



SAN FRANCISCO PLANNING DEPARTMENT

Administrative Code Chapter 31 Amendments

Case Number: Ordinance No. 161-13
Initiated by: Supervisor Wiener
Effective Date: September 25, 2013
Summarized by: Sarah B. Jones, Environmental Review Officer

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The Way It Was:

Prior to 2003, the California Environmental Quality Act (CEQA) statute provided for appeals of environmental impact report (EIR) certifications to the elected decision-making body where a non-elected decision-making body certified the EIR. In response to this earlier provision of CEQA, the City codified an appeal process for EIRs, which is currently found in Administrative Code Section 31.16, which provided for appeal within 20 days of Planning Commission certification of an EIR. 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.

The Way It Is Now:

The ordinance establishes a process for filing appeals of all types of environmental documents to the Board of Supervisors, including exemption determinations and negative declarations. It also provides for clarification of what actions can be taken once an appeal is scheduled for hearing at the Board, provides for enhanced noticing of CEQA decisions, and allows for review of Planning Department decisions as to whether changes to exempt projects can be subject to new CEQA decisions and new appeals.

Timing of Appeals to Board of Supervisors:

- EIRs are appealable within 30 days after Planning Commission certification.
- Negative declarations are appealable after the issuance of a final negative declaration by the Planning Commission and within 30 days of the Approval

Action, defined as the approval of the project by the first decision-making body that adopts the negative declaration.

- Exemptions are appealable after issuance of the exemption determination and, in most cases, within 30 days after the Approval Action, defined as Planning Commission approval, if any, of a private project in reliance on an exemption determination; or issuance of a building or site permit for an exempt private project; or, for City projects, approval of the exempt project at a noticed public hearing. Exceptions:
 - For an exempt City project approved without a noticed hearing, the Approval Action is the decision to carry out the project and the appeal period runs from 30 days after the approving department has Planning post a notice on Planning's web site advising of the approval and the appeal period.
 - If an exemption determination is not posted on the City's website as required by the ordinance and no other public notice of the exemption is provided, an appeal may be filed within 30 days of the appellant's discovery of the exemption determination.

Priority Projects:

- Expedited environmental review is required for publicly funded affordable housing projects and bicycle and pedestrian safety projects. Precedence is to be given through all stages of the environmental review process to these projects.

Electronic Notification and Document Distribution System:

- Environmental notices as well as EIRs are to be provided electronically to available email addresses unless someone specifically requests a hard copy or if specified otherwise by CEQA. Hard copies will be provided to persons requesting such notice before the effective date of this provision.
- Requires Planning Department to develop subscription-based electronic notice system that allows the public to receive notice of specific projects, or projects in specific neighborhoods, involving historic resources, or involving a specific type of CEQA decision.

Procedures and Noticing for Exemptions:

- Planning Department will post on its website and provide to city departments a list of the types of projects that Planning has identified as categorically exempt.
- When departments other than Planning issue exemptions, they shall inform Planning of such issuance and provide Planning with a copy of each exemption determination.

- Planning Department will post on its website at least the following information about each exemption determination: a project description that identifies the location, size and nature of the project, the type or class of exemption, the Approval Action, and the date of the exemption determination. Additional approval actions, if required and known will also be posted.
- A more formal written determination is required to be prepared, posted and mailed to specified parties, including anyone requesting notice, for projects involving historic resources, Class 31 or Class 32 exemptions, demolitions, or community plan exemptions.
- Public hearing notices will inform the public of pending Approval Actions and will include information on how to obtain a copy of the exemption determination, and the consequences of failing to timely raise objections to the exemption.
- Notices under Planning Code Sections 311 and 312 will state that if a discretionary review hearing is requested and the project is approved by the Planning Commission, such approval will be the Approval Action; if a discretionary review hearing is not requested, the issuance of the building permit will trigger the Approval Action.
- For City projects approved without noticed public hearings, once the approving City Department provides a notice to Planning of the Approval Action, Planning will post notice on its website that the CEQA exemption may be appealed to the Board of Supervisors within 30 days after the first date of posting of the notice.
- A notice of exemption (NOE) 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. NOEs will be posted at Planning offices and on its website and mailed to anyone who has requested them.

Modification of Exempt Project:

- When an exempt project changes after the Approval Action and it requires a subsequent approval, the Environmental Review Officer (ERO) will determine whether the change is a substantial modification.
- Substantial modification is defined as: (A) expansion or intensification of the project, such as expanding the building envelope, changing the use, or undertaking a demolition; or (B) new information presented to the ERO that was not known at the time of the original determination, which shows the project no longer qualifies for the exemption.

- When a project is substantially modified, the ERO shall make a new CEQA decision – either an exemption determination or an initial study, and if necessary, prepare an EIR. The new CEQA decision will be subject to appeal to the Board.
- When the ERO determines that a change in a project is not a substantial modification, the ERO shall post that determination on its website and in its offices, and mail the notice to the applicant, City approving entities, and anyone requesting written notice.
- Anyone may ask the ERO to reconsider the determination within 10 days of the posting; the ERO must then hold a public hearing and render a written determination on the reconsideration request, which is then a final decision.
- Planning will provide guidance to other City departments in determining the type of project modification for exempt projects that might occur after an Approval Action that would require additional CEQA review.

Negative Declarations or Mitigated Negative Declarations

- Posting notices on the subject site are to be visible from the closest public location.
- For rezonings, area plans or general plan amendments covering 20 acres or more, Planning is not required to mail a notice of intent (NOI) to each property owner within 300 feet of the exterior boundaries of the project area, but adds a requirement that for all mailed notices, it must include residential occupants, if practical.
- The NOI must state 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.
- The notice proposing to adopt the negative declaration and take the Approval Action for the project must advise the public of its appeal rights to the Board of Supervisors following the Approval Action in reliance on the negative declaration.
- A notice of determination (NOD) 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. The NOD shall be posted in Planning offices, on its website and mailed to anyone who requests it.

Environmental Impact Reports

- Planning Department shall obtain comments from the Historic Preservation Commission on a draft EIR for any projects that may impact historic or cultural resources seven days before the Planning Commission holds a public hearing on

the draft EIR, unless to do so would extend the comment period, in which case, it shall obtain comments as far in advance of the Planning Commission hearing as possible.

- 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 (NOA) to each property owner within 300 feet of the exterior boundaries of the project area, but adds a requirement that for all mailed notices, it must include residential occupants, if practical.
- The notice of the Planning Commission certification hearing shall inform the public of its appeal rights to the Board of Supervisors after such date.
- A NOD 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. The NOD shall be posted in Planning offices, on its website and mailed to anyone who requests it.

Board of Supervisors CEQA Appeal Procedures

- Requirements for filing an appeal include (1) stating the grounds for appeal, (2) paying a fee, (3) for EIRs, submitting comments during the public comment period on the draft EIR, and (4) for negative declarations, having first filed an appeal of the negative declaration to the Planning Commission.
- Planning must advise the Clerk of the Board in three working days after an appeal is filed whether the appeal is timely. The Clerk will have seven working days to advise the appellant whether the appeal complies with all ordinance requirements, including whether it was timely filed.
- The Clerk will schedule the appeal following the expiration of the appeal period. For projects requiring multiple approvals, approvals may proceed until after the Clerk has scheduled the appeal for hearing. Once the appeal is scheduled and pending at the Board, other City agencies and officials may not carry out or approve the project, except for taking essential actions to abate hazards to public health and safety. During this period the Board may not take action to approve the project but may hold hearings on the project and pass any pending approvals out of committee without a recommendation so that they can be consolidated with the CEQA appeal at the full Board.
- The Board must affirm the CEQA decision before it approves the project, if project approval is before the Board. If the Board reverses the CEQA determination of Planning, all prior approvals taken by other City agencies and officials, are void.
- Timing Requirements Associated with Appeals:

- Clerk to schedule the CEQA appeal hearing before the full Board no less than 21 and no 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.
 - The public, appellant and project sponsor may submit written materials to the Clerk no later than noon, 11 days prior to the scheduled hearing.
 - Clerk will distribute materials submitted by noon, eight 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.
- If, upon appeal, 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 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.
 - 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.