

Policy 1.1.7 Environmental Quality Regulations

POLICY PURPOSE:

The California Environmental Quality Act of 1970, as amended, (“CEQA”) requires cities and other units of local government to adopt objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports.

POLICY STATEMENT:

By the adoption of Resolution No. 118-04 the City Council adopts by reference the State Guidelines for the implementation of CEQA to insure adequate review of the impact on the environment of projects to be undertaken or approved by the City of Sunnyvale, so as to maximize the preservation and enhancement of the environment. See the “City of Sunnyvale Supplemental Procedures To Implement The California Environmental Quality Act” for further assistance regarding specific practices in Sunnyvale.

(Adopted: RTC 190-77 [Resolution] (11/24/1981); Amended RTC 04-01CA (6/8/2004))

Lead Department: Community Development

COUNCIL POLICY MANUAL

CITY OF SUNNYVALE SUPPLEMENTAL PROCEDURES TO IMPLEMENT THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of Sunnyvale is mandated by the California Environmental Quality Act (“CEQA”) (Public Res. Code §§ 21000 et seq.) to review the environmental impact of all non-exempt private and public projects. The basic purposes of CEQA are to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities, identify ways that environmental damage can be avoided or reduced, prevent significant unavoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures, and to disclose to the public the reasons why a governmental agency chooses to approve a project if significant environmental effects are involved.

CEQA requires that governmental agencies adopt procedures to implement the provisions of the law. Pursuant to statutory mandate, the State Secretary of the Resources Agency has adopted a comprehensive set of guidelines prepared by the Office of Planning and Research to assist governmental agencies and the public with implementation of CEQA’s requirements. (“State Guidelines,” Cal. Code of Regs., Title 14, §§ 15000 et seq.) The City has adopted the State Guidelines, as they may be amended from time to time, in their entirety as its local guidelines. These supplemental procedures are intended to provide further assistance to project proponents regarding specific practices in Sunnyvale; in the event of any conflict between these supplemental procedures and the State Guidelines, the State Guidelines shall control.

CEQA applies to discretionary government activities, defined as “projects.” A project may be an activity directly undertaken by a public agency such as the construction of a public facility or adoption of a specific plan, or it may be an activity undertaken by a private party which involves the issuance of a lease, permit, license, certificate or other entitlement for use by a public agency.

Basically, CEQA requires that an agency proceed in the following manner: 1) determine whether a proposed activity is a project that may have a significant, adverse effect on the environment, 2) if so, consider whether any exemptions from the CEQA process apply, 3) if the project is not exempt, prepare an Initial Study to determine possible significant impacts and whether they can be mitigated through project redesign or conditions, 4) if the Initial Study determines that there will be no significant impacts or that the potential impacts can be mitigated, file a negative declaration or mitigated negative declaration, and 5) if a project may result in a significant adverse impact, prepare an environmental impact report to evaluate potential impacts and possible project alternatives and their impacts.

1. PRIVATE PROJECTS.

The Community Development Department Planning Division is primarily responsible for processing private projects for which development applications are submitted. The Planning Officer, or his or her designee, is responsible for overseeing the CEQA compliance procedures. The project planner assigned to any particular project has the responsibility to manage CEQA compliance in conjunction with the project review.

A. Exempt Projects.

As part of the preliminary review of a project application, the project planner shall consider whether a project is exempt from CEQA. Generally, a project may be exempt from CEQA review if it falls within any of the following categories:

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- The project is not considered a “project” within the CEQA definition
- The City does not have discretion to disapprove or put conditions on the project
- The action is required by a state regulatory program
- The State has determined by statute that the type of project is exempt from CEQA review
- The project is a type that the State has determined generally does not have a significant environmental impact

CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that the project in question would not have a significant effect of the environment, it is not subject to CEQA.

1) Ministerial Projects or Permits.

Ministerial projects are those projects over which the City has no discretionary power to deny or condition, providing the project meets specified code requirements. Ministerial projects are exempt from CEQA. When a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the provisions of CEQA. Ministerial permits in Sunnyvale include, but are not limited to:

- building permits, including mechanical, electrical and plumbing permits
- grading permits (in areas with average slope less than 20%)
- business licenses and other permits required by Title 5, Business Licenses and Regulations, of the Sunnyvale Municipal Code
- licenses and permits required by Title 9, Public Peace, Safety or Welfare, of the Sunnyvale Municipal Code
- issuance of industrial waste permits unless in connection with a project which exceeds wastewater standards set forth in Chapter 12. 40 of the Sunnyvale Municipal Code
- approval or waiver of parcel maps and the approval of final subdivision maps
- approval of individual utility service connections and disconnections
- issuance of occupancy inspection permits
- issuance of demolition permits, unless in connection with a property of historical or cultural significance to the community, as designated on the cultural resources inventory maintained by the City, or as designated as a heritage landmark by the City

2) Determination of Exemption.

If the project planner determines the project falls into one of the exempt categories, no further CEQA review is required. The formal determination the project is exempt from CEQA is made by the decision-making body at the time of project approval (or disapproval). Depending on the type of development action sought, the decision-making body may be administrative staff, the

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Planning Commission, or the City Council. The decision-making body may conclude a project is not exempt; in such a case the project planner shall proceed with an Initial Study.

If the decision-making body finds a project is exempt and approves the project, the Planning Division may file a Notice of Exemption with the County Clerk after approval of the project. This starts a thirty-five day period for challenge of the decision through the courts.

B. Non-Exempt Projects.

1) Initial Study.

As part of the application process, the project applicant must complete and submit an environmental information form, supplied by the Planning Division, before the application can be deemed complete. The type of information to be submitted is dependent upon the type of development the applicant proposes.

After an applicant submits an application for a non-exempt project, the project planner will conduct an Initial Study of the project to determine whether a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report should be prepared. To assist in the preparation of the Initial Study, the project planner may submit application information to the Project Review Committee (“PRC”) for comment and evaluation. The PRC is a standing internal review committee composed of representatives from various city departments with responsibilities for overseeing functions such as fire safety, building, solid waste management, utility service, etc. The project planner will coordinate and incorporate the comments of the PRC members into the Initial Study.

2) Negative Declaration.

Based upon the Initial Study, the project planner shall evaluate the project’s effect on the environment. If it is determined the project will have no significant adverse effects, the project planner shall prepare a Negative Declaration.

3) Mitigated Negative Declaration.

If the preliminary determination shows that a proposed project may have a significant effect upon the environment, the project planner will meet with the applicant to discuss possible mitigation measures and/or project alterations that would avoid the significant effects identified in the Initial Study. The application and Initial Study shall be revised to reflect any changes made to the project to address potential impacts, and shall discuss required mitigation measures and how they will be enforced (i.e., conditions of approval).

4) Adoption of Negative/Mitigated Negative Declaration; Project Approval.

The Planning Officer, or a person designated by the Planning Officer to act as Environmental Coordinator, shall review the project planner’s determination to prepare a Negative Declaration or Mitigated Negative Declaration. If the Environmental Coordinator agrees with the determination, he or she shall sign the Notice of Intent to prepare the Negative Declaration, and circulate it in accordance with the State Guidelines.

The adoption of either type of Negative Declaration is made by the decision-making body at the time of project approval (or disapproval). Depending on the type of development action sought,

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the decision-making body may be administrative staff, the Planning Commission, or the City Council. The decision making body may conclude that the evidence presented calls for the preparation of an Environmental Impact Report (EIR) rather than a type of Negative Declaration. In such a case, an EIR shall be prepared.

5) Environmental Impact Reports.

If the Environmental Coordinator determines that a proposed project may have one or more significant adverse impacts, he or she shall circulate a Notice of Preparation in anticipation of preparing an EIR, and must consult with relevant agencies and interested parties, in accordance with the State Guidelines. The draft EIR may be prepared by City staff or by a consultant under contract to the City. The City shall administer all consultant contracts. The contents of the EIR as well as the process for preparing and finalizing the EIR shall be as stated in the State Guidelines.

6) Appeal From Determination to Prepare EIR.

A project applicant may appeal the Environmental Coordinator's determination that an EIR must be prepared to the Planning Commission, in accordance with the general appeal procedures set forth in Chapter 19.98 of the Sunnyvale Municipal Code. An applicant may further appeal the Planning Commission's decision to the City Council, in accordance with the general appeal procedures.

7) Findings for Project Approval.

The Final EIR shall be reviewed and certified by the decision making body in accordance with CEQA procedures and the State Guidelines. Prior to project approval, the decision making body shall certify that the final EIR was completed in compliance with the provisions of CEQA, and that the decision making body reviewed and considered the information contained therein. The decision making body shall adopt a statement of overriding considerations and mitigation monitoring plan as necessary under the circumstances.

8) Notice of Determination.

The Environmental Coordinator shall file a Notice of Determination with the County of Santa Clara following the final approval of a project where either a Negative/Mitigated Negative Declaration was adopted or an EIR certified. The filing of the Notice of Determination establishes a thirty day period for challenge of the decision through the courts.

9) Appeals.

The action of the decision making body on a CEQA finding may be allowed by the statute or State Guidelines, may be appealed to the next level of decision making body, in accordance with the State Guidelines and general appeal procedures set forth in Chapter 19.98 of the Sunnyvale Municipal Code.

10) Costs and Fees.

- (a) No environmental review fee shall be required where it is determined that an application is exempt from CEQA review.

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- (b) For the review and initial environmental assessment required in connection with any project, the applicant shall pay a fee in an amount prescribed by resolution of the City Council, which shall be payable at the time of the filing of the application.
- (c) Upon completion of the review and initial assessment, the applicant shall be advised whether or not it has been determined that the project may have a significant effect on the environment and thus require preparation of an EIR. The applicant will be further advised whether or not the City will retain a consultant to assist in preparation of the EIR.
- (d) For review and required filings in connection with an EIR, there shall be a fee in an amount prescribed by resolution of the City Council, which shall be payable by the applicant prior to the time any work on the draft EIR is authorized.
- (e) In the event the City retains a consultant to assist in the preparation of the EIR, the applicant shall pay the cost. The applicant shall deposit an amount to be determined by the Planning Officer based upon his or her estimate of the cost of preparation of the EIR. If the costs of preparation exceed the amount of the deposit, the Planning Officer shall notify the applicant who shall, within five (5) business days of such notice, deposit the additional amount necessary to cover costs of preparation. If the costs of preparation are less than the amount deposited, any amounts remaining upon certification of the EIR shall be refunded to applicant.
- (f) Payment of required fees or deposits by an applicant shall be a condition precedent to the obligation of the City or any consultant retained by the City to perform any act or provide any service for which such fee or deposit is required.
- (g) The fees for copies of documents prepared pursuant to these procedures and the State Guidelines shall be the standard fee charged by the City for copies of like documents.
- (h) Fees for the preparation or reproduction of environmental documents shall be in addition to any other fee required by law.

2. CITY PROJECTS

CEQA defines a project as the “whole of an action” which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. This applies to activities directly undertaken by the City including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local general plans and elements thereof.

1) Lead Department.

The City Department with the major responsibility for carrying out or approving an activity or project is designated as the Lead Department for the City. For example, the Public Works Department is the Lead Department for street improvement projects, and the Parks and Recreation Department is the Lead Department for park improvement projects.

The Planning Division of the Community Development Department is the Lead Department for zoning ordinance and general plan amendments, as well as for private development applications.

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2) Timing.

Assigned staff in the Lead Department (the Project Manager), shall be responsible for ensuring CEQA compliance as City projects are carried out. The Project Manager shall be alert for environmental issues at the earliest stages of project planning, so that appropriate environmental safeguards and mitigations can be designed into the project. Initially, the Project Manager shall determine whether a project is exempt from CEQA review. The Project Manager shall consult with the Environmental Coordinator if necessary to make this determination. If a project is exempt, a Notice of Exemption may be filed when the project is approved.

If the project is not exempt, the Lead Department shall incorporate environmental considerations into project conceptualization, design, and planning. In cases where the City will be acquiring property for a project, CEQA compliance should be completed prior to acquisition of a site.

2) Process.

When the City plans to carry out a non-exempt project, the Lead Department will participate in the environmental review process in a manner similar to that for private project applicants. All environmental documentation shall be prepared by the Lead Department (or under direction of that Department) in coordination with the Planning Division. This coordination is intended to ensure consistency between the processing of private projects and the processing of public projects.

The Project Manager of the Lead Department shall conduct an Initial Study to determine whether the project may have a significant effect on the environment. The project may be submitted to the PRC for review and comment. If the Initial Study finds that there is not substantial evidence that the project may have a significant effect, the Project Manager shall prepare a Negative Declaration. If the Initial Study shows that the project may have a significant effect, the Lead Department shall prepare a Mitigated Negative Declaration or EIR, as appropriate.

All environmental documents shall be prepared in compliance with the State Guidelines. The Planning Officer and Lead Department may agree that the Environmental Coordinator shall act as the Project Manager for a Lead Department with respect to CEQA compliance when circumstances so warrant.