

## LEGISLATIVE DIGEST

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

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

### Existing Law

#### Background:

Administrative Code Chapter 31 sets forth the procedures for implementing the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.* ("CEQA"). CEQA requires local agencies to allow an appeal of an environmental impact report ("EIR"), a negative declaration ("neg dec") or a determination of exemption to the elected decision-making body if a nonelected decision-making body certifies the EIR, approves a neg dec or makes a determination of exemption.

#### 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 determination. The Clerk of the Board has provided procedures for an appeal of a neg dec or an exemption determination, 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 legislation in Board of Supervisors File No. 100495 provides new procedures as well as procedures for appeal of a negative declaration, but does not include any new procedures or appeal procedures for an exemption determination.

Current Section 31.08 sets forth procedures for exemption determinations, including requirements for written notice of certain kinds of exemption determinations, maintaining a list of the kinds of categorical exemptions, and the authority to delegate certain kinds of exemption determinations to other City departments.

### Amendments to Current Law

#### Section 31.08

Section 31.08 sets forth requirements for exemption determinations, including determinations made by City departments to which the Environmental Review Officer has delegated authority to make exemption determinations. The amendment to Section 31.08 (c) allows the Historic Preservation Commission to request additions, deletions and modifications to the classes of projects listed as categorically exempt in CEQA.

Section 31.08(f) adds a public notice requirement for an exemption determination regarding any alteration to a building 50 years or older, and continues to require notice for other kinds of exemption determinations, including demolition, which this amendment defines as any one of the following: (1) removal of more than 25% of the surface of all external walls facing a public street; or (2) removal of more than 50% of all external walls from their function as all external walls; or (3) removal of more than 25% of external walls from function as either external or internal walls; or (4) removal of more than 75% of the building's existing internal structural framework or floor plates unless the City determines that such removal is the only feasible means to meet the standards for seismic load and forces of the latest adopted version of the San Francisco Building Code and the State Historical Building Code.

Section 31.08 requires that certain kinds of exemption determinations be in writing, and posted on the Planning Department's website, in addition to existing notice requirements to post the exemption determination in the offices of the Planning Department and mailed to any individuals or organizations that have previously requested such notice in writing.

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 exemption determination and where to obtain a copy of it, and (2) advise the public that any person who wishes to object to the CEQA determination may raise an objection before the Planning Commission, the Zoning Administrator, or other City board or commission, as applicable. Such testimony must be allowed prior to and separate from the consideration of the project.

Following approval of a project that is the subject of the exemption determination, the ERO may file a Notice of Exemption and shall post it in the offices of the Planning Department and on the Planning Department's website, and mail it to any person or organization that has requested in writing such notice. The Notice of Exemption may not be filed until after project approval and after any CEQA appeals that may have been filed following such project approval have been resolved and the project approval becomes effective.

### Section 31.16

The amendments to Section 31.16 contained in this legislation reflect the changes included in the legislation in Board of Supervisors File No. 100495. This legislation reflects those changes and this legislative digest discusses only the procedures applicable to CEQA exemption determinations, which have been included in this divided file.

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 decision that is being appealed. The letter must state the specific grounds for appeal, which are limited to the adequacy of the environmental review, and the completeness of the environmental analysis.

All appellants or their authorized agent(s) 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.

Any person or entity may appeal a project's exemption determination no later than twenty (20) days after the final discretionary permit to be issued for the project, provided that there is an appeal process for such discretionary permit and provided further that such appeal shall be filed prior to the conclusion of any appeal period for such discretionary permit, even if the appeal period for the discretionary permit is less than twenty (20) days.

For purposes of a determination made with respect to an ordinance, the full Board shall consider the Planning Department's recommended exemption determination at a public hearing as the Board's CEQA determination, and shall affirm or reject the CEQA determination prior to and separate from its consideration of the ordinance and no separate appeal shall be required.

The ERO shall transmit copies of the environmental documents to the Clerk of the Board no less than 11 days prior to the scheduled hearing on the appeal, and shall make the administrative record available to the Board.

While the appeal is pending, the City may not consider the approval of, or issue any permits for, the project that is the subject of the appeal unless and only to the extent to which the activities must be undertaken immediately to abate a hazard or an emergency presenting an imminent hazard to the public and requiring immediate action. If the Historic Preservation Commission is considering a landmark or historic district nomination that includes the project, the nomination may proceed during the pendency of the appeal.

The Board shall hold a hearing without regard to any rule or policy of the Board requiring a 30-day review period. The hearing must be held no less than 20 and no more than 30 days following the date the Clerk determines the appeal is valid. If more than one appeal is submitted, the Board President may consolidate such appeals, provided that up to 3 individual appellants will have his or her own time for testimony as if such appeals were not being heard simultaneously, and shall have the same total time for testimony at the public hearing as provided to the Project Sponsor. The CEQA appeal must be heard prior to and separate from other hearings on the project.

Notice of the appeal shall be provided by mail to the appellants and to organizations and individuals who have requested in writing such notice no less than 10 days prior to the date the appeal is scheduled to be heard. Appellants must submit written materials regarding the appeal 15 days in advance of the hearing, and the Planning Department must submit written materials 10 days in advance of the hearing. Any other materials submitted no later than noon 7 days prior to the hearing will be distributed to the Supervisors as part of their hearing materials.

The Board must act on an appeal within 30 days of the date set for the hearing, 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, and provided further that if the Board does not conduct at least 3 regular Board meetings during such 30 days, the Board must decide the appeal within 40 days of the time set for hearing.

This amendment does not require an appellant of an exemption determination to comment to the Planning Department, Planning Commission or any approving body prior to appealing to the Board. The Board conducts its own independent review on appeal, may consider anew the facts and evidence and may consider new evidence.

The Board may affirm or reverse the environmental 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 determination, which may include adoption or incorporation of the Appellant's written materials.

The Board shall affirm an exemption determination only if it finds, as applicable, that the project conforms to the requirements set forth in CEQA for the exemption determination. 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 the exemption determination, the Board shall make specific findings to overturn the exemption determination and remand the CEQA determination to the Planning Department for environmental review consistent with the Board's findings, including the preparation of a negative declaration or an EIR, as appropriate. In the event the Board reverses the exemption determination of any City department, agency or official other than the Planning Department, the exemption determination shall be remanded to the Planning Department, and not the City department, agency or official that made the original exemption determination, for environmental review in accordance with the Board's directions.

If the Board remands an environmental determination to the Planning Commission or Department, it 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 determination that have been revised.

The Board may reject an appeal if it finds that the appeal fails to state proper grounds for appeal or fails to comply with Section 31.16.

The date of the environmental determination shall be the date of the original approval of the determination if the Board affirms the 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 the appeal, the date of the environmental determination shall be the date upon which the Board approves the environmental determination.

If the Board reverses the CEQA determination, the prior determination and any approval actions for the project in reliance on the reversed CEQA determination shall be deemed void.

#### Background Information

CEQA was amended to allow appeals of negative declarations and exemption determinations and this legislation implements local procedures to implement the appeal requirements for exemption determinations.