

**REVISED LEGISLATIVE DIGEST**

(7/22/2013, Amended in Committee)

[Administrative Code - California Environmental Quality Act Procedures, Appeal of Exempt Project Modification]

**Ordinance amending Administrative Code, Chapter 31, to provide for appeal to the Environmental Review Officer to reconsider a determination of the Environmental Review Officer that an exempt project modification does not require a new decision under the California Environmental Quality Act; and making environmental findings.**

Existing Law

The City of San Francisco, in accordance with the requirements of the 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

This legislation amends one section of Chapter 31 to provide for a process to appeal a determination by the Environmental Review Officer ("ERO") that a change to a project exempt from CEQA is not a substantial modification to the project that requires a new CEQA decision.

The appeal process provides for a hearing before the ERO. Project approvals and construction related to the changes in the project may proceed during the appeal process. The ERO is required to reconsider his or her prior decision in light of any new information submitted before or at the hearing. The appeal must be filed within 10 days of the original decision and the hearing held within 20 days of the appeal, on the same day as a Planning Commission regularly-scheduled meeting. If no Planning Commission meeting is scheduled within the 20-day period, or if the period between the filing of the appeal and the Planning Commission meeting is insufficient to notice the public hearing, then the hearing must be held on the day of the one of the next two Planning Commission meetings. The hearing must be video-recorded, with the recording posted on the City's website, and, if feasible, broadcast on the City's official television channel. The ERO must render a decision within 14 days of the hearing.

If the ERO finds that the original determination that the change is the project is not a substantial modification was in error, the ERO must issue a new CEQA decision. Until a new CEQA decision is issued, project approvals authorizing the change in the project will be suspended. If the ERO issues a new exemption determination, the suspended approvals will be reinstated and valid as of the date of the original approval. But, if the ERO identifies a suspended approval as the Approval Action for the modified project, for purposes of Chapter 31 only, the date of the Approval Action will be the date the approval is reinstated. If the ERO determines that the modified project is not exempt from CEQA, any prior approval for the modified project is void.

If the ERO finds that the original determination was not in error, the original decision is final and not subject to any further administrative appeals.

The ordinance has an operative date that is the same as companion legislation in Board file 121019 that proposes other amendments to Chapter 31.

#### Background Information

The ordinance amends substitute legislation proposed to revise one aspect of the City's existing CEQA implementation procedures. Supervisor Kim introduced the original legislation on May 14, 2013, and the substitute legislation on July 16, 2013. Under the original proposal, one had 30 days to file an appeal to the Planning Commission of a determination by the ERO that a change to a project exempt from CEQA was not a substantial modification to the project that required a new CEQA decision. The Planning Commission had 60 days to take action on the appeal. The City could not take action to approve the project during the pendency of the appeal.

The substitute legislation provided instead for an appeal process before the ERO, with the deadlines as stated in this proposed amendment. The amendment clarifies that the City can approve the changes in the project during the appeal process. The amendments also clarify the effect on such approvals if the ERO determines as a result of the appeal that a new CEQA decision is required. The amendments also make some technical clarifications in the appeal process and add an operative date.