

From: [Lara Weisiger](#)
To: [Planning](#); [Nancy McPeak](#); [Jennifer Warner](#)
Subject: FW: [EXTERNAL] for item 2025-4953 zoning amendment is not Exempt from CEQA
Date: Monday, April 14, 2025 1:28:23 PM

From: Shelby S <sheehan.shelby@gmail.com>
Sent: Monday, April 14, 2025 1:25 PM
To: City Clerk <CLERK@alamedaca.gov>
Subject: [EXTERNAL] for item 2025-4953 zoning amendment is not Exempt from CEQA

Hello Clerk- Please accept this public comment on my and Tod Hickman's behalf (cc'd here for the record)

Public Comment Opposing CEQA Exemption for PLN25-0155 (Zoning Amendment – Universal Design Ordinance)

Re: PLN25-0155 – Improper Use of CEQA Exemption for Citywide Zoning Ordinance Amendment

Dear Planning Board Members,

I am writing to express my strong objection to the City's proposed reliance on a CEQA exemption for PLN25-0155, a zoning ordinance amendment that would materially alter Universal Design requirements and procedures citywide.

The proposal improperly invokes the “common sense exemption” under CEQA Guidelines § 15061(b)(3) despite making substantive regulatory changes that will enable the issuance of hardship waivers, expand discretionary authority, and exempt certain types of construction from accessibility requirements. These changes clearly have the potential to cause environmental effects, particularly relating to housing equity and access, which CEQA defines as part of the environment under Public Resources Code § 21060.5.

I. Zoning Code Amendments Are Projects Under CEQA

As confirmed by the California Supreme Court in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, zoning code amendments that facilitate future development are “projects” under CEQA because they may result in a reasonably foreseeable indirect physical change in the environment. The Court explicitly rejected the argument that a zoning text change could be categorically exempt merely because it does not itself approve construction.

This proposal unlawfully converts discretionary zoning decisions into **ministerial actions** by empowering a single, potentially biased and unqualified staff member to issue waivers. It further shifts significant discretionary authority to staff—a legislative act with foreseeable consequences. Once adopted, the zoning change will apply citywide to future residential projects. It cannot credibly be argued that these policy-

level changes have “no possibility” of significant effect.

II. The City Is Not a Valid Lead Agency

The City has not adopted current CEQA implementation procedures as required by CEQA Guidelines § 15022(a), (b), and (d). The failure to adopt formal, updated procedures by resolution or ordinance means the City is not authorized to act as a lead agency. Any exemption determination made without valid § 15022 procedures is **ultra vires and void** and will not withstand judicial scrutiny.

III. The Claimed Exemption Does Not Apply

The “common sense exemption” under § 15061(b)(3) applies **only** where it is **absolutely certain** that no significant environmental impact can occur. This is a high bar. As the court explained in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, CEQA prohibits agencies from relying on this exemption where any possibility of environmental impact exists.

Here, the proposed ordinance:

- Alters development review processes;
- Adds discretionary authority to exempt projects from accessibility requirements;
- Potentially affects the physical design outcomes of future housing stock.

These changes undermine equitable housing access and exempt unknown categories of construction—exactly the kind of policy shift CEQA is meant to evaluate.

IV. Environmental Review Cannot Be Deferred

The suggestion that environmental review can be deferred until future permitting is not legally permissible under CEQA. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the court rejected the practice of postponing environmental analysis to a later phase when significant impacts may result from the initial enabling action.

This is especially harmful in Alameda, where the City has routinely used improper CEQA exemptions (such as this one) to bypass review, eliminate public process, and invoke vague claims of “design-review” exemptions.

V. Conclusion: Withdraw the Exemption and Prepare CEQA Review

The proposed amendment is not exempt under CEQA and must be evaluated through, at minimum, an Initial Study, and more likely a Mitigated Negative Declaration or full Environmental Impact Report.

You would know this if the City had adopted valid CEQA procedures—but it hasn’t.

Don’t let the Planning Board be sidelined by another blatant attempt to bypass your authority.

I urge the Planning Board to:

1. Reject the use of the § 15061(b)(3) exemption;
2. Direct staff to initiate proper CEQA review;
3. Refrain from adopting any zoning code amendment until CEQA compliance is complete.

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Shelby

510-435-9263

"The righteousness of the oppressed will not go unheard."