

REVISED LEGISLATIVE DIGEST

(11/20/2012, Substituted in Board)

[Administrative Code - California Environmental Quality Act Procedures]

Ordinance amending the San Francisco Administrative Code Chapter 31 to reflect revisions in the California Environmental Quality Act (CEQA) and to update and clarify certain procedures provided for in Chapter 31, including without limitation: codifying procedures for appeals of exemptions and negative declarations; providing for the Board to make the final CEQA decision on projects requiring Board legislative action, negating the need to file formal CEQA appeals; revising noticing procedures for environmental impact reports and negative declarations for plan area projects exceeding five acres; expanding noticing requirements for certain exempt projects; and clarifying existing noticing requirements for exempt projects.

Existing Law

The City of San Francisco, in accordance with the requirements of California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* ("CEQA"), and CEQA Guidelines, Title 14, California Code of Regulations, Section 15000 *et seq.* has adopted local procedures for administering its responsibilities under CEQA. These procedures are codified in San Francisco Administrative Code Chapter 31. These procedures tailor the general provisions of the CEQA Guidelines to the specific operations of the City and incorporate by reference the provisions of CEQA and the CEQA Guidelines.

Amendments to Current Law

The proposed ordinance updates some of the procedures in San Francisco Administrative Code Chapter 31 to reflect revisions to CEQA and the CEQA Guidelines and to codify certain administrative procedures that the San Francisco Planning Department has found workable in practice. The primary updates to Chapter 31 are as follows:

- Section 31.04. Deletes a no longer relevant reference to the San Francisco Redevelopment Agency. Clarifies certain administrative functions of entities within the City and County to reflect actual practice and changes in local law, including activities of the Clerk of the Board, the Historic Preservation Commission and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk. Provides for notices electronically unless otherwise specified by CEQA.
- Section 31.05. Clarifies existing practice, which is that all projects subject to CEQA are referred to the ERO unless the ERO has delegated specified exemption determinations to another city entity.

- Section 31.06. Deletes references to "categorical" exemptions and instead references all types of exemptions. See Section 31.08.
- Section 31.08. Clarifies the procedures for handling exemptions from CEQA, including:
 - Defines four types of exemptions to better reflect CEQA and CEQA Guidelines - statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
 - Updates existing ordinance language as to when public notice of an exemption determination is required by (1) clarifying the definition of projects involving historic resources for which notice is required and (2) defining demolition projects to be consistent with Planning Code Section 317.
 - Updates the ordinance language to be consistent with existing practice of the Planning Department to produce a written determination for any project for which a notice is required and by posting the determinations on its web page.
 - Provides in Section 31.08(f) that projects that rely on an exemption determination and for which the first approval of the project occurs at a public hearing are required to provide notice of the exemption, right to appeal to the Board and consequences of failing to timely raise objections to the exemption.
 - Provides in Section 31.08(g) that a department approving a project may request the Planning Department to post a notice on Planning's web page advising the public of the department's first approval of the project and informing the public that the exemption determination may be appealed to the Board of Supervisors.
- Sections 31.09 and 31.10. Makes minor clarifying revisions to these sections to reflect actual practice of the Planning Department in its initial evaluation of projects. Revises the language as to when a negative declaration is required to make the ordinance language consistent with CEQA Guidelines.
- Section 31.11. Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices. Provides that projects covering large areas do not require a notice of intent to adopt a negative declaration to be distributed to each property owner within 300 feet of the exterior boundaries of the project area but requires Planning to post all negative declarations on its web page.
- Sections 31.12 – 31.15. Updates and clarifies the noticing, posting and distribution requirements of CEQA and the practices of the Planning Department with respect to environmental impact reports (EIRs). Provides that projects covering large areas do not require a notice of completion of an EIR to be distributed to each property owner

within 300 feet of the exterior boundaries of the project area but provides that Planning shall post all draft EIRs on its web page. Requires a phonographic reporter to record all public hearings on draft EIRs.

- Section 31.16. Deletes existing Section 31.16 pertaining to appeals of final EIRs and proposes a new Section 31.16 to address appeals of exemption determinations, negative declarations and environmental impact reports. The key provisions of the new section include:
 - Exemption determinations, negative declarations and environmental impact reports may be appealed to the Board of Supervisors unless the Board is the CEQA decision-making body for the project, in which case, the Board must affirm the CEQA determination of the Planning Department or Planning Commission before the project will be finally approved by the City. The Board is defined as the CEQA decision-making body for the project if the project involves a CEQA document prepared specifically in support of a Board ordinance or any project for which Board approval actions are pending before the Board or have already been taken on a project at the time a CEQA appeal is filed. The Board will be the CEQA decision-making body for projects that require the Board's approval to be implemented. If the Board is the CEQA decision-making body, any person may raise CEQA issues before the Board through the Board's regular public hearing process. The Board must affirm or reject the preliminary CEQA decision rendered by the Planning Department or Planning Commission, prior to, or, as part of, its consideration of the project.
 - Appeals must be filed within specified periods: (1) for an EIR, within 20 days of an EIR certification and first approval of the project; (2) for a negative declaration, within 20 days of the adoption of the negative declaration approving the project; and (3) for exemption determinations, within one of these periods as applicable: (i) for a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process, within 20 days of the granting of the first appealable entitlement; (ii) for projects not covered by (i), if the Planning Department posts a notice as provided in Section 31.08(g) informing the public of the first approval of the project, within 20 days of the posting; or (iii) for projects not covered by (i) for which Planning is not asked to post a notice as provided in Section 31.08(g), within 30 days of the first approval of the project.
 - To file an appeal, one must pay a fee, and the person filing the appeal must have submitted comments during the public comment period on the draft EIR if the appeal is of an EIR; if the appeal pertains to a negative declaration, the negative declaration must have been appealed to the Planning Commission

first. The grounds for the appeal and all written materials in support of the appeal must be filed with the appeal.

- For projects that require multiple approvals, while the appeal is pending at the Board, other City agencies and officials may approve the project but shall not take actions to implement the project that will physically change the environment except essential actions to abate hazards to public health and safety. If the Board reverses the CEQA determination of Planning, all approvals, including those taken during the pendency of the appeal, are void.
- The ordinance specifies the time frame for the ERO to transmit the environmental documents to the Board and to provide the Board with lists of interested parties.
- The Clerk is directed to schedule the appeal hearing before the full Board or as otherwise provided by the Board Rules of Order. The Clerk shall schedule the CEQA appeal hearing no less than 30 or more than 45 days following the expiration of the time for filing the appeal and provide at least a 14 day notice of the appeal hearing.
- For materials to be submitted to Board members prior to the hearing, members of the public may submit written materials to the Board up to 11 days and Planning may submit written materials up to 8 days before the hearing. The Board shall act within 30 days of the scheduled hearing date but may extend this to not more than 90 days from the deadline for filing the appeal under specified circumstances.
- The ordinance specifies the actions that the Board may take for each kind of appeal and the process for then completing the CEQA document in the event the Board reverses the decision of the Planning Commission or Planning Department. If the Board upholds the CEQA decision, prior approval actions are valid. If the Board reverses the CEQA decision, prior approval actions are void.
 - In the case of EIRs, if the Board reverses Planning's certification, any further appeals of the revised EIR are limited to revised portions and an appellant must comment on the revised EIR at any earlier public hearing on the revisions.
 - In the case of a negative declaration, if the Board reverses Planning's approval, the Board may remand the negative declaration to Planning for revision and if so, further appeals of the revised negative declaration are limited to the revised portions. The Board may alternatively require

preparation of an EIR, in which case, Planning shall prepare the EIR in accordance with CEQA and the requirements of this Chapter 31.

Background Information

The ordinance is proposed to update the City's existing CEQA procedures so that they conform to current provisions of CEQA and CEQA Guidelines, and reflect current Planning Department practices. Among other provisions, the proposed ordinance codifies a process for appealing negative declarations and exemption determinations to the Board and provides for the Board to become the final CEQA decision-making body for projects that require Board approval. These provisions are intended to respond to requirements in the CEQA statute that if the Board, as the elected body of the City, does not make the final decision regarding a CEQA determination, and instead, such decisions are made by the Planning Commission or Planning Department, the public has the right to appeal those decisions of Planning to the elected Board.

Prior to 2003, the CEQA statute provided for appeals of EIR certifications to the elected decision-making body where a non-elected decision-making body certified the project. In response to this earlier provision of CEQA, the City codified an appeal process for EIRs, which is currently found in Administrative Code Chapter 31.16. The Legislature amended the CEQA statute in 2003 to provide that where a non-elected decision-making body of a lead agency adopts a negative declaration or makes a determination that a project is exempt from CEQA, the negative declaration or CEQA exemption may be appealed to the lead agency's elected decision-making body, if any. Since 2003, the City has not amended Chapter 31 to provide for an appeal process for negative declarations or exemption determinations. Instead, the City has relied on interim guidelines issued by the Clerk's Office, City Attorney opinions on ripeness and timeliness of appeals and Board Rules of Procedure for conducting land use appeal hearings.

Since the appeal requirement to the Board under CEQA only applies where Planning renders the final CEQA decision, the ordinance provides that where the Board must approve a project, the Board will become the final decision-maker for CEQA purposes, thereby negating the need under CEQA for a formal appeal process. Instead of requiring the public to file an appeal, the public may raise CEQA issues as part of Board hearings on the project and the Board must affirm the earlier CEQA determination of Planning as part of its approval of the project.