

NOTICE OF EXEMPTION

To: Assessor/Recorder/County Clerk
Attn: Fish and Wildlife Notices
1600 Pacific Highway, Suite 260
San Diego CA 92101
MS: A-33

From: **CITY OF CARLSBAD**
Planning Division
1635 Faraday Avenue
Carlsbad, CA 92008
(442) 339-2600

Subject: Filing of this Notice of Exemption is in compliance with Section 21152b of the Public Resources Code (California Environmental Quality Act).

Project Number and Title: MCA 2022-0003

Project Location - Specific: Citywide

Project Location - City: Carlsbad

Project Location - County: San Diego

Description of Project: Amendment to Title 22 (Historic Preservation Ordinance) to adopt a Mills Act Program and to address longstanding inconsistencies in the Historic Preservation Ordinance.

Name of Public Agency Approving Project: City of Carlsbad

Name of Person or Agency Carrying Out Project: City of Carlsbad

Name of Applicant: Mike Strong, Assistant Community Development Director, acting on behalf of the City of Carlsbad

Applicant's Address: 1635 Faraday Avenue, Carlsbad CA 92008

Applicant's Telephone Number: 442-339-2607

Name of Applicant/Identity of person undertaking the project (if different from the applicant above):
N/A

Exempt Status: *(Check One)*

- Ministerial (Section 21080(b)(1); 15268);
- Declared Emergency (Section 21080(b)(3); 15269(a));
- Emergency Project (Section 21080(b)(4); 15269 (b)(c));
- Categorical Exemption - State type and section number: Class 8 (Actions by Agencies for Protection of the Environment) and 31 (Historical Resource Restoration)
- Statutory Exemptions - State code number: _____
- Common Sense Exemption (Section 15061(b)(3))

Reasons why project is exempt: See attached

Lead Agency Contact Person: Mike Strong

Telephone: 442-339-2607



Eric Lardy, City Planner

August 19, 2022

Date

Date received for filing at OPR:

Class 8 and Class 31 Exemptions - substantiation:

The ordinance will require a discretionary permit and CEQA review, was analyzed in accordance with CEQA. Categorical Exemptions Class 8 and 31 of the State CEQA Guidelines are appropriate and that the exceptions to these two categorical exemptions do not apply to this project. Clarifying and simplifying local historic regulations in conjunction with establishing incentives to property owners who voluntarily wish to preserve any buildings, structures, sites, artifacts, landscaping, or portions thereof would better regulate construction activities to ensure the protection of a city historic resource. In fact, the purpose of the proposed amendments to Title 22 and adoption of a Mills Act Program is to prevent significant environmental impacts to a historic and cultural resource identified in the city. Without regulation of construction activities, the historic integrity of buildings, structures, sites, artifacts, landscaping, or portions thereof could be lost through incompatible alterations and new construction and the demolition of irreplaceable historic structures. The standards to which would apply to prospective applications for constructive work are based upon the Secretary of the Interior's Standards and provide guidance on the historically appropriate construction activities in order to ensure the continued preservation of buildings, structures, sites, artifacts, landscaping, or portions thereof.

The use of Categorical Exemption Class 8 from the State CEQA Guidelines is consistent with other California jurisdictions, which finds that the regulations placed upon historic districts is necessary for the protection of the environment and will make sure that maintenance, repair, restoration, and rehabilitation does not degrade the historic resource. Section 15308, Class 8 "consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment."

As to whether the activity "is capable of causing a direct or reasonably foreseeable indirect change in the environment," individual construction projects that are subject to the updated historic preservation standards would be required to go through project specific environmental review if required under CEQA. Thus, clarifying and simplifying local historic regulations in conjunction with establishing incentives to property owners do not supersede the California Environmental Quality Act, or other Carlsbad Municipal Code requirements. However, the indirect changes have been contemplated. Furthermore, some individual construction projects may be considered ministerially, without the benefit of additional CEQA review. In those instances, the use of Categorical Exemption Class 31 from the State CEQA Guidelines is consistent with other California jurisdictions, which is applicable when rehabilitation is consistent with the Secretary of the Interior Standards. Categorical Exemption, Article 19, Section 15331, Class 31 "consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Buildings (1995), Weeks and Grimmer." Under the implementation of the ordinance, construction projects would be reviewed for conformity with Title 22 code standards, which implements the Secretary of the Interior's Standards for Rehabilitation. The project proponent must demonstrate use of qualified personnel (e.g. a preservation architect), a process/procedure (e.g. use of federal historic rehabilitation tax credits), or other means to ensure appropriate interpretation and application of the Standards. The proponent must understand that work undertaken may be halted, and the exemption revoked, if the work is not being performed consistent with the Standards as originally defined.

Exceptions to the Use of Categorical Exemptions

Planning staff evaluated all the potential exceptions to the use of Categorical Exemptions for the proposed project (in accordance with CEQA Guidelines Section 15300.2) and determined that none of these exceptions apply as explained below:

- Cumulative Impact - “All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” The exception applies when, although a particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant. Adoption of the proposed ordinance would not alter the environment but will address development to ensure that future projects and development are compatible with the Secretary of Interior Standards; therefore, protecting the historic resources. Consequently, there is no cumulative impact on the environment from previous ordinance adoptions, the current ordinance adoption, or future ordinance adoptions.
- Significant Effect - “A categorical exemption shall not be used for any activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Examples include projects, which may affect scenic or historical resources. There are no unusual circumstances that would have a significant impact on the environment due to the adoption of the ordinance. Therefore, there is no possibility of significant effects on the environment. The proposed ordinance would provide incentives and/or otherwise protect the unique character of the existing environment, which retains much of its original design, street grid pattern, and building setbacks of prior development.
- Scenic Highway - “A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.” This exception applies when a project may result in damage to scenic resources within a duly designated scenic highway. The proposed ordinance does not contain any state or city designated scenic highway or parkway, nor does it make reference to such. Thus, the proposed ordinance would not negatively impact scenic resources within a duly designated scenic highway. Rather, the proposed ordinance would provide incentives and/or otherwise protect the unique character of the existing environment, which retains much of its original design, street grid pattern, and building setbacks of prior development.
- Hazardous Waste Site - “A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. This exception applies when a project is located on a site or facility listed pursuant to California Government Code 65962.5.
- Historical Resources - “A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.” This exception applies when a project may cause a substantial adverse change in the significance of a historical resource. The proposed project would not cause an adverse change in the significance of a historical resource as defined in State CEQA Guidelines 15064.5; rather, the proposed project would protect identified historic structures through ordinance adoption. The proposed ordinance would ensure that exterior work on historical are consistent with the Secretary of the Interior’s Standards as clarified and elaborated in the proposed ordinance and would require an additional level of review (prior to obtaining other entitlements and building permits), so that new additions or alterations are conducted in a historically appropriate manner, preserving the historic integrity of the property and its environment.

Planning staff also evaluated the potential exceptions to the use of Categorical Exemptions as defined by Section 19.04.070 of the Carlsbad Municipal Code and determined that none of these exceptions apply as explained below:

- Grading and clearing activities affecting sensitive plant or animal habitats – A categorical exemption shall apply when there is earth moving activities “which disturb, fragment or remove such areas as defined by either the California Endangered Species Act (Fish and Game Code Sections 2050 et seq.), or the Federal Endangered Species Act (16 U.S.C. Section 15131 et seq.); sensitive, rare, candidate species of special concern; endangered or threatened biological species or their habitat (specifically including sage scrub habitat for the California Gnatcatcher); or archaeological or cultural resources from either historic or prehistoric periods.” Adoption of the proposed ordinance would not alter the environment but will address development to ensure that future projects and development are compatible with the Secretary of Interior Standards; therefore, protecting the historic resources. The ordinance neither changes the grading standards nor policies to which apply to this exception to the exemption. The proposed ordinance would ensure that exterior work on historical are consistent with the Secretary of the Interior’s Standards as clarified and elaborated in the proposed ordinance and would require an additional level of review (prior to obtaining other entitlements and building permits), so that new additions or alterations are conducted in a historically appropriate manner, preserving the historic integrity of the property and its environment.
- Impacts to biological species or their habitats or archeological or cultural resources – “Parcel maps, plot plans and all discretionary development projects otherwise exempt but which affect sensitive, threatened or endangered biological species or their habitat (as defined above), archaeological or cultural resources from either historic or prehistoric periods, wetlands, stream courses designated on U.S. Geological Survey maps, hazardous materials, unstable soils or other factors requiring special review, on all or a portion of the site.” This exception applies when a project may result in damage to biological species or their habitats or archeological or cultural resources. The proposed ordinance does not contain any biological species or their habitats or archeological or cultural resources, nor does it make reference to such. Rather, the proposed ordinance would provide incentives and/or otherwise protect the unique character of the existing environment, which functions as a preservation tool and retains much of its original design, street grid pattern, and building setbacks of prior development.

Common Sense Exemption - substantiation:

In the alternative, Planning staff has reviewed the proposed ordinance and has identified that it equally qualifies for an exemption from CEQA pursuant to Section 15061(b)(3) (Common Sense or General Rule Exemption) of the State CEQA Guidelines. The activity is covered by the Common Sense Exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. When it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. No special circumstances exist that the proposed ordinance would create a significant adverse effect on the environment (i.e., no sensitive species or habitats, no hazardous sites, no scenic highways, no historic resources, etc.).