

REVISED LEGISLATIVE DIGEST

(5/20/2013, Amended in Committee)

[Administrative Code - California Environmental Quality Act Procedures, Appeals, and Public Notice Requirements]

Ordinance amending Administrative Code, Chapter 31, to provide for appeals under the California Environmental Quality Act to the Board of Supervisors of environmental impact reports, negative declarations, exemption determinations, and determinations on modified projects; to clarify and update existing Chapter 31 procedures, including without limitation: to provide for the Planning Department or Planning Commission to approve all exemption determinations; to require the Planning Department to establish an electronic notification system; to expand noticing of exempt projects; to require new noticing when filing notices of exemption and notices of determination; to revise noticing of negative declarations and environmental impact reports for plans of 20 acres or more; to provide an expanded role for the Historic Preservation Commission; and making environmental finding.

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

The proposed ordinance clarifies and updates procedures in San Francisco Administrative Code Chapter 31 to reflect revisions to CEQA and the CEQA Guidelines, to provide for appeals to the Board of Supervisors of various CEQA decisions, to update and expand noticing and to expand the role of the Historic Preservation Commission in CEQA reviews. The primary updates to Chapter 31 are as follows:

- Section 31.02.
 - States a purpose of the ordinance is that EIRs consider a reasonable range of alternatives.
 - States a purpose of the ordinance is to resolve appeals to the Board in a fair and timely manner.

- 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 and the Environmental Review Officer ("ERO") in transmitting notices to the County Clerk.
 - Provides that the Historic Preservation Commission has authority to review all environmental documents for projects that may have an impact on historic or cultural resources.
 - Provides for the Historic Preservation Commission to hold a hearing and comment on Planning's proposed administrative regulations if they concern historic or cultural resources issues.
 - Requires all notices provided for under Chapter 31 to be provided in hard copy unless some one specifically requests electronic copies.
 - Requires the Planning Department to establish an electronic notification system for all notices provided under Chapter 31 that allows persons to pick different specified categories of projects or different types of CEQA documents for which they would like to receive electronic notice.

- Section 31.05.
 - Provides for the Historic Preservation Commission to hold public hearings on any proposed administrative regulations of the Planning Department related to CEQA that concern historic or cultural resources issues.
 - Adds a new finding by the Board that expediting environmental review for publicly funded affordable housing projects for purposes of expediting permit processing qualifies as a public policy basis. It then directs Planning to evaluate its written guidance required by Campaign and Governmental Conduct Code Section 3.400, and if necessary, to revise it to provide a process for informing an applicant of an affordable housing project, within 60 days of the submittal of a preliminary project assessment request, as to whether the project is exempt from CEQA, or, if technical studies are needed before making such a determination, in no more than 120 days from the request.

- Section 31.08. Revises how Planning makes and notices exemption determinations.
 - Updates the ordinance to be consistent with existing Planning Department practice, which is to apply Chapter 31 procedures for exempt projects to all types of exemptions - statutory exemptions, categorical exemptions, community plan exemptions and general rule exclusions.
 - Requires the Planning Department to post on its website and provide to city departments a list of the types of projects in the city that Planning has identified as categorically exempt.
 - Provides that when other City departments grant exemption determinations that they inform Planning of the exemption determination and requires Planning to make the information available to the public as it does for its own exemption determinations.
 - **Public notices of exemptions.** Requires Planning to post and mail notices of exemption determinations for these specified projects:
 - Projects involving historic resources, which are defined as those that include 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 for which substantial evidence supports a finding of historic significance under CEQA criteria.
 - Projects involving demolition, as defined in Planning Code Section 317.
 - Projects involving demolition, as defined in Planning Code Section 1005(f).
 - Alterations to buildings 50 years old or older that change the roof, add a garage, modify the front facade except for replacements in kind, or expand the occupied square footage of the building.
 - Any project in or affecting a park or open space under the jurisdiction of or planned for acquisition by the Recreation and Parks Commission, or any project on land formally designated by ordinance as a park or is subject to the Park Code and under the jurisdiction of another city department.

- Projects relying on a community plan exemption.
- Any project that qualifies for a Class 31 exemption.
- Any project that qualifies for a Class 32 exemption.
- **Final Discretionary Approval.** Requires Planning to identify the final discretionary approval action for exempt projects and to post that information on its website. For private projects, this approval will usually be the building permit, conditional use permit, or subdivision approval for the project.
- **Certificates of exemption.** Allows but does not require use of written Certificates of Exemption; if prepared, Planning must post and mail notices of the certificate.
- **Testimony on exemption determination.** Provides that the Planning Department's issuance of an exemption determination is final unless the Planning Commission directs staff to reevaluate the exemption. This section requires the Commission to allow testimony on the exemption prior to action on a project that relies on an exemption.
- **Project approval noticing.** Requires any city department that holds a public hearing to approve an exempt project to provide notice of the exemption determination and advise of the right of appeal to the Board.
- **Notices of exemption.** Specifies that notices of exemption, which CEQA provides may be filed with the County Clerk to start the running of a statute of limitation, may be filed only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.
- **Modification to exempt project.** Requires reevaluation of an exemption and issuance of a new CEQA decision if the scope of a project changes or if Planning is presented with new information regarding the environmental impacts of the project.
- Sections 31.10 and 31.11.

- Clarifies in Section 31.10(f) as to when a negative declaration or an environmental impact report is required by CEQA.
- Updates notice and publication provisions for negative declarations to reflect CEQA requirements and Planning Department practices.
- Provides in Section 31.11(c)(5) 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 300 feet of the exterior boundaries of the project area.
- Provides in Section 31.11(h) that the decision-making body that adopts the negative declaration shall so advise the ERO.
- Specifies in Section 31.11(j) that CEQA-required notices of determination shall be filed with the County Clerk to start the running of a statute of limitation, only after a project is approved and the appeal period to the Board has expired with no appeal filed, or, if an appeal has been filed, the exemption upheld. In addition to filing these notices with the County Clerk, and the state Office of Planning and Research if specified by CEQA, the ordinance also requires Planning to post the notices in its offices, on the website and to mail the notices to all approving entities and to anyone who has requested notice.
- Sections 31.12 – 31.15.
 - Provides in Section 31.14(a)(1) that the Planning Department shall obtain comments from the Historic Preservation Commission on a draft EIR for any projects that may impact historic or cultural resources. Planning shall obtain any comments seven days before the Planning Commission holds a public hearing on the draft EIR.
 - 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 a draft EIR to each property owner within 300 feet of the exterior boundaries of the project area.
 - Requires in Section 31.14(c) that Planning make the draft EIR available on Planning's website and provide a copy in electronic form on a text searchable digital storage device or by text searchable electronic mail transmission to anyone who requests a copy and provides an email address, unless they request a hard copy.

- Requires in Section 31.15(a) that Planning make a final EIR available to the public no less than 10 days before the Planning Commission hearing to consider certification of the final EIR.
- Provides in Section 31.15(c) that the ERO must have the draft EIR hearing record transcribed as part of the administrative record.
- Requires the first decision-making body to approve the project to so advise the ERO.
- In section 31.15(f) contains the same provision regarding the filing of notices of determination for EIRs as found in Section 31.11(j) for negative declarations.
- Section 31.19. Provides in section 31.19(b) that when an exempt project is modified, as defined in Section 31.08(k), and again determined to be exempt, Planning must post the determination on its website, and mail notice to all approving entities and all entities requesting notice.
- 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, environmental impact reports, and determinations that no additional environmental review is required for modified projects requiring subsequent approvals that previously relied on an EIR or negative declaration for approval. The key provisions of the new section include:
 - To file an appeal, one must pay a fee, file the appeal within the time frames specified in the ordinance and state the specific grounds for appeal.
 - The time frames for filing appeals are:
 - For an EIR, after EIR certification and no later than 30 days after the first approval of the project in reliance on the EIR.
 - For a negative declaration, after the Planning Commission affirms a negative declaration on appeal, or, if no appeal is filed, after the Planning Department issues a final negative declaration, and no later than 30 days after the first decision-making body to consider the project adopts the negative declaration.
 - For an exemption determination that is noticed, after notice of the exemption determination and no later than 30 days after issuance of any permit or other project approval for the project. For projects involving multiple approval actions, the appeal must be filed no later than 30 days

after the final discretionary approval. Once the Board has heard and upheld an appeal of the same determination for the same project, the Clerk will reject subsequent appeals.

- For an exemption determination that is not noticed, whenever the exemption determination is discovered, but no later than 60 days after the project is approved.
 - For determinations that modified projects for which EIRs or negative declarations were prepared, within 30 days of notice of the determination that no further environmental review is required.
- 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 without regard to any rule or policy of the Board, no less than 30 or more than 45 days following the date the Clerk has accepted the letter of appeal and: (1) for exemption determinations, the City has taken an action to approve the project; and (2) for EIRs, negative declarations, and determinations on modified projects, the time for filing the appeal has expired.
 - For projects that require multiple approvals, once the appeal is scheduled for hearing by the Clerk, other City agencies and officials may not approve the project, except City departments can take essential actions to abate hazards to public health and safety.
 - The Board is required to consider all appeals on a project in a single hearing and may coordinate the appeal hearing with hearings on the project.
 - Appellants must submit written materials pertaining to the appeal 11 days before the scheduled hearing. The Planning Department and anyone else may submit written responses to the Board within 8 days before the hearing. Materials submitted 8 days before the scheduled hearing will be distributed through the Board's normal distribution procedures and will be part of the record. Later submitted materials will not be part of the record, except materials from Planning submitted 3 days before the hearing, unless a member of the Board submits a formal written request for the Board to include such written materials in the record.
 - The Board shall act within 30 days of the scheduled hearing date but may extend this date to not more than 90 days from the date that the Clerk schedules the appeal hearing.

- 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 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 appealable directly to the Board.

Background Information

The ordinance is proposed to revise the City's existing CEQA procedures so that they conform to current provisions of CEQA and CEQA Guidelines, provide codified procedures for appealing negative declarations, exemption determinations and determinations regarding whether additional environmental review is required for modified projects. The provisions concerning appeals to the Board of EIRs, negative declarations, and determinations of exemption 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.

The ordinance also contains provision that are not required by CEQA, including, for example, a provision for appeal of determinations regarding whether additional environmental review is required for modified projects and Planning Department noticing and posting requirements for notices of exemption and notices of determination.

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 rendered certified the EIR for a 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.

A substitute ordinance introduced on May 14, 2013, amended the original ordinance introduced on April 8, 2013, in the following primary ways:

Section 31.04(h). Electronic notifications. Revised the types of notifications that subscribers can request.

Section 31.05(l). Priority projects. Added a new finding by the Board that expediting environmental review for affordable housing projects for purposes of expediting permit processing qualifies as a public policy basis. It directs Planning to evaluate its written guidance required by Campaign and Governmental Conduct Code Section 3.400, and if necessary, to revise it to provide for a preliminary project assessment process, which within 60 days of the completed assessment request, would inform these projects as to whether the project is exempt from CEQA, or, if due to the need for technical studies before making such a determination, a precise timeline for informing the projects as to whether they are exempt, but in no event more than 120 days from the completed request.

Section 31.08(d). Allowing delegation of exemptions. Deleted prohibition on delegating exemption determinations to other departments.

Section 31.08(e). Clarifying notice, exempt projects involving 50 year or older buildings and parks. Revised the requirement to provide mailed and posted notices of exemptions for all projects that alter buildings 50 years or older by limiting the types of building for which notice is required.

Section 31.08(f). Defining final approval for exempt projects; deleting written exemptions for multiple-approval projects. Deleted the requirement that written determinations are required for projects involving multiple approval actions. Instead, Planning is required to identify the final discretionary approval for an exempt project and post that information on its website, along with a short project description.

Section 31.08(h). Testimony required but not Commission approval of exemptions. Deleted the requirement that the Planning Commission approve an exemption if it approves the project and instead requires the Commission to allow testimony on the exemption prior to action on a project that relies on an exemption and allows the Commission to request reevaluation of an exemption.

Section 31.14(a)(1)(C). HPC comments 7 not 10 days before draft EIR hearing. Revised from 10 days prior to 7 days prior to the Planning Commission hearing on a draft EIR, the requirement to have a public meeting at the Historic Preservation Commission to obtain its comments on the draft EIR.

Section 31.15(a). Final EIR available 10, not 14 days before certification. Revised from 14 days to 10 days the requirement to make a the final EIR available to the public prior to the certification hearing.

Section 31.16(b)(3). No landmarking, during pendency of appeal. Deleted the provision that provided for landmarking while a CEQA appeal is pending at the Board.

Section 31.16(b)(5). Consolidated appeals. Deleted the provision providing for procedures for the Board to consolidate up to three appeals and instead, the Board is required to consider all appeals in a single hearing and may coordinate the appeal hearing with hearings on the project. Ordinance does not dictate procedures for how the Board will conduct the hearings.

Section 31.16(b)(6). Planning responses to appeal. Provides that Planning may submit responses to an appeal up to three days before a hearing. Documents submitted by others later than noon, eight days before a hearing will not be considered part of the record unless one member of the Board submits a formal request in writing before or at the appeal hearing, to include such written materials in the record. Previously, the ordinance provided for a majority vote to include such materials in the record.

Section 31.16(e)(1)(A). Final approval ends appeal period – exemptions. Regarding exemption appeals, clarifies that if the exemption is noticed, the appeal must be filed no later than 30 days after the final discretionary approval, if the project involves multiple approval actions.

The Land Use Committee amended the ordinance introduced on May 20, 2013, in the following ways:

Section 31.09. Added amendments to this section to state, as required by CEQA Sections 21080.1 and 21080.2 that Planning shall advise applicants for permits or entitlements, within 30 days of determining an application is complete, whether the project requires an EIR or a negative declaration or mitigated negative declaration.

Section 31.16. Added various amendments requested by the Clerk's Office to clarify certain appeal procedures, including Planning's role in determining timeliness of appeals, process for Board members to request late submittals be included in the record, and schedule for Clerk to set appeal hearings when Board is in recess.