE OF SUCH DECISIONS AND DETERMINATIONS.**

### PREAMBLE

Whereas, on November 3, 2009, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0495 which would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors by amending the Administrative Code. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.; and

Whereas, on May 27, 2010, the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the San Francisco Charter Section 4.135 states under "Other Duties" that the San Francisco Historic Preservation Commission (hereinafter "HPC") has limited jurisdiction to review and comment on certain environmental documents; specifically stating, "For proposed projects that may have an impact on historic or cultural resources, the Historic Preservation Commission shall have the authority to review and comment upon environmental documents under the California Environmental Quality Act and the National Environmental Policy Act."; and

Whereas, on June 2, 2010, the HPC conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed Administrative Code amendment has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the HPC has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the legislative sponsor, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the HPC has reviewed the proposed Ordinance; and

**MOVED**, that the HPC hereby recommends that the Board of Supervisors recommends *approval with modification of the proposed Ordinance* and adopts the Resolution to that effect.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission considered a similar Ordinance in 2006. At that time, the Planning Commission recommended approval with modification in Resolution Number 17335;
2. The proposed Ordinance considered by the Historic Preservation Commission today has incorporated the changes recommended by the Planning Commission in 2006;
3. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies;
4. The proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale;
5. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. ENVIRONMENTAL PROTECTION ELEMENT

**OBJECTIVE 1**

ACHIEVE A PROPER BALANCE AMONG THE CONSERVATION, UTILIZATION, AND DEVELOPMENT OF SAN FRANCISCO'S NATURAL RESOURCES.

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**OBJECTIVE 7**

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

II. URBAN DESIGN ELEMENT

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

6. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance with the recommended modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance not affect affordable housing supply..*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will not affect landmark and historic buildings.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance will not impact the City's parks and open space.*

7. The Historic Preservation Commission therefore recommends *approval with the modifications recommended by the Planning Commission and described below:*

**Recommended Modifications**

1. **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
2. **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the "Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period". This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
3. **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to our Commissions is that this number is subject to change over time. The Commission recommends leaving this matter to the more malleable "Procedures of the Clerk" rather than to fixing the number through legislation.

4. **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Commission would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.
5. **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Commission recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
6. **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Commission suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the Commission would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Board agrees with this recommendation, the Commission further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.
7. **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
8. **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “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.” The Commission requests clarifications on the intent of this language. The Commission is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Commission requests that this section apply to demolitions as defined by the Planning Code in Section 317.
9. **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Commission believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Commission would suggest that that appellants need only to raise the issue but not

discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.

10. **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.
  11. **Change “Approval” to “Adoption” as suggested by the City Attorney.** References to NegDec “approvals” by the Planning Commission should be changed to “adoption” throughout the proposed Ordinance to more accurately represent the action taken by the Commission.
8. In addition, the Historic Preservation Commission further recommends **that the draft Ordinance be modified to address the following points of concern:**
- 1) ensure fairness in any potential limiting of appellants to those who have been involved or commented at previous hearings and strike requirement for prior participation in categorical exemptions;
  - 2) add specificity about the role of the Historic Preservation Commission within the proposed process;
  - 3) increase notice of categorical exemptions and therefore increase capacity to secure early public involvement; and
  - 4) address the potential to limit future actions of the Historic Preservation Commission in the event of simultaneous approvals (especially potential district designation) where a CEQA appeal has been filed.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on July 7, 2010.

  
Linda Avery  
Commission Secretary

AYES: Buckley, Hasz, Martinez, Matsuda, and Wolfram

NAYS: --

ABSENT: Chase and Damkroger

ADOPTED: July 7, 2010



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Administrative Code Text Change

HEARING DATE: MAY 27, 2010  
CONTINUED TO: JUNE 24, 2010

1650 Mission St.  
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*Project Name:* **Appeals of Certain Environmental Determinations and Providing Public Notice**  
*Case Number:* 2010.0336U [Board File No. 10-0495]  
*Initiated by:* Supervisor Alioto-Pier  
*Introduced:* April 20, 2010  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Reviewed by:* **Bill Wycko, Chief Environmental Review Officer**  
Bill.Wycko@sfgov.org, 415-575-9048

*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Alioto-Pier would amend Administrative Code Chapter 31 provisions for appeals to the Board of Supervisors of environmental decisions and determinations under the California Environmental Quality Act, and amend the provisions for public notice of such decisions and determinations.

#### The Way It Is Now Summary:

The California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body if a non-elected decision-making body approves the CEQA document. In San Francisco, this means when the Planning Department or the Planning Commission acts on an environmental impact report (EIR), a negative declaration (neg dec) or a determination of exemption appeals must be granted before the elected Board of Supervisors.

Chapter 31 of the Administrative Code establishes local regulations to implement CEQA. At present, Chapter 31 provides procedures for an appeal of an EIR<sup>1</sup>, but does not provide procedures for an appeal of a neg dec or an exemption. To fill this void, the Clerk of the Board has provided procedures for an appeal of a neg dec and an exemption. Not only does Chapter 31 currently not provide for a process for an appeal of such determinations, but also Chapter 31 does not provide any time limits for filing appeals. On February 22, 2008, the City Attorney drafted a memorandum<sup>2</sup> explaining how the Amended CEQA

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<sup>1</sup> The current procedures for appeal of an EIR are set forth in Administrative Code Section 31.16.

<sup>2</sup> The full title of the memorandum is "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations/Determining Whether Appeals Are Ripe for Review and Timely Filed".

Guidelines that became effective on July 27, 2007 should be used to establish if appeals were 1) “ripe” or ready for appeal and 2) “timely” meaning not too late. All of the existing regulations and procedures for appeals are summarized in the comparison chart (Exhibit A).

**The Way It Would Be Summary:**

The proposed Ordinance would codify procedures for appeal of neg decs and exemptions to the Board of Supervisors. The Ordinance would delete Section 31.16 in its entirety and add a new Section 31.16 that would set forth an appeal process for EIRs, neg decs, and exemptions (including categorical exemptions, general rule exclusions, and statutory exclusions or exemptions). The new section would establish procedures applicable to all appeals, as well as specific procedures for appeals of EIRs, neg decs, and exemptions. In addition, the legislation would amend the public notice requirements for neg decs and draft EIRs in Sections 31.11 and 31.13, such that noticing would be more limited for projects that are citywide in scope or on project sites of 5 acres or more. Furthermore, Section 31.15 would be amended to specify that final EIRs must be available to the public no less than 10 days prior to the final EIR certification hearing.

**Detailed Description of Appeal Procedures:**

This document contains two summaries of appeal procedures that currently exist and those that are proposed in the Ordinance. The first summary is a comparison table. The second is a text description based upon the 2006 legislative digest that has been updated to reflect the current proposed Ordinance.



Comparison The Way It Is Now Table:

Environmental Notice & Appeal Provisions – Existing Procedures					
	Exemption	Prelim. Neg Dec	Final Neg Dec	Draft EIR	Final EIR
Notice	None required for most.  Cat ex as defined in 31.08 (f) requires notice for historic resources, demolitions or class 31 or 32 exemptions.)	Site Posting. Mailed notice to interested parties; approving entities; owners w/in 300' of site & adjacent occupants. Newspaper advertisement.	NONE; notice of determination may be filed after approval of project	Site Posting. Mailed notice to interested parties; approving entities; agencies w/expertise; owners w/in 300' of site. Newspaper advertisement.	Mailed notice to all C&R document recipients (commenters on DEIR, interested parties, etc).
Appeal to CPC	No appeal; testimony at approval hearing	Allowed	Not applicable	Not applicable	Not necessary; Planning Commission certifies Final EIR
Appeal to BOS	Allowed	Not allowed	Allowed	Not applicable	Allowed
Deadline for Filing Appeal to BOS - if “ripe” & “timely”	If Building Permit: “ripe” after first approval / “timely” until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal .  If CU: “ripe” after Commission hearing until permit issued & “timely” until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal.	Not applicable	If Building Permit: “ripe” after first approval / “timely” until permit issued & 15-day period for building permit appeal has expired or at conclusion of Board of Appeal hearing on building permit appeal .  If CU: “ripe” after Commission hearing until permit issued & “timely” until 30-day period for CU appeal has expired or at conclusion of Board of Supervisors hearing on CU appeal.	Not applicable	20 days after CPC certification of FEIR
Who Can Appeal to BOS	Any person	Not applicable	Any person	Not applicable	Any person who commented prior to certification
Deadline for BOS Appeal Hearing	Clerk practice is to schedule hearing within 45 days after appeal filing	Not applicable	Clerk practice is to schedule hearing within 45 days after appeal filing	Not applicable	30 days after appeal filing

Comparison The Way It Would Be Table: \* Note: only procedures that would change are detailed below.

grey box and red underlined text.

Environmental Appeal Provisions – Proposed Ordinance*					
	Exemption	Prelim. Neg Dec	Final Neg Dec	Draft EIR	Final EIR
Notice	No change.	No change.	No change.	No change.	No change.
Appeal to CPC	No change.	No change.	No change.	No change.	No change.
Appeal to BOS	No change.	No change.	No change.	No change.	No change.
Deadline for Filing Appeal to BOS	<u>10 days after first project approval or permit issuance</u>	No change.	<u>20 days after PC approval /adoption of FND NOTE: This is not the intent of the Ordinance. CEQA requires adoption of neg dec for appeal, A neg dec is “adopted” after approval of the project. This will be corrected in a later version of the Ordinance.</u>	No change.	No change.
Who Can Appeal to BOS	<u>Any person, or any person who objected to exemption at hearing on related approval action, if applicable.</u>	No change.	<u>Any person who appealed PND or commented at PND appeal hearing</u>	No change.	No change.
Deadline for BOS Appeal Hearing	<u>“Board decision within 45 days after appeal filing</u>	No change.	<u>Board decision within 45 days after appeal filing</u>	No change.	No change.



**Detailed Text Description:**

Current Chapter 31 Procedures:

Chapter 31 currently provides procedures for appeal of an EIR, but does not provide procedures for an appeal of a neg dec or an exemption. The Clerk of the Board has provided procedures for an appeal of a neg dec or an exemption, but Chapter 31 does not provide for a process or any time limits for an appeal of a neg dec or exemption to the Board of Supervisors ("Board").

The procedures for appeal of an EIR are set forth in Administrative Code Section 31.16 and are as follows.

1. Any person who has submitted written or oral comments on a draft EIR may appeal the Planning Commission's certification of the EIR to the Board.
2. A letter of appeal must be submitted to the Board within twenty calendar days after the Planning Commission's certification of the EIR. The letter must state the specific grounds for appeal, which are limited to the adequacy, accuracy and objectiveness of the final EIR, and the correctness of its conclusions. A fee must accompany the appeal letter, and may be waived or refunded under certain circumstances as set forth in Administrative Code Section 31.22.
3. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
4. While the appeal is pending, the City may not carry out or consider approval of the project.
5. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 3D-day review period multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project.
6. The Board must act on an appeal within 30 days of the appeal of the Planning Commission's certification of the EIR, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
7. The Board conducts its own independent review of the EIR, and may consider anew the facts and evidence and may consider new evidence.
8. The Board must affirm the Planning Commission's certification of the EIR if it finds that the Planning Commission's findings are correct. If the Board reverses the Planning Commission's certification, it shall make specific findings and remand the final EIR to the Planning Commission for further action as directed by the Board. The Board may affirm or reverse the EIR but may not amend the EIR. The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal. The Board acts by a vote of a majority of all members of the Board.
9. If the Board remands an EIR to the Planning Commission, the Planning Commission must take such action as may be required by the Board's specific findings. In the event the Planning Commission re-certifies the EIR, only the new issues or the portions of the EIR that have been revised may be appealed again to the Board.
10. The date of certification of the EIR shall be the Planning Commission's date of certification if no appeal is filed or if the Board upholds the Planning Commission's certification.

Proposed Amendments to Chapter 31

New Section 31.16 sets forth an appeal process for EIRs, neg decs and exemption determinations. Section 31.16 (b) includes procedures to be followed for all appeals. Section 31.16(c) includes procedures specific to EIRs, Section 31.16(d) includes procedures specific for neg decs and 31.16(e) provides procedures to be followed for statutory exclusions or exemptions, categorical exemptions and general rule exclusions (collectively, "exemptions"). Section 31.16(a) allows appeals to the Board of the following CEQA determinations: (1) certification of an EIR, (2) approval of a neg dec, (3) determination of categorical exemption, (4) a determination that a project is statutorily exempt or excluded from CEQA where the determination involves the discretionary application of factors set forth in CEQA, and (5) a general rule exclusion.

Proposed Procedures Applicable to All Appeals:

1. 15 copies of a letter of appeal must be submitted to the Clerk of the Board, accompanied by the fee set forth in Administrative Code section 31.22 and a copy of the CEQA document or CEQA decision that is being appealed. The letter must state the specific grounds for appeal, which are limited to the adequacy of the environmental review, the completeness of the environmental analysis or the correctness of the environmental determination. All appellants must sign the letter of appeal. A copy of the letter of appeal must be submitted to the Environmental Review Officer ("ERO") at the same time it is submitted to the Clerk of the Board. The Clerk of the Board may reject an appeal if appellants fail to comply with these requirements.
2. The ERO shall promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.
3. While the appeal is pending, the City may not carry out or consider the approval of the project that is the subject of the appeal unless the activities must be undertaken immediately to abate a hazard or an emergency presenting an imminent hazard to the public and requiring immediate action.
4. The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. 15 days advance notice shall be mailed to appellants and anyone else who has requested such notice in writing. All written materials regarding the appeal must be submitted 7 days in advance of the hearing to the Clerk of the Board, the ERO and other involved agencies. Multiple appeals will be consolidated into one hearing and may be coordinated with any other hearings on the project. Where multiple appeals are consolidated, the Board will allot to appellants the same total time for testimony as the Board allots to the applicant.
5. The Board must act on an appeal within 45 days of the date of appeal, provided that if the full Board is not present on the last day on which the appeal is said or continued for hearing, the Board may postpone the hearing for up to 90 days from the date of filing the appeal.
6. The Board conducts its own independent review on appeal, and may consider anew the facts and evidence and may consider new evidence.
7. The Board may affirm or reverse the environmental decision or determination by majority vote of all members of the Board. A tie vote will be considered disapproval. The Board will adopt findings in support of its decision and will provide specific findings setting forth the reasons for a decision to reverse the environmental decision or determination. The Board may also reject an appeal if it finds the appeal does not comply with the requirements of this section.

8. If the Board remands an environmental determination or document to the Planning Commission, the Planning Commission shall take such action as may be required by the Board's specific findings. Any further appeal shall be limited to the portions of the environmental document or determination that have been revised, and any appellant shall have commented on the revised environmental document or determination in order to appeal to the Board.
9. The date of the environmental document or determination shall be the date of the original approval of the document or determination if the Board affirms the document or determination and the City has approved the project prior to the filing of the appeal. If the City has not approved the project prior to filing an appeal of a neg dec or EIR the date of a neg dec or EIR shall be the date upon which the Board approves the environmental document.
10. If the Board reverses an environmental decision, the previous decision and approvals shall be void.

Proposed Procedures Specific to Appeals of EIRs:

1. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's certification of the EIR.
2. Grounds for appeal, and the Board's decision, shall be limited to issues related to the adequacy, accuracy, objectiveness and correctness of the EIR.

Proposed Procedures Specific to Appeals of Neg Decs:

1. An appellant shall submit a letter of appeal to the Clerk of the Board within 15 days of the Planning Commission's approval of the negative declaration. An appellant must have appealed the preliminary neg dec to the Planning Commission. If the preliminary neg dec is not appealed to the Planning Commission, the neg dec may not be appealed to the Board.
2. The Board may affirm the neg dec if it finds that the project could not have a significant effect on the environment, or may refer the neg dec back to the Planning Department for revisions. If the Board overrules the neg dec, it shall make specific findings upon remand to the Planning Commission.
3. A letter of appeal must be submitted to the Clerk of the Board within 20 days of the Planning Commission's approval of the neg dec.

Proposed Procedures Specific to Appeals of Exemptions:

1. Any person may appeal an exemption within 20 days of the first approval of the project or the first permit issued for the project.
2. If the Planning Department or other City department authorized to make an exemption determination provided public notice of the determination and the approving commission's or board's intent to rely upon the determination, any appellant must have objected to the determination before the commission or board considering the exemption and the project. Section 31.08(f) currently requires notice for a subset of exemptions (generally historic resources, demolitions, and Class 31 or 32 exemptions) that involve the majority of the exemption

determinations that are appealed to the Board<sup>3</sup>. If the public notice required by Section 31.08(f) is not provided, then the appellant is not required to object at any hearing before appealing the exemption to the Board. Section 31.08(f) requires the following public notice of an exemption determination:

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 person who wishes to object to the CEQA determination must raise an objection 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.

3. The 20-day appeal period for an appeal to the Board shall not commence until the date of an approval action following the conclusion of any properly noticed public hearing before any board or commission considering the project and the exemption.
4. With respect to an exemption determination for an ordinance, the first approval shall be the Planning Commission's decision to recommend an ordinance. If the Planning Commission takes no action on an ordinance, then the Board shall consider, and affirm or reject, the Planning department's recommended CEQA exemption as the Board's CEQA determination when it considers the ordinance and no separate appeal of the exemption shall be required.
5. The Board may affirm the exemption if it finds that the project conforms to the requirements set forth in CEQA for the exemption. The Board may provide additional analysis of the exemption, provided that the ERG recommends such additional analysis and no additional public notice is required. 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. Any exemption that the Board remands must be sent to the Planning department, and not the department making the original exemption.

#### Changes in Public Notice Requirements

Sections 31.11 and 31.13 have been amended to delete the requirement to mail notice to owners within 300 feet of all exterior boundaries of the project area of (1) a notice of intent to adopt a neg dec, or (2) a notice of completion of a draft EIR, for projects that either are citywide in scope or where the total area of land that is part of the project is 5 acres or more.. Section 31.15 has been amended to require that the final EIR shall be available to the public no less than 10 days before the Commission considers certification.

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<sup>3</sup> From Section 31.08 (f): "When the ERO . . . 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.

## REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## RECOMMENDATION

The Department strongly recommends that the Commission recommend *approval with modifications* to the proposed Ordinance and adopt the attached Draft Resolution to that effect.

### Recommended Modifications

- **All Sections- Add Community Plan Exemptions.** This exemption should be added throughout the Ordinance where types of exemptions are enumerated.
- **Section 31.16(b)(4)- Request Preparation Time.** This section provides that the “Clerk of the Board shall promptly schedule a hearing on the appeal, without regard to any rule or policy of the Board requiring a 30-day review period”. This could be problematic for the Department, appellants, and project sponsors in that a hearing could be scheduled virtually immediately without any reasonable opportunity to prepare and submit written materials for the appeal hearing.
- **Section 31.16(b)(5)- Delete Requirement for Certain Number of Copies.** This section requires that all parties submit 15 copies to the Clerk of the Board. Our experience with the number of copies provided to the Planning Commission is that this number is subject to change over time. We recommend leaving this matter to the more malleable “Procedures of the Clerk” rather than to fixing the number through legislation.
- **Section 31.16(b)(5)- Adjust the Response Deadline.** This section requires all parties submit all written materials no later than noon, seven days prior to the appeal hearing. The Department would propose a staggered submission deadline that would require the appellant to submit the argument for their appeal 15 days before the hearing, the Department and project sponsor would submit responses to the argument 10 days prior to the hearing, and rebuttals by all parties are due 7 days prior to the hearing. Currently, all parties are submitting late responses and responses to late response up through the day of the appeal hearing. The Code requirement should restrain tardy responses by all parties to the greatest degree possible.
- **Section 31.16(b)(7)- Change the Requirement for Board Action.** This section requires that the Board act within 45 days of filing the appeal. In practice, there may be some delay between the filing of an appeal and the determination that a filed appeal is a valid appeal. The Department recommends that the 45-day deadline for Board action be counted from the date the appeal is determined to be valid.
- **Section 31.16(b)(9)- Request Clarification on Remanded Decisions.** This section discusses reversal of the Planning Commission decision. The Department suggests this section specify, in greater detail, the process for remanded decisions that are sent back to the Department for further work. Clarification should be added to specify whether if only the content sent back for future work can be the subject of subsequent appeals or instead if the entire CEQA work could be subject to subsequent appeal. In addition, if remanded work is subsequently appealed the

Department would suggest that all future hearings on the topic go directly to the Board of Supervisors to avoid conflicting directions to the Department. If the Commission agrees with this recommendation, the Department further recommends that the rights for an appeal of a previously remanded decision be preserved by timely comments at associated approval hearings or in writing to the ERO.

- **Section 31.16(e)(1)- Request Clarification on Notice Types That Require Objection to Maintain Appeal Rights.** This section discusses when a potential appellant may appeal an exemption that has been “noticed”. This could be made more specific by listing the types of notice that would satisfy this requirement such as notices for 311/312, conditional use authorization, discretionary review and/or other notices of permitting.
- **Section 31.08(f)- Request Clarifications on Notice Requirements For Exemptions.** This section provides the list of exemptions which require notice. The first clarification concerns a new exemption that would require notice: “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.” The Department requests clarifications on the intent of this language. The Department is unclear if MEA could ascertain the full noticing requirements for all projects. The second clarification concerns an existing requirement for notice of demolitions. The Planning and Building Departments have different definitions for “demolition”. The Department requests that this section apply to demolitions as defined by the Planning Code in Section 317.
- **Section 31.08(f)- Request Clarification on the Process for Preserving Exemption Appeal Rights When No CEQA Hearing Occurs.** The last sentence this section discusses the exemption notice requirements and describes how potential appellants must raise objections as specified in order to preserve the right of appeal to the Board. The Department believes this section needs clarification for items which have no forum for objecting; i.e. there is no CEQA hearing. In this instance, the Department would suggest that that appellants need only to raise the issue but not discuss or resolve the issue in order to maintain the right to appeal. Most importantly, there should not be an “on-the-spot” decision regarding the potential merits of a CEQA appeal at a discretionary review hearing.
- **Section 31.13(d)-Request Additional Process Description.** This section discusses draft environmental impact reports (DEIR) and associated notice requirements. The section adds additional language discussing projects of large scope. This section, however, does not discuss noticing requirements for steps that occur in advance of DEIR publication such as noticing for “notice of preparation” (NOP) and “initial study” (IS). A more thorough description of the notice requirements for NOP and IS would be beneficial to the public and the Department.

## BASIS FOR RECOMMENDATION

The Planning Department strongly supports the proposed Ordinance, with minor modifications. The Planning Commission considered a similar Ordinance in 2006. At that time, the Commission recommended approval with modification in Resolution Number 17335. (See Exhibit C) In the Fall of 2006, the Land Use Committee considered the Ordinance but continued it to the call of the chair. The revised Ordinance discussed in this report has incorporated the changes recommended by the Commission in 2006. Although the Administrative Code has not been amended the intervening years,



there have been changes and clarifications to the City's CEQA appeals process, including the City Attorney memorandum from February 22, 2008 and the 2007 Amended CEQA Guidelines.

While these changes have added some clarity to the process, there is still room for improvement. The proposed Ordinance, with the modifications recommended by the Planning Department, would make Chapter 31 consistent with CEQA requirements for appeals to elected decision-making bodies. Furthermore, the proposed amendments, with modifications, would codify existing procedures for CEQA appeals, would establish time limits for appeals, and would establish more limited notification requirements for projects of a larger scale.

## **ENVIRONMENTAL REVIEW**

The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department received no letters in support or opposition of the proposed Ordinance.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0495
- Exhibit C: 2006 Planning Commission Resolution Number 17335