

## LEGISLATIVE DIGEST

[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. 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 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.

Section 31.08 sets for requirements for exemption determinations, including determinations made by City departments where the Environmental Review Officer has delegated authority to make exemption determinations.

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

#### Changes in Public Notice Requirements

Sections 31.11 and 31.13 have been amended to provide that City-sponsored projects that involve 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 requires 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 31.14 has been amended to provide for the Historic Preservation Commission's review of environmental documents and determinations that address historic resource issues.

#### 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, Community Plan 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, (5) a Community Plan Exemption and (6) 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 promptly transmit copies of the environmental review documents to the Clerk of the Board and make all other relevant documents available to the Board.

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.

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. Appellants must submit written materials regarding the appeal 15 days in advance of the hearing, and other parties must submit written materials 10 days in advance of the hearing and the Planning Department response must be submitted 7 days in advance of the hearing. 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.

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.

The Board conducts its own independent review on appeal, and 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. The Board may also reject an appeal if it finds the appeal does not comply with the requirements of this section.

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.

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.

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. An appellant must have appealed the negative declaration to the Planning Commission or submitted comments to the Planning Commission in order to appeal to the Board.
2. The Board may affirm the negative declaration 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.

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 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. 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.

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.

#### 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.