

REVISED LEGISLATIVE DIGEST

(4/2/2013, Substituted)

[Administrative Code - California Environmental Quality Act Procedures]

Ordinance amending 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 of Supervisors (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 20 acres; expanding noticing requirements for certain exempt projects; clarifying existing noticing requirements for exempt projects; and making environmental findings.

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.
- In new section 31.04(h) defines “Approval Action,” “Building Permit,” “Date of the Approval Action,” and “Entitlement of Use for the Whole of the Project,” all of which relate to describing the approval action for a project that triggers the ability to file an appeal of a CEQA determination to the Board of Supervisors.
- “Approval Action” for an exempt project is defined as:
 - (1) for private projects:
 - (A) the first approval of the project in reliance on the exemption at a noticed public hearing at the Planning Commission, or if no such hearing is required,
 - (B) the first approval in reliance on the exemption that grants an entitlement for the whole of the project, either by another commission, board or official after a public hearing or by any official of the city without a public hearing.
 - (2) for City’s own projects (e.g. not private projects):
 - (A) the first approval in reliance on the exemption of the project at a noticed public hearing,
 - (B) if approved without a public hearing, the decision in reliance on the exemption that commits the City to a definite course of action in regard to the project.
- “Approval Action” for projects covered by a negative declaration means the approval of the project by the first City decision-making body that adopts the negative declaration.
- “Approval Action” for projects covered by an EIR means the approval of the project by the first City decision-making body following the certification of the completion of the EIR by the Planning Commission as provided in Section 31.15(d).
- 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 31.08. Clarifies the procedures for handling exemptions from CEQA, including:

- Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for projects covered by 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 for which notice is required to be consistent with Planning Code Section 317. Projects involving historic resources that require noticing of an exemption determination include those involving sites or districts listed on the California Register, listed in Planning Code Articles 10 or 11, listed on an historic resource survey that has been adopted or officially recognized by the City, and any other resource that the ERO determines to be an historic resources under CEQA criteria.
- Updates the ordinance language to be consistent with existing Planning Department practice to produce a written determination for any project for which a notice is required and by posting the determinations on its web page.
- Requires in Section 31.08(f)(1) that public hearing notices inform the public if the City will take an Approval Action that triggers the ability to file an appeal of a CEQA exemption determination to the Board of Supervisors. Such notices must advise the public of the exemption determination, how to obtain a copy, and the consequences of failing to timely raise objections to the exemption.
- Requires in Section 31.08(f)(2) that the Planning Department notices under Planning Code Sections 311 and 312 (advising of the right to request a discretionary review hearing) contain the information in Section 31.08(f)(1) and advise those noticed that if a discretionary review hearing is requested and the project is approved by the Planning Commission, such approval will be the Approval Action that triggers the ability to file an appeal of the CEQA exemption determination. If a discretionary review hearing is not requested, the issuance of the Building Permit will trigger the Approval Action.
- Requires in Section 31.08(g) that when City entities take an Approval Action on a City project (e.g. a project not involving private entitlements) without a noticed public hearing, the City entity shall arrange for Planning to post a notice on Planning's website informing the public that the CEQA exemption may be appealed to the Board of Supervisors within 30 days after the first date of posting of the notice.
- Provides in Section 31.08(i) that the ERO has the authority to re-evaluate the application of an exemption to a project in the event the project changes after the Approval Action. In such a case, following a new Approval Action for the project,

the new exemption determination may be appealed to the Board under Section 31.16 as to those issues associated with the project changes.

- 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.
 - Clarifies in Section 31.10(f) the language as to when a negative declaration, a mitigated negative declaration, and an environmental impact report are required. The language used is drawn from CEQA Guidelines Sections 15064(f) and 15070. Language now in Section 31.12 regarding when to prepare an EIR is deleted.
- Section 31.11.
 - Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.
 - Provides in Section 31.11(c)(4) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent to adopt a negative declaration to each property owner within the project area or within 300 feet of the exterior boundaries of the project area, but, requires Planning to post all negative declarations on its web page.
 - Provides in Section 31.11(d) that the notice of intent shall inform the public that only persons appealing the preliminary negative declaration to the Planning Commission will be permitted to appeal the final negative declaration to the Board of Supervisors.
 - Provides in Section 31.11(h) that a notice proposing to adopt the negative declaration and take the Approval Action for the project shall advise the public of its appeal rights to the Board of Supervisors following the Approval Action in reliance on the negative declaration.
- Sections 31.12 – 31.15.
 - In addition to deleting language at the beginning of Section 31.12 concerning when to prepare an EIR as explained previously, 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 in Section 31.14(a)(5) that for rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of availability of the Draft EIR to each property owner within the project area or within 300 feet of the exterior boundaries of the project area, but provides that Planning shall post all draft EIRs on its web page.
- Provides in Section 31.14(b)(3) that the notice of availability shall inform the public that only commenters on the Draft EIR will be permitted to file an appeal of the certified EIR to the Board of Supervisors.
- Provides in Section 31.15(c) that a phonographic reporter record all public hearings on draft EIRs.
- Provides in Section 31.15(d) that the notice of the certification hearing shall inform the public of the expected Date of the Approval Action on the project and of its appeal rights to the Board of Supervisors after such date.
- 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:
 - Section 31.16(a) provides that 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.
 - Section 31.16(b) provides that the Board is 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. In such cases the Board is required to affirm the CEQA decision rendered by the Planning Commission or the Planning Department before or as part of its approval of the project. When the Board is the CEQA decision-making body, any person may raise objections to the CEQA decision in writing prior to or at a public hearing on the project at the Board. The Board may address any procedures for submitting any objections to the Board in its Board's Rules of Order but prior to approving the project, the Board shall provide the Planning Department with adequate time to submit a written response to any objections that the public raised prior to the close of the public hearing on the project.
 - Appeals must be filed within specified periods:

(1) For an EIR, within 30 days after the Date of the Approval Action following the EIR certification.

(2) For a negative declaration, within 30 after the Date of the Approval Action taken in reliance on the negative declaration.

(3) For exemptions, within one of these periods as applicable:

(A) For a private project seeking a permit, license or other entitlement for which the City provides a separate appeal process for the entitlement, within 30 days after the Date of the Approval Action, even where the appeal period for the entitlement is shorter. Departments that grant entitlements supported by an exemption determinations shall take steps to advise applicants that the appeal period for exemption determinations is 30 days after approval of the entitlement.

(B) For the City's own projects not involving a private entitlement, if the Approval Action is taken at a public hearing, within 30 days after the Date of the Approval Action; if the Approval Action is taken without a public hearing, within 30 days after a notice as provided in Section 31.08(g) is posted on Planning's web page.

- 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, one must have first appealed the negative declaration to the Planning Commission. 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.

(1) In the case of EIRs, if the Board reverses Planning's certification, any further appeals of the revised EIR are limited to revised portions, including any new information, and an appellant must comment on the revised EIR at any earlier public hearing on the revisions.

(2) 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, reflect current Planning Department practices, and provide codified procedures for appealing negative declarations and exemption determinations to the Board. The ordinance also provides for the Board to become the final CEQA decision-making body for projects that require Board approval. The provisions concerning appeals to the Board 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, after the project is approved. 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 Order 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 objections to the preliminary CEQA determination rendered by the Planning Commission or the Planning Department 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.