

**REVISED LEGISLATIVE DIGEST**

(Substituted: 11/23/2010)

[Amendment of Administrative Code Chapter 31 to provide for appeals of certain environmental determinations and providing public notice]

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

Currently, Section 31.08 also provides a process for issuance of categorical exemptions and a list of persons and organizations to be notified when certain kinds of categorical exemption determinations are made.

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 30-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.

#### Amendments to Current Law

Section 31.01 provides that the City Attorney will notify the Board of Supervisors when changes in the law may require amendments to Chapter 31. Section 31.04 also authorizes the Clerk of the Board to adopt procedures to perform administrative functions necessary to resolve any appeals to the Board of Supervisors.

#### Changes to Exemption Determination Procedures

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 the appeal period for the exemption determination, set forth in Section 31.16, has expired or any appeal has been finally resolved and the exemption determination becomes final.

#### Changes in Procedures for Negative Declarations

Section 31.11 requires that any preliminary negative declarations for projects that may affect any historic resource, as defined in CEQA, be provided to the Historic Preservation Commission for its review and comment.

Section 31.11 provides the procedure for the first City decision-making body to act on approval of a project that is the subject of a negative declaration. In the event that such body determines that the negative declaration does not provide adequate information for the project to be approved, the decision-making body shall make findings regarding

such deficiencies and shall delay consideration of approval of the project pending receipt of additional environmental information, or may disapprove the project. A Notice of Determination may be filed after the project has been approved and the appeal period for the negative declaration has expired or any appeal has been finally resolved and adoption of the negative declaration becomes final.

#### Changes in General Public Notice Requirements

Sections 31.11 and 31.13 have been amended to provide that City-sponsored projects involving rezonings, Area Plans or General Plan amendments and are either citywide in scope or the total area of land is 5 acres or more, shall not be required to provide mailed 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.

Section 31.15 has been amended to require that a Final EIR be made available to the public 14 days prior to the Planning Commission's certification hearing.

#### Historic Preservation Commission Review

Section 31.13 has been amended to require the ERO to consult with the Historic Preservation Commission on a Draft EIR if the project may affect historic resources or will be subject to the approval of the Historic Preservation Commission. Section 31.14 has been amended to require the Historic Preservation Commission's review of a Draft EIR when a project may affect historic resources, as defined by CEQA. Such review shall take place at a public hearing at least eight (8) days prior to the Planning Commission's hearing on the Draft EIR.

#### Appeal Process

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 negative declarations and 31.16(e) provides procedures to be followed for statutory exclusions or exemptions, categorical exemptions and general rule exclusions (collectively, "exemption determinations").

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 that a categorical exemption applies, (4) a determination that a project is statutorily exempt or excluded from CEQA, and (5) a general rule exclusion.

#### Procedures applicable to all appeals:

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 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.

The ERO shall transmit copies of the environmental review 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 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 deletes that requirement that an appellant shall have commented on an EIR to the Planning Department or Commission in order to be able to appeal the EIR to the Board, and does not require an appellant of a negative declaration or 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 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, which may include adoption or incorporation of the Appellant's written materials.

If the Board remands an environmental determination or document to the Planning Commission or Department, which 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.

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 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 the appeal, the date of the environmental document shall be the date upon which the Board approves the environmental document.

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

Specific procedures for 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.

Specific procedures for appeals of Neg Decs:

1. An appellant shall submit a letter of appeal to the Clerk of the Board within 20 days of the Planning Commission's adoption of the negative declaration.
2. The Board may affirm the negative declaration only if it finds that the record does not contain substantial evidence supporting a fair argument that the project could have a significant effect on the environment, or the Board 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 Department.

In the event a negative declaration is remanded to the Planning Department, the Environmental Review Office must take action consistent with the Board's direction. In the event the negative declaration is revised, the Environmental Review Officer shall finalize the revised negative declaration and send notice to the public of the availability of the revised negative declaration. No appeal to the Planning Commission of the revised negative declaration shall be required. In the event an organization or individual wishes to appeal the revised negative declaration, such appeal shall be made directly to the Board of Supervisors within twenty (20) days of publication of the revised negative declaration.

Specific Procedures for appeals of Exemptions:

The following procedures apply to exemptions.

1. Any person may appeal an exemption within 20 days of the date that notice is given of the issuance of a discretionary permit for the project. If no notice is provided, any person may appeal an exemption determination within 20 days of 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 the CEQA appeal shall be filed with the Board prior to the conclusion of any appeal period for such discretionary permit, even if the appeal period for the discretionary permit is less than 20 days. The 20-day appeal period shall not 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 exemption determination for the project approval action and advised the public of an opportunity for a public hearing on the proposed project.
2. For purposes of a determination made with respect to 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.
3. If the Board reverses the exemption determination of any City department other than the Planning Department, the exemption determination shall be remanded to the Planning Department, and not the City department that made the original exemption determination, for environmental review in accordance with the Board's directions.

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.