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Office of the City Manager

CONSENT CALENDAR
November 17, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Environmental Review Procedures

## RECOMMENDATION
Adopt a Resolution adopting the Land Use Planning Division's Environmental Review Procedures.

## FISCAL IMPACTS OF RECOMMENDATION
The Environmental Review Procedures detail processes and requirements already undertaken by City staff to comply with the California Environmental Quality Act (CEQA). Adoption of the Environmental Review Procedures will not result in new staff responsibilities or lead to a demand for new staff or additional resources.

## CURRENT SITUATION AND ITS EFFECTS
California Resources Code Section 21082 requires all public agencies to adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations.

California Code of Regulations Title 14, Section 15022 (State CEQA Guideline § 15022) requires every public agency in California to adopt its own local objectives, criteria, and specific procedures for administering CEQA. Local rules ensure the orderly evaluation of projects and the proper preparation of environmental documents.

The City of Berkeley's Environmental Review Procedures were established by City Council Resolution No. 55,422-N.S. on July 9, 1990 and have not been updated since then. In the past 36 years, there have been expansions of CEQA, including Categorical Exemptions, requirements for online posting and availability of draft documents, tribal consultation, and streamlining laws, which are not included in the current Procedures document. Revised, modernized procedures are necessary to reflect current CEQA processes and requirements, and to codify existing practices. While City staff administer CEQA consistent with the latest legal and administrative requirements, the 1990 Environmental Review Procedures document is out of date. An updated document will provide clear guidance for staff and applicants and serve as a reliable source of information for the public.

BACKGROUND
Each public agency is responsible for complying with the California Environmental Quality Act (CEQA) and with the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

CEQA requires that public agencies document and consider the potential environmental effects of any agency's actions that meet the definition of a "project" under CEQA. A "project" is an action that has the potential to result in direct or indirect physical changes to the environment. This includes the agency's direct activities as well as activities that involve the agency's approvals or funding.

In preparing the revised Environmental Review Procedures, staff reviewed the CEQA Guidelines, as well adopted procedures from other agencies that were prepared within the past five years to understand similar practices and functionality.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
The adoption of the Environment Review Procedures document will ensure that the environmental effects of City activities are consistently and predictably analyzed and, if necessary, mitigated.

RATIONALE FOR RECOMMENDATION
The City of Berkeley's adopted Environmental Review Procedures have not been updated since 1990. Revised, modernized procedures are necessary to reflect current CEQA processes and requirements, and to codify existing practices and used as a Standard Operating Procedure for the City

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Justin Horner, Principal Planner, Land Use Planning, 510-981-7476

Attachments:
1: Resolution
Exhibit A: Environmental Review Procedures.

RESOLUTION NO. ##,###-N.S.

ADOPTION OF THE CITY OF BERKELEY ENVIRONMENTAL REVIEW PROCEDURES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES

WHEREAS, California Resources Code Section 21082 requires all public agencies to adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations; and

WHEREAS, California Code of Regulations Title 14, Section 15022 (State CEQA Guideline § 15022) requires every public agency in California to adopt its own local objectives, criteria, and specific procedures for administering CEQA; and

WHEREAS, the City Council of the City of Berkeley in July 1988 adopted Resolution No. 54,388-N.S., adopting City of Berkeley CEQA Guidelines to be used to review potential environmental impacts of public and private projects locate in the City Berkeley; and

WHEREAS, the City Council of the City of Berkeley in July 1990 adopted Resolution No. 55,422-N.S., updating the City of Berkeley CEQA Guidelines and rescinding Resolution No. 54,388-N.S.; and

WHEREAS, CEQA has since been amended to include expanded Categorical Exemptions, online posting and availability requirements, tribal consultation, and streamlining laws which are not contained in the current version of the Environmental Review Procedures.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby adopts the Environmental Review Procedures included as Exhibit A of this Resolution.

BE IT FURTHER RESOLVED the Environmental Review Procedures included as Exhibit A of this Resolution supersede and replace the Environmental Review Procedures adopted pursuant to Resolution No. 55,422-N.S, and that Resolution No. 55,422-N.S. is hereby rescinded.

BE IT FURTHER RESOLVED that City staff may implement amendments to the Environmental Review Procedures, without further action by the City Council, as necessary to comply with changes in State law or applicable court decisions.

Exhibits
A: Environmental Review Procedures

Attachment 1, Exhibit A

# Land Use Planning Division

# Environmental Review Procedures




A1.1

October 2026

CITY OF BERKELEY

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# LOCAL PROCEDURES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

*State CEQA Guidelines* Section 15022(a) requires that each public agency issue local procedures for implementing the *State CEQA Guidelines* in order to ensure the orderly evaluation and preparation of environmental documents. Such procedures shall be revised when needed to be kept current with changes to the *State CEQA Guidelines*; however, *State CEQA Guidelines* shall take precedence even if the local procedures are not updated.

## CHAPTER 1. INTENT AND GENERAL PROVISIONS

**Section 100. Intent.**

These local City CEQA guidelines are established, adopted and intended to meet the requirements of Section 15022(a) the of the State CEQA Guidelines and to provide the public with information on the procedures used by the City in the environmental review process.

**Section 101. Applicability.** *[State CEQA Guidelines §15022]*

The procedures established in these guidelines are applicable to both public and private projects under the jurisdiction of the City of Berkeley and may be used by districts whose boundaries are coterminous with or are entirely encompassed by the City.

**Section 102. Compliance Required Prior to Project Approval.** *[State CEQA Guidelines §15004]*

No application for a permit shall be approved nor shall any permit be issued or approval given by any City Official or body until all procedures required by the *State* and *City CEQA Guidelines* have been completed, including if required the preparation and certification of a Final Environmental Impact Report (FEIR) by the appropriate decision-making body. Compliance with CEQA shall be included in the planning process as early as possible in order to allow incorporation of environmental considerations into the design of the project.

**Section 103. Public Records.** *[Public Records Act]*

(a) All final documents prepared pursuant to these procedures shall be available for public inspection in the Planning & Development Department. Drafts and working papers shall not be considered final documents.

(b) All reports and documents, such as public correspondence, applicant statements, community meeting summaries or other supporting documentation shall be available for public inspection in the Planning & Development Department. This does not include proprietary reports, confidential archaeological and special status species location studies and other confidential information.

**Section 104. Use of Consultants.**

(a) The City may use consultants to fulfill its obligations under CEQA including, but not limited to, the preparation of technical studies, mitigation monitoring reports, restoration plans, Initial Studies, Negative/Mitigated Negative Declarations, and EIRs.

(b) All consultant-prepared environmental documents, such as Initial Studies, Negative Declarations, and EIRs utilized shall be prepared under contract with the City using the most current version of the City's Professional Services Agreement. Subject to the City's independent judgment, applicant-sponsored technical reports and environmental surveys utilized in the preparation of the application and project design may be utilized by the City.

(c) The project sponsor shall pay the full costs of technical studies and draft and final document preparation including both consultant and City oversight and review costs. A deposit to cover City costs shall be paid at the time of application in conformance with applicable sections of the Master Fee Schedule. The deposit shall be made prior to the City contracting with a consultant and in no case later than thirty (30) days after issuance of the letter from the Planning Director indicating the estimated cost to produce the document(s) involved.

(d) When the Planning Director determines that it is necessary to contract with a consultant to prepare an environmental document or document(s) for a public or private project, the Planning Director may select a consultant through a separate Request for Proposals (RFP) process.

(e) No firm or person having a financial interest in a project shall be employed to prepare environmental documents on that project.

(f) Environmental consultants shall work at the direction of City staff and the City shall accept consultant-prepared work products as final only when the Planning Director determines them to be impartial, technically adequate, and complete. City decision-makers shall confirm that the environmental documents reflect the lead agency's independent judgment and analysis.

(g) The project sponsor may submit technical studies along with their application submittal or at the City's request, but a project sponsor may not contract directly with a consultant for preparation of a complete environmental document including, but not limited to, preparation of an Environmental Impact Report, Negative Declaration or Mitigated Negative Declaration.

**Section 105. Notice Generally.** *[State CEQA Guidelines §§15072 and 15087 ]*

(a) The City should make a concerted effort to provide early notice and solicit comments on environmental documents from the public and interested organizations so that a broad range of interests and opinions are available to decision-makers regarding the impacts of projects.

(b) Any required notice shall be deemed given on the date of mailing, the date of posting or the first day of publication, whichever is later.

(c) Errors, irregularities or neglect in the preparation of any required notice shall not in any way affect the validity or legality of the adoption or certification of environmental documents or approval or disapproval of a project unless such error, irregularity or neglect is clearly substantial and prejudicial and that by reason of such error, irregularity or neglect the party complaining suffered substantial injury and that a different result would have been probable if such error, irregularity or neglect had not occurred.

(d) In addition to providing notice to those property owners required to receive notice under State law, planning staff shall endeavor to notice additional property owners and residents who may have an interest in the project.

## CHAPTER 2. DEFINITIONS

**Section 200. General.**

The following definitions which are specific to City of Berkeley are intended to supplement the definitions found in Article 20 of the *State CEQA Guidelines*:

(a) **"City"** means City of Berkeley.

(b) **"City Council"** means the City Council of the City of Berkeley, or when a referral has been received from a District as defined in Section 101.

(c) **"City Official"** means the department head or other City staff member, or, when a referral has been received from an outside agency, agency staff member, responsible for approving the permit under consideration.

(d) **"Days"** means calendar days including City-recognized holidays, unless otherwise stated.

(e) **"Decision-Making Body"** means the City Council, Zoning Adjustments Board, Planning Commission, or City official that has the ultimate responsibility for approving the permit/project under construction.

(f) **"Environmentally Sensitive Area"** means an area containing one or more environmental resources or hazards that may affect or be affected by the specific project involved.

(g) **"General Rule Finding"** means a finding that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the

environment (i.e. the "Common Sense Exemption") and therefor CEQA is not applicable. [State CEQA Guidelines §15061(b)(3)]

(h) **"Permit"** means any zoning permit including Administrative Use Permit (AUP), Use Permit Public Hearing (UPPH), Structural Alteration Permit (SAP), Variance, lease, license, certificate or other entitlement for use. A Zoning Certificate is not a permit.

(i) **"Planning Commission"** means the City of Berkeley Planning Commission.

(j) **"Planning & Development Department"** means the Planning and Development Department of the City of Berkeley.

(k) **"Planning Director"** means the Director of Planning & Development for the City of Berkeley or their designee.

(l) **"Zoning Adjustments Board"** means the Zoning Adjustments Board.

(m) **"Zoning Certificate"** means a ministerial approval that confirms that a structure or land use complies with the Zoning Ordinance.

## CHAPTER 3. RESPONSIBILITIES

The responsibilities for implementation of CEQA are as follows:

**Section 300. Planning Commission.**

When the Planning Commission is the decision-making body on a project, the Planning Commission is responsible for certifying the Final EIR, adopting a Negative/Mitigated Negative Declaration, or determining that the project is exempt from environmental review; considering the environmental document prepared prior to taking action on the project; and for making the findings required by *State CEQA Guideline* Sections 15091 (Findings) and 15093 (Statement of Overriding Considerations).

When the Planning Commission is required to make a recommendation on a project to the City Council, the Planning Commission shall hold any hearings required on the proposed environmental documents produced, review all comments made and the responses prepared, and make a recommendation regrading certification of the Final EIR or adoption of the Negative/Mitigated Negative Declaration involved. If the Planning Commission believes that the project is exempt from environmental review, it shall recommend to the City Council to make such a finding.

**Section 301. Zoning Officer, Planning Director, or City Official.**

When the Zoning Officer (ZO), Planning Director, or other City Official is the decision-maker on a project, they are responsible for certifying the Final EIR, adopting a Negative/Mitigated Negative Declaration or determining that the project is exempt from

environmental review; considering the environmental document prepared prior to taking action on the project and for making the findings require by State CEQA Guidelines Section 15091 (Findings) and 15093 (Statement of Overriding Consideration).

**Section 302. Zoning Adjustments Board**

When the Zoning Adjustments Board is the decision-making body on a development project, they are responsible for certifying the Final EIR, adopting a Negative/Mitigated Negative Declaration, or determining that the development project is categorically or statutorily exempt from environmental review; considering the environmental document prepared prior to taking action on the project; and for making the findings required by *State CEQA Guideline* Sections 15091 (Findings) and 15093 (Statement of Overriding Considerations), except when otherwise required as described in Chapter 9 (AB 130, SB 131, and Other State CEQA Streamlining Provisions).

**Section 303. Planning and Development Department**

The Land Use Planning Division and other divisions of the Planning & Development Department are responsible for:

(a) **Environmental Review.** Carrying out environmental reviews undertaken by the City including those requested on behalf of other agencies;

(b) **Agency Comment & Review**. Obtaining comments from other agencies on the expected environmental effects of a project;

(c) **Levels of Significance.** Identify appropriate measures to reduce potentially significant effects of a project to less than significant levels;

(d) **Mitigation Monitoring & Reporting Program (MMRP)**. Prepare Mitigation and Monitoring Programs when required;

(e) **Review of External Agency Environmental Documents**. Review and comment on environmental review documents submitted to the City on behalf of other public agencies;

(f) **Notice Preparation**. Prepare, distribute and file applicable environmental notices, including a Notice of Intent, Notice of Preparation, and Notice of Completion, and those Notices of Exemption and Notices of Determination for projects approved by the City Council, Planning Commission, Zoning Officer, or Planning Director;

(g) **Fish and Game Fees.** Collection of State Fish and Game fees for transmittal to the Alameda County Clerk recorder.

(h) **Implementing Procedures.** Develop, coordinate and implement the City's Environmental Review procedures consistent with the Policy direction provided by the City Council.

(i) **Thresholds of Significance.** Establish informal and propose formal working thresholds of significance.

# CHAPTER 4. INITIAL ENVIRONMENTAL REVIEW

**Section 400. Project Submittal.**

(a) A copy of any application for a permit that requires environmental review shall be promptly forwarded to the Planning & Development Department along with copies of all plans and other associated information.

**Section 401.Project Completeness and Acceptance for Filing.** *[State CEQA Guidelines §§15101 and 15111]*

(a) No application for a permit shall be deemed complete until:

i. All information required by the Planning Director to complete an Initial Study or make a determination that the underlying project is categorically exempt has been received, or

ii. The Planning Director has determined pursuant to these and the State CEQA Guidelines that the underlying project is not a project under CEQA, is ministerial rather than discretionary in nature, clearly has no potential to have a significant effect on the environment, or is statutorily exempt from environmental review.

a. The Planning Director shall develop, disseminate and update as necessary an Application Completeness Checklist listing the information that is typically required for the typers of permits normally requested.

(b) If the Planning Director determines that adequate information has not been submitted to complete a preliminary environmental review and, if necessary, an Initial Study, the sponsor shall be notified in writing within thirty (30) days of application receipt that the application is incomplete. Any such notification shall state what additional information, including fees must be submitted before the application can be considered complete.

i. Failure to provide the required information within one-hundred twenty (120) days of issuance of a Completeness Determination or thirty (30) days of issuance of a Request for Deposit Submission shall cause the application to be deemed “abandoned” without further notice or action unless the Planning Director gives a written extension to the deadline involved. Once an application is deemed abandoned, no further work shall be

done on the project without submission of a new application and payment of new fees.

(c) Notwithstanding subsection (a), accepting an application as complete does not limit the City's authority to require the applicant to submit additional information needed for environmental evaluation of the project if the applicant makes changes to the project or if there are changes in circumstances that could not be anticipated during the initial review. Failure to provide this information within one hundred twenty (120) days of issuance of a Request for Additional Environmental Information or a Request for Additional Deposit Submission shall be treated in the same manner as failure to provide the information requested in a Completeness Determination (see Section 401(b)(2) above).

**Section 402. Project Segmenting.** *[State CEQA Guidelines §15378]*

A project is defined as the "whole of an action" and may not be segmented nor divided into smaller parts in an attempt to avoid full consideration of its environmental impacts. Thus, all of the separate permits and approvals for a particular project shall be considered together (along with the underlying activity itself) when determining the project's environmental effects. The environmental review of a project must include an analysis of the environmental effects of future expansion or other action if: (a) such future expansion or other action is a reasonably foreseeable consequence of the initial project; and (b) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

When actions are remote or speculative, so that meaningful information regarding their impacts is unavailable, they are not reasonably foreseeable parts of a particular project and therefore need not be considered at the same time.

**Section 403. Project Revisions.**

Any revised or amended project shall be treated as a new project for purposes of determining the time period within which CEQA processing must be completed and the project approved or denied unless the revision is found by the Planning Director to be minor and/or technical.

Project revisions shall be documented via submission of a Project Revision Statement.

**Section 404. Early Consultation.** *[State CEQA Guidelines §15063(g)]*

The Planning Department shall distribute a request for comments on the expected environmental effects of the project to all responsible agencies, trustee agencies, and other agencies and organization's that in the opinion of the Planning Director have an interest in the project or applicable special expertise. The request may occur before or

after an application is deemed complete, and may be combined with the request for comments on the project itself. At a minimum, such requests shall include a request to identify potential impacts, possible mitigation measures, and project revisions needed. At the discretion of the Planning Director, submission of a Project Revision Statement by the project applicant may result in additional consultation.

**Section 405. Tribal Consultation** *[Public Resources Code §§ 21080.3.1–21080.3.2; CEQA Guidelines §§ 15064.5, 15126.4]*

AB 52 requires state and local public agencies to consult with California Native American tribes during the environmental review process for development projects to protect tribal cultural resources.

SB 18 requires state and local public agencies to consult with California Native American tribes before adopting a General Plan or Specific Plan and a General Plan or Specific Plan amendment.

(a) The City shall comply with all applicable consultation requirements regarding Tribal Cultural Resources as set forth in CEQA and State law.

(b) For projects subject to CEQA for which the City is the Lead Agency, the Land Use Planning Division shall conduct consultation with California Native American tribes that have requested notification from the Native American Heritage Commission (NAHC), in accordance with Public Resources Code Sections 21080.3.1 and 21080.3.2, as amended.

(c) Within seven (7) days of determining that an application for a project is complete, or deciding to undertake a project, whichever occurs first, the City shall submit a request to the NAHC for a list of tribes that have requested notification for activities undertaken in the project area;

(d) Within seven (7) days of receiving a list of tribes from the NAHC, the City shall provide formal notification to those tribes pursuant to Public Resources Code Section 21080.3.1(b).

(e) A tribe shall have thirty (30) days from receipt of the notification to request consultation.

(f) Upon receipt of a timely request for consultation, the City shall initiate consultation with the requesting tribe and shall consult in good faith prior to adoption of a Negative Declaration or Mitigated Negative Declaration, or certification of an Environmental Impact Report.

(g) Consultation shall be considered concluded when:

  i. The parties agree to measures to mitigate or avoid a significant impact on Tribal Cultural Resources;

  ii. A party acting in good faith concludes that mutual agreement cannot be reached; or

iii. The tribe fails to engage in the consultation process or otherwise fails to respond after reasonable efforts by the City.

(h) The purpose of consultation shall be to identify Tribal Cultural Resources that may be affected by a project and, where feasible, to develop measures to avoid or substantially lessen significant impacts to such resources.

(i) Information submitted by a tribe during consultation that is confidential, sensitive, or exempt from disclosure under State law shall be maintained as confidential to the extent permitted by law, including Public Resources Code Section 21082.3(c).

(j) Projects eligible for statutory exemptions that require tribal notification or consultation pursuant to State law, including Public Resources Code Section 21080.66 and any successor provisions, shall comply with those requirements prior to approval.

(k) Nothing in this section shall be construed to limit or alter the City's obligations under Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, or any other applicable federal, state, or local law regarding the treatment of human remains, archaeological resources, or Tribal Cultural Resources.

**Section 406. Preliminary Environmental Evaluation.** *[State CEQA Guidelines §§15060 and 15061]*

(a) The City shall begin the formal environmental evaluation of a project after determining that an application is complete and that the project is subject to CEQA. Accepting an application as complete does not limit the City’s authority to require the applicant to submit additional information necessary for the environmental evaluation. Requiring additional information after the application is deemed complete does not change the status of the application.

(b) Once an application is deemed complete, the City shall first determine whether the project is subject to CEQA. An activity is not subject to CEQA if:

i. It does not involve the exercise of discretion;

ii. It would not result in a direct or reasonably foreseeable indirect physical change in the environment; or

iii. It is not a project as defined in CEQA Guidelines Section 15378.

(c) Preapplication Consultation: A potential applicant may request a preapplication consultation prior to the filing of a formal application to consider the range of actions, possible environmental effects, potential alternatives and/or mitigation measures for the potential project.

(d) Once the City has determined that the activity is a project subject to CEQA, the City shall determine whether the activity is exempt from CEQA, consistent with CEQA Guidelines Section 15061. Potential exemptions include statutory exemptions, categorical exemptions or activities covered by the "common sense" exemption.

i. After the City determines that a project is exempt, the City may prepare a notice of exemption. The notice shall not be filed with the County Clerk or the State of California until the project is approved.

ii. Once the project is approved, the notice of exemption may be filed by the applicant or the City.

If the Planning Director determines that a proposal is excluded or exempt from review under CEQA, no further environmental review is required and the Planning & Development Department shall document this finding in the record. The Planning & Development Department may also prepare and file a Notice of Exemption.

**Section 407. Initial Study Preparation.** *[State CEQA Guidelines §§15063 and 15064]*

If a proposed project is not excluded or exempt from review under CEQA, the Planning & Development Department shall prepare an Initial Study to determine whether a Negative/Mitigated Negative Declaration or an EIR is required for the proposed project. If the project may have an unavoidable significant effect on the environment, the Planning & Development Department may proceed with preparation of an EIR without preparing an Initial Study if desired.

If the Initial Study determines, based on substantial evidence considering the whole record, that the project has no potential to have a significant effect on the environment then a negative declaration must be prepared (see Chapter 6). If the project may have one or more significant impacts on the environment, then preparation of an EIR (see Chapter 7) is required. However, if revisions or mitigation measures can be applied to the project that would clearly reduce all impacts to a level of insignificance, AND the applicant agrees to these in writing via submittal of a Project Revision Statement prior to release of the document for public review, then a mitigated negative declaration may be prepared (see Chapter 6).

**Section 408. Previous Prepared City Environmental Document.** *[State CEQA Guidelines §15162(a)]*

If a previous EIR or Negative/Mitigated Negative Declaration has been certified/adopted by the City and the Planning Director determines that none of the circumstances requiring the preparation of a subsequent environmental document exist, the Planning &

Development Department shall document that determination in the record, and the decision-making body shall utilize the earlier document. Documentation of the Planning Director's determination may take the form of a memorandum or may be based on preparation of an Initial Study if desired.

# CHAPTER 5. EXEMPT PROJECTS

**Section 500. General.**

Projects that are ministerial in nature, meet General Rule findings, are statutorily exempt, are categorically exempt, or are denied do not require the preparation of an Initial Study, an EIR, or a Negative/Mitigated Negative Declaration.

**Section 501. Ministerial Projects.** *[State CEQA Guidelines §15268]*

Ministerial projects are exempt from the requirements of CEQA. The issuance of building permits, the issuance of business licenses and the approval of Final Subdivision Maps are presumed to be ministerial. The issuance of a Zoning Certificate is a ministerial action. However, when a project involves elements, some of which are ministerial in nature and some of which are discretionary, the overall project will be deemed discretionary and subject to CEQA review.

**Section 502. General Rule.** *[State CEQA Guidelines §15061(b)(3)]*

CEQA does not apply to a project where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

**Section 503. Statutory Exemptions.** *[State CEQA Guidelines §15260]*

Those exemptions granted by the State legislature are listed in State CEQA Guidelines Article 18, and as may be amended.

**Section 504. Categorical Exemptions.** *[State CEQA Guidelines §15301-15332]*

Those exemptions granted by the State legislature are listed in State CEQA Guidelines Article 19, and as may be amended.

**Section 505. Categorical Exemption Use Limitations.** *[State CEQA Guidelines §15300.2]* A categorical exemption shall not be used if the conditions in State CEQA Guidelines Section 15300.2 apply.

**Section 506. Denial of Projects.** *[State CEQA Guidelines §15061(b)(4)]*

Projects that the City rejects or disapproves are not subject to CEQA. This provision, however, does not relieve an applicant from paying the costs for an EIR, Negative/Mitigated Negative Declaration, Initial Study, or preliminary environmental evaluation if prepared.

**Section 507. Notice of Exemption.** *[State CEQA Guidelines §15062]*

If the Planning & Development Department finds that a project is exempt for CEQA pursuant to this Chapter, a Notice of Exemption (NOE or Notice) may be filed.

The Notice shall be filed with the County Recorder, if at all, after approval of the project and shall include:

(a) A brief description of the project,
(b) The location of the project, by street address,
(c) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt,
(d) A brief statement of reasons to support the finding, and
(e) The applicant's name, if any.

When the Planning & Development Department approves an applicant's project, either the Planning & Development Department or the applicant may file a NOE. A Notice filed by the applicant is subject to the same posting and time requirements as a Notice filed by a public agency.

When an applicant files the NOE with the County Registrar it shall contain the information required together with a certified document issued by the Planning & Development Department stating that the Planning & Development Department has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the Planning & Development Department.

The filing of a NOE and the posting on the list of notices start a 35-day statute of limitations period on legal challenges to the Planning & Development Department's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180-day statute of limitations will apply.

## CHAPTER 6. NEGATIVE/MITIGATED NEGATIVE DECLARATION PROCESS

The following provisions are added as procedural clarifications of State CEQA Guidelines Sections 15070 - 15075 with respect to Negative/Mitigated Negative Declarations in the County.

**Section 600. Negative Declaration.** *[State CEQA Guidelines §15070]*

If the Planning Director finds, based on the Initial Study, that there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment, the Planning Director shall direct the Planning & Development Department

to prepare a Negative Declaration for consideration by the decision-making body for the permit(s) involved.

**Section 601. Mitigated Negative Declaration.** *[State CEQA Guidelines §15070]*

If the Planning Director finds, based on the Initial Study that the proposed project may have possible adverse significant impacts on the environment, but through revisions to the project or imposition of mitigation measures, such impacts would be mitigated or avoided so that no significant impacts remain, AND there is no substantial evidence in the record as a whole that significant impacts would result from the revised project; then the Planning Director shall notify the project sponsor(s) and provide them with a copy of the list of proposed mitigation measures that the project could incorporate to avoid all potentially significant effects. If the project sponsor agrees to these or functionally equivalent revisions/mitigation measures by signing a Project Revision Statement so indicating, the Planning & Development Department will then prepare a Mitigated Negative Declaration for public review and consideration by the decision-making body on the permit(s) involved.

**Section 602. Contents.** *[State CEQA Guidelines §15071]*

The Negative/Mitigated Negative Declaration must contain all items required by State CEQA Guidelines Section 15071.

**Section 603. Public Notice and Review.** *[State CEQA Guidelines §15072 and 15073]*

A Notice of Intent to Adopt a Negative/Mitigated Negative Declaration shall be provided in accordance with State CEQA Guidelines Section 15072.

(a) The City shall provide such notice in the following manner:

i. Publication at least one time in a newspaper of general circulation in the area potentially impacted;

ii. Mailing of the notice to the owners of all parcels within 300 feet of the boundaries of the parcel(s) on which the project is located plus those parcel owners adjacent to areas to be disturbed by off-site work at their last known address on the latest equalized assessment roll;

iii. Mailing of the notice to responsible agencies, trustee agencies, the State Clearinghouse, and the City Clerk/Recorder; and

iv. Mailing of the notice to organizations and individuals who have requested notice in writing.

(b) If a comment is not received during the public review period from an agency or person, it shall be assumed, absent a request for a specific extension of time that said agency or person has no comment to make.

**Section 604. Notice of Determination.** *[State CEQA Guidelines §15075]*

(a) Whenever the City Council, Zoning Adjustments Board, Planning Commission, Zoning Officer, or Planning Director approves a permit or authorizes a project for which a Negative/Mitigated Negative Declaration has been prepared, the Planning & Development Department shall file within 5 working days of their action a Notice of Determination with the County Clerk.

(b) In instances where multiple approval actions are required, the Notice of Determination shall be filed after the final decision to approve a project.

(c) If the project requires discretionary approvals from one or more state agencies, the Notice of Determination shall also be filed with the State Office of Planning and Research within this same 5-day period.

(d) Payment of any Fish and Game fees due to the State at the time a Notice of Determination is filed is the responsibility of the project sponsor. Payment must be received by the Planning & Development Department before the decision-making body holds a hearing or decides on the adequacy of the Negative/Mitigated Negative Declaration prepared. The Planning & Development Department shall forward the fee to the County Clerk with a filing fee. The County Clerk in turn forwards the fee to the State.

# CHAPTER 7. ENVIRONMENTAL IMPACT REPORT (EIR) PROCESS

The following provisions are added as procedural clarifications of *State CEQA Guidelines* Sections 15080–15097, 15120–15132, and 15140–15154 with respect to the preparation and processing of EIRs in the County.

**Section 700. EIR Preparation.** *[State CEQA Guidelines §§15081 and 15081.5]*

If the Planning Director finds during preliminary review or based on an Initial Study that there is substantial evidence in the record as a whole that a project may have a significant adverse effect on the environment, or if an EIR is required by statute, the Planning Director shall notify the project sponsor in writing within thirty (30) days that an EIR must be prepared.

**Section 701. Contents of an EIR.** *[State CEQA Guidelines §15120-15132]*

An EIR produced by/for the City must contain all items required by *State CEQA Guidelines* Sections 15120-15132 and must meet the requirements of *State CEQA Guidelines* Sections 15140-15152 and 15154.

**Section 702. Notice of Preparation (NOP).** *[State CEQA Guidelines §15082]*

A Notice of Preparation notifying responsible and interested agencies about the project

and soliciting their comments on the scope and content of the EIR shall be prepared by the Planning & Development Department. This notice shall be sent by certified mail to the project sponsor, all responsible and trustee agencies, and all federal agencies involved in approving or funding the project. If State agencies are involved, then the NOP shall also be sent to the State Clearinghouse. A copy of the NOP shall also be delivered to the City Clerk/Recorder for posting for thirty (30) days. A list of agencies that are typically sent the NOP shall be maintained by the Planning & Development Department.

**Section 702.1 Scoping. [State CEQA Guidelines §15083]**

The scope of the EIR prepared is determined using the following sources: the Initial Study, if one is produced, previous environmental documents, responses to the NOP, consultation with other agencies, and public scoping meetings, if held. A public scoping meeting may be incorporated into the NOP process and is typically held by the consultant preparing the EIR with assistance from the Planning & Development Department.

**Section 702.2 Preparation of Administrative Draft EIR.**

The pre-circulation draft of an EIR is referred to as the administrative draft. This draft is considered a working document to be circulated among City staff for their comment on its accuracy and adequacy. It is not available for public review and shall be destroyed upon release of the DEIR.

**Section 702.3 Public Review of Draft EIR.** *[State CEQA Guidelines §§15085, 15087, 15105]*

(a) The Planning Director shall provide public notice of the availability of the Draft EIR for review and comment in the same manner as specified in Section 603(a)-(c) for a Negative Declaration. In addition, a copy of the Draft EIR shall be sent to the nearest branch of the City of Berkeley Library at the same time a Notice of Completion is sent to the State Office of Planning and Research. The contents of the public notice shall be as specified in *State CEQA Guidelines* Section 15087(c).

(b) The normal public review period for a Draft EIR in the City shall be 45 days unless a shorter period of not less than 30 days is approved by the State Clearinghouse. *[State CEQA Guidelines §15105]* In special circumstances, the Planning Director may require a public review period of up to 60 days.

(c) Requests for extensions of time beyond 60 days shall be considered and either granted or denied by the Planning Director. Planning Director decisions regarding requests for extensions of time are not appealable to the City Council

**Section 702.4 Final EIR**. *[State CEQA Guidelines §15132]*

The Final EIR consists of the text of the Draft EIR revised as necessary to reflect those comments received that require text changes, all comments received on the Draft EIR, the City's responses to said comments, a list of all persons and agencies that commented on the Draft EIR, and any other information added by the City.

**Section 702.5 Notice of Determination (NOD).** *[State CEQA Guidelines §15094]*

After certification of the Final EIR and approval of the project, the Planning & Development Department or decision-making body shall prepare and file a Notice of Determination with the County Clerk following the same procedure and with the same restrictions as specified in Section 604.

# CHAPTER 8. MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

**Section 800. General.** *[State CEQA Guidelines §15097]*

Pursuant to Public Resources Code Section 21081.6, all jurisdictions must have a method for monitoring compliance and implementation of adopted mitigation measures. The City's Mitigation Monitoring and Reporting programs (i.e., MMRPs) shall be in conformance with *State CEQA Guidelines* Section 15097 as augmented by the provisions listed below.

**Section 801. Adoption.** *[State CEQA Guidelines §15097]*

(a) At the time the City makes the required CEQA findings regarding the Mitigated Negative Declaration or EIR being used, the City Council shall adopt a program for monitoring and reporting on the mitigation measures as part of the project. Conformance with this program shall be a condition of project approval.

(b) The resultant adopted MMRP shall be distributed to all agencies, departments, and parties with monitoring or reviewing responsibility thereunder.

**Section 802. Contents.**

MMRPs shall include at a minimum the following information for each mitigation measure:

(a) identification of the individual, department, agency, or other entity responsible for performing the mitigation measure;

(b) identification of the timing for implementation of the mitigation measure;

(c) identification of the specific results or performance standards that the mitigation is intended to accomplish if not clearly stated in the mitigation measure;

(d) identification of the frequency of inspections or other monitoring activities;

(e) identification of when compliance is completed;

(f) a statement that the project sponsor shall pay all monitoring costs including but not limited to those incurred by the City; and

(g) a signature block for the project sponsor and the property owner (for private projects only).

**Section 803. Compliance Assurance Responsibilities.**

(a) Overall compliance shall be coordinated by the Planning & Development Department unless otherwise indicated in the adopted MMRP.

(b) The Planning & Development Department may hire an outside consultant where mitigation measure compliance cannot be verified through the planning clearance process, where monitoring requires specialized expertise, or when City staff is unavailable to do the necessary work. The cost of said consultant shall be paid by the project sponsor.

(c) Mitigation measure compliance shall be monitored by the appropriate City Department. The Planning & Development Department and other City departments should review the building plans and the "as built" project for compliance with the mitigation measures imposed.

(d) Other agencies shall monitor the mitigation measures that they request or that are within their area of expertise. The Planning & Development Department shall notify these agencies of the mitigation monitoring required. These agencies shall inform the City in writing when each of their mitigation measures has been complied with completely.

**Section 804. Fees.** *[State CEQA Guidelines §15045]*

(a) The City shall charge and collect from the project sponsor a fee in an amount equal to the actual costs to the City of implementing the adopted MMRP. This includes the costs associated with use of an outside consultant where the Planning Director finds said use to be either necessary and/or convenient.

(b) An initial deposit in an amount equal to the City's total estimated costs of implementing the adopted MMRP for the first three (3) years shall be submitted to the Planning & Development Department prior to issuance of the first building permit needed to commence work on the project. Any unused portion of this initial deposit that is not needed to pay for permanent or long-term monitoring will be refunded to the project sponsor upon fulfillment of <u>all</u> those MMRP provisions that do not involve such monitoring.

(c) The project sponsor shall replenish the initial deposit every two (2) years so that the balance is high enough to pay for the estimated costs of monitoring compliance for three(3) years for those measures that require long-term or ongoing monitoring.

# CHAPTER 9. AB 130, SB 131, AND OTHER STATE CEQA STREAMLINING PROVISIONS

**Section 900. Purpose.**

The purpose of this chapter is to establish procedures for implementing statutory exemptions, streamlined environmental review provisions, and other CEQA reforms enacted by the California Legislature, including AB 130 (2025), SB 131 (2025), and subsequent amendments thereto.

Assembly Bill 130 (AB 130) is a new law under the California Environmental Quality Act Guidelines (CEQA) that provides a complete statutory exemption for qualifying urban infill housing development projects[1]. The Bill was signed into law and effective on June 30, 2025, and is codified in Public Resources Code (PRC) Section 21080.66.

Senate Bill 131 creates two different CEQA exemption pathways. The law applies to any rezoning that implements the schedule of actions contained in a California Department of Housing and Community Development-approved Housing Element, including any required conforming General Plan amendments. The law also creates a path for “near-miss” projects where a single issue disqualifies a housing development project from a full exemption. The project specific environmental review focuses on the impacts associated with the single issue. SB 131 was signed into law and effective on June 30, 2025, and is codified in Public Resources Code Section 21080.085.

**Section 901. Evaluation of Statutory and Categorical Exemptions and Streamlining Provisions.**

(a) During preliminary environmental review, the Land Use Planning Division shall evaluate whether a proposed project qualifies for:
   i. Special situations exemption (Article 12);
   ii. A statutory exemption from CEQA (Article 18);
   iii. A categorical exemption from CEQA (Article 19);
   iv. Streamlined environmental review procedures authorized by State law;
   v. Reliance upon a previously certified environmental document;
   vi. Tiering, incorporation by reference, addenda, supplemental environmental documents, or subsequent environmental documents; or
   vii. Other environmental review procedures authorized by CEQA and the State CEQA Guidelines.

[1] As defined in Government Code Section 65589.5(h)(2).

(b) The determination regarding applicability of any exemption or streamlining provision shall be supported by substantial evidence in the administrative record.

**Section 902. Urban Infill Housing Development Projects (AB 130).**

(a) The City shall evaluate whether a housing development project qualifies for the Urban Infill Housing Development Project Exemption set forth in Public Resources Code Section 21080.66 (AB 130), as amended.
(b) Eligibility determinations shall be based upon the criteria established by State law and supported by substantial evidence in the administrative record.
(c) Projects determined to qualify for the exemption shall be processed in accordance with all applicable requirements of Public Resources Code Section 21080.66, including any tribal notification, consultation, notice filing, conditions of approval, and approval timeline requirements.
(d) Upon approval of an exempt project, the City shall prepare and file any required Notice of Exemption in accordance with CEQA and State law.

**Section 903. Housing Element Implementation Rezonings (SB 131).**

(a) The City shall evaluate whether a rezoning or zoning amendment, and any required conforming General Plan amendments, qualify for the Housing Element Implementation Rezoning Exemption set forth in Public Resources Code Section 21080.085 (SB 131), as amended.
(b) Where applicable, the City may rely upon this statutory exemption for rezonings and conforming General Plan amendments undertaken to implement the schedule of actions contained in an adopted Housing Element.
(c) The Planning Director shall document the basis for any exemption determination in the administrative record.

**Section 904. Housing Development Projects Subject to Limited Environmental Review.**

(a) The City shall evaluate whether a housing development project qualifies for limited environmental review pursuant to Public Resources Code Section 21080.1, as amended.
(b) Where applicable, environmental review shall be limited to the environmental effects caused solely by the condition or circumstance that prevents the project from qualifying for an otherwise applicable statutory or categorical exemption.
(c) The scope of environmental review shall be consistent with State law and supported by substantial evidence in the administrative record.

**Section 905. Housing Development Projects Subject to AB 1633**

AB 1633, which became effective on January 1, 2024, revised a provision in the Housing Accountability Act (HAA, Government Code Section 65589.5) that allows an applicant to file a petition to enforce the HAA's protections where a local agency fails to make a determination that the project is exempt from CEQA when it is eligible for the exemption.

(a) The City shall evaluate housing development projects for applicability of any CEQA exemptions, streamlining provisions, or limited environmental review authorized by State law, including those enacted or amended by AB 1633 (2025) and related legislation.
(b) The Planning Director shall ensure that environmental review for qualifying housing development projects is conducted in accordance with applicable statutory requirements and within any timelines established by State law.
(c) The basis for any determination regarding the applicability of a statutory exemption, streamlined environmental review procedure, or limited environmental review shall be documented in the administrative record.
(d) Nothing in this section shall be construed to alter the City's obligation to exercise independent judgment in determining the appropriate level of environmental review required under CEQA.

**Section 906. Additional Statutory Exemptions and Streamlining Provisions.**

(a) The City may apply any additional statutory exemption, streamlined environmental review procedure, or alternative compliance pathway authorized by CEQA and State law.
(b) Nothing in this chapter shall limit the City's ability to utilize future statutory exemptions, streamlining provisions, or CEQA reforms enacted by the California Legislature.
(c) The Planning Director may establish administrative procedures, application materials, and guidance documents necessary to implement the provisions of this chapter.

# CHAPTER 10. CITY OF BERKELEY AS A RESPONSIBLE AGENCY

*[State CEQA Guidelines §§15096 and 15253]*

The following provisions are added as procedural clarifications of State CEQA Guidelines Sections 15096 and 15253 for when the City is a responsible agency responding to another Lead Agency's environmental review.

**Section 1000. Commenting on a Lead Agency's Environmental Document.** *[State CEQA Guidelines §15096]*

(a) The Planning & Development Department shall make every effort to provide written comments on the draft Negative/Mitigated Negative Declaration, Notice of Preparation and/or Draft EIR prepared by a Lead Agency within the time frames specified in the *State CEQA Guidelines*.

(b) The comments provided shall be limited to activities within the City's area(s) of expertise or jurisdiction. They shall at a minimum identify City permit requirements, potentially significant impacts, alternatives to be analyzed, and any mitigation measures to be considered. In addition, a recommendation as to whether a Negative/Mitigated Negative Declaration, or EIR is the appropriate document for the Lead Agency to prepare may be provided. The focus of the comments shall be to assist the Lead Agency in producing a defensible environmental document.

**Section 1001. Failure of Lead Agency to Consult With City or Adequately Respond to Comments Provided.** *[State CEQA Guidelines §15096]*

(a) If a Lead Agency fails to consult with the City prior to adopting a Negative/Mitigated Negative Declaration or certifying an EIR for a project over which the City has permit authority, the Planning & Development Department will review the document prepared. If the Planning Director finds based on the review that the document is adequate for City purposes, the City shall follow the procedures specified in Sections 1003 and 1004 below. However, if the Planning Director finds that the document is inadequate, then the City may take over the role of Lead Agency. The Planning & Development Department shall in that case follow the procedures specified herein in Chapters 4, 5 and 6 to prepare and process the environmental document needed.

(b) If a Lead Agency fails in the opinion of the Planning Director to adequately respond to the comments provided, the Planning Director shall consult with the City Attorney and jointly recommend a course of action pursuant to CEQA Guidelines Section 15096(e).

**Section 1002. Approval of Project By City Acting as a Responsible Agency.** *[State CEQA Guidelines §15096]*

(a) In issuing approvals or taking any other discretionary action on a project for which the City is a responsible agency, the City shall certify that it has reviewed and considered the environmental effects of the project as shown in the Negative/Mitigated Negative Declaration or EIR prepared by the Lead Agency.

(b) If an EIR has been produced, the City decision-making body shall adopt findings as set forth in *State CEQA Guidelines* Sections 15091 and 15093, if necessary.

(c) Where the City decision-making body requires the implementation of mitigation measures or other project changes to substantially lessen or avoid significant environmental effects of activities under its statutory control, a MMRP consistent with Chapter 8 of these guidelines covering those changes and measures shall be adopted at the time of project approval.

**Section 1003. Limitations on the Power of City as a Responsible Agency to Require Changes in Project.**

(a) When the City acts as a responsible agency for a project, it may only require those changes in a project that lessen or avoid the effects, either direct or indirect, of that part of the project that the City will be called upon to carry out or approve.

(b) When the City acts as a responsible agency, it may refuse to approve a project only in order to avoid direct or indirect adverse environmental effects of that part of the project the City must carry out or approve.

**Section 1004. Certified Equivalent Program: Use of Environmental Document Prepared In Lieu of a Negative/Mitigated Negative Declaration or EIR.** *[State CEQA Guidelines §§15250-15253]*

An environmental analysis document prepared for a project pursuant to a certified equivalent program shall be used by the City as a substitute for an EIR or Negative Declaration/Mitigated Negative Declaration and no additional environmental document shall be required if the conditions in *State CEQA Guideline* Section 15253(b) are met.