

# Article 6

## Permit Procedures

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## Chapter 17.600 – Permit Application Filing and Processing

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### Sections:

- 17.600.010 – Purpose
- 17.600.020 – Authority for Land Use and Zoning Decisions
- 17.600.030 – Multiple Permit Applications
- 17.600.040 – Application Preparation and Filing
- 17.600.050 – Application Fees
- 17.600.060 – Applicant Indemnification
- 17.600.070 – Initial Application Review
- 17.600.080 – Project Evaluation and Staff Reports
- 17.600.090 – Environmental Review
- 17.600.100 – Water Quality Management Plan (WQMP) Required

### 17.600.010 – Purpose

This Chapter provides procedures and requirements for the preparation, filing, and initial processing of the land use permit applications required by this Development Code.

### 17.600.020 – Authority for Land Use and Zoning Decisions

Table 6-1 (Review Authority), identifies the review authority responsible for reviewing and making decisions on each type of application required by this Development Code.

### 17.600.030 – Multiple Permit Applications

- A. **Concurrent filing.** An applicant for a development project that requires the filing of more than one application (e.g., Conditional Use Permit, Tentative Map, Landscape and Irrigation Plans, etc.), shall file all related applications concurrently, together with all application fees required by Section 17.600.050 (Application Fees), below, unless these requirements are waived by the Director. (ord. 16-01, adopted April 5, 2016)
- B. **Concurrent processing.** Multiple applications for the same project shall be processed concurrently, and shall be reviewed, and approved or disapproved by the highest review authority designated by this Development Code for any of the applications. For example, a project for which applications for Zoning Map Amendment and a Conditional Use Permit are filed shall have both applications decided by the Council, instead of the Commission being the final decision making authority for the Conditional Use Permit as otherwise required by Table 6-1. In the example cited, the Commission would still hear all of the applications (the Zoning Map Amendment and the Conditional Use Permit) and forward recommendations to the Council.

**Table 6-1  
Review Authority**

| Type of Action   | Applicable Code Chapter   | Role of Review Authority (1) |                         |          |
|--|---|------------------------------|-------------------------|----------|
|  |   | Director                     | Commission              | Council  |
| <b>Legislative Actions</b>   |   |                              |                         |          |
| Development Agreements and Amendments                                    | 17.610  | Recommend (1)                | Recommend               | Decision |
| Development Code Amendments  | 17.720  | Recommend (1)                | Recommend               | Decision |
| General Plan Amendments  | 17.720  | Recommend (1)                | Recommend               | Decision |
| Specific Plans and Amendments  | 17.635  | Recommend                    | Recommend               | Decision |
| Zoning Map Amendments  | 17.720  | Recommend                    | Recommend               | Decision |
| <b>Planning Permits and Approvals and Administrative Actions</b>         |   |                              |                         |          |
| Commercial Marijuana Cultivation Planning Permit                         | 17.603  | City Manager                 |                         |          |
| Conditional Use Permits  | 17.605  | Recommend                    | Decision (2)(4)         | Appeal   |
| Home Occupation Permits  | 17.615  | Decision (3)                 | Appeal                  | Appeal   |
| Interpretations  | 17.105  | Decision (3)                 | Appeal                  | Appeal   |
| Minor Use Permits  | 17.605  | Decision (3)                 | Appeal                  | Appeal   |
| Minor Variances  | 17.650  | Decision (3)                 | Appeal                  | Appeal   |
| Planned Development Permits  | 17.620  | Recommend                    | Decision (4)            | Appeal   |
| Reasonable Accommodations  | 17.625  | Decision (3)                 | Appeal                  | Appeal   |
| Sign Permits   | 17.335  | Decision (3)                 | Appeal                  | Appeal   |
| Site Plan and Design Review<br>(See Table 6-2 for specified thresholds.) | 17.630  | Decision (3)                 | Decision/<br>Appeal (4) | Appeal   |
| Temporary Use Permits  | 17.640  | Decision (3)                 | Appeal                  | Appeal   |
| Transfer of Development Rights   | 17.645  | Recommend                    | Recommend               | Decision |
| Variances  | 17.650  | Recommend                    | Decision (4)            | Appeal   |
| Zoning Clearances  | 17.655  | Decision (3)                 | Appeal                  | Appeal   |
| Landscape and Irrigation   | See Chapter 17.325 – Water Efficient Landscape and Irrigation for details (ord. 16-01, adopted April 5, 2016) |                              |                         |          |

## Notes:

- (1) "Recommend" means that the review authority makes a recommendation to a higher decision making body; "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision making body, in compliance with Chapter 17.715 (Appeals).
- (2) The final review authority for a Conditional Use Permit granting a Density Bonus, in compliance with Section 17.310.060 (Application Filing, Processing, and Approval) shall be the Council, with the Commission first making a written recommendation to the Council.
- (3) The Director may defer action and refer the request to the Commission for consideration and final decision.
- (4) The Commission may defer action and provide a recommendation to the Council for consideration and final decision.



## 17.600.040 — Application Preparation and Filing

### A. Pre-Application Conference.

1. A prospective applicant is strongly encouraged to request a pre-application conference with the Director before completing and filing a land use permit application.
2. The purpose of this conference is to generally:
  - a. Inform the applicant of City requirements as they apply to the proposed project;
  - b. Review the City's review process, possible project alternatives, or modifications; and
  - c. Identify information and materials the City will require with the application, and any necessary technical studies and information relating to the environmental review of the project.
3. Neither the pre-application review nor the provision of information and/or pertinent policies shall be construed as either a recommendation for approval or disapproval of the application or project by any City staff. Failure by City staff to identify all required studies or all applicable requirements shall not constitute a waiver of those requirements.

### B. Pre-Development Review Committee.

1. A prospective applicant may request review of their project by the Pre-Development Review Committee.
2. The Pre-Development Review Committee shall be comprised of the following membership:
  - a. Two Council members; and
  - b. Two Commissioners.
3. The Pre-Development Review Committee is available to provide the prospective applicant with the opportunity to obtain early feedback regarding a proposed development project.
4. Neither the pre-development review nor the provision of information and/or pertinent policies shall be construed as either a recommendation for approval or disapproval of the application or project by the City. Failure by the City to

identify all required studies or all applicable requirements shall not constitute a waiver of those requirements.

- C. Application contents.** Each application for a permit, amendment, or other matter pertaining to this Development Code shall be filed with the Department on a City application form, together with all required fees and/or deposits and all other information and materials specified in the Department handout for the specific type of application and/or as specified by the Director. Applicants are encouraged to contact the Director before submitting an application to verify which materials are necessary for application filing.
- D. Eligibility for filing.**
1. An application may only be filed by the owner of the subject property or a lessee or authorized agent of the property owner with the written consent of the property owner. With the Director's approval, a lessee with the exclusive right to use the property for a specified use may file an application related to that use.
  2. The application shall be signed by the owner of record or may be signed by the lessee or by authorized agent of the property owner if written authorization from the owner of record is filed concurrently with the application.

#### 17.600.050 — Application Fees

- A. Fee schedule.** The Council shall establish a schedule of fees for the processing of the applications required by this Development Code, hereafter referred to as the City's Planning Fee Schedule. The fee schedule is intended to allow recovery of all costs incurred by the City in processing permit applications to the maximum extent allowed by law. The fee schedule shall provide for optional expedited review/fast track processing.
- B. Timing of payment.** Applications shall not be deemed complete, and processing shall not commence, on any application until all required fees or deposits have been paid. Failure to timely pay supplemental requests for payment of required fees and/or deposits shall be a basis for disapproval or revocation of any permit or other requested entitlement, notwithstanding any other provisions of this Development Code.
- C. Refunds and withdrawals.** Application fees cover City costs for public hearings, mailings, staff and consultant time, and the other activities involved in processing applications. Therefore, no refund due to disapproval shall be allowed. In the case of a withdrawal, the Director shall have the discretion to authorize a partial refund based upon the pro-rated costs to-date and the status of the application at the time of withdrawal.

### 17.600.060 — Applicant Indemnification

- A. **Applicant agreement.** At the time of submitting an application for a discretionary land use approval, the applicant shall be deemed to have agreed as part of the application, to defend (with legal counsel of City's selection), indemnify, and hold harmless the City and its elected and appointed officials, agents, attorneys, employees and officers, from any action, claim or proceeding brought against the City or its elected and appointed officials, agents, employees and officers to attack, set aside, void, or annul a discretionary land use approval of the City, which action is brought within the applicable statute of limitations. The required indemnification shall include damages awarded against the City, if any, costs of suit, attorneys' fees and other costs and expenses incurred in connection with the action.
- B. **City notification of applicant.** In the event that an action, claim, or proceeding referred to in Subsection A., above is brought, the City shall promptly notify the applicant of the existence of the action, claim, or proceeding and shall cooperate fully in the defense of the action, claim, or proceeding.
- C. **City participation in defense.** Nothing in this Section shall prohibit the City from participating in the defense of any action, claim, or proceeding if the City elects to bear its own attorneys' fees and costs and defends the action in good faith.

### 17.600.070 — Initial Application Review

- A. **Review for completeness.** The Director shall review each application for completeness and accuracy before it is accepted as being complete and officially filed. The Director's determination of completeness shall be based on the City's list of required application contents and any additional written instructions provided to the applicant in any pre-application conference (see Section 17.600.040 — Application Preparation and Filing) and/or during the initial application review period.
1. **Notification of applicant.** As required by Government Code Section 65943, within 30 days following application filing, the applicant shall be informed in writing, either that the application is complete and has been accepted for processing, or that the application is incomplete and that additional information, specified in the Director's letter, shall be provided.
  2. **Appeal of determination.** Where the Director has determined that an application is incomplete, and the applicant believes that the application is complete and/or that the information requested by the Director is not required, the applicant may appeal the Director's determination in compliance with Chapter 17.715 (Appeals).
  3. **Time for submittal of additional information.** When an application is incomplete, the time used by the applicant to submit the required additional

information shall not be considered part of the time within which the determination of completeness shall occur. The time available to an applicant for submittal of additional information is limited by the following Subparagraph A. 4.

**4. Expiration of application.**

- a. If an applicant fails to provide the additional information specified in the Director's letter within 60 days following the date of the letter, or shorter time frame as determined by the Director, the application shall expire and be deemed withdrawn without any further action by the City, unless an extension is approved by the Director for good cause shown.
- b. After the expiration of an application, future City consideration shall require the submittal of a new, complete application and associated filing fees.

- 5. Environmental information.** After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with the California Environmental Quality Act (CEQA), the City's CEQA guidelines, and Section 17.600.090 (Environmental Review), below.

- B. Referral of application.** At the discretion of the Director, or where otherwise required by this Development Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project.

**17.600.080 – Project Evaluation and Staff Reports**

- A. Staff evaluation.** The Director shall review all discretionary applications filed in compliance with this Chapter to determine whether they comply and are consistent with the provisions of this Development Code, other applicable provisions of the Municipal Code, the General Plan, and any applicable specific plan.
- B. Staff report.** The Director shall provide a written recommendation to the Commission and/or Council (as applicable) as to whether the application should be approved, approved subject to conditions, or disapproved.
- C. Report distribution.** Each staff report shall be furnished to the applicant at the same time as it is provided to the review authority before action on the application.

**17.600.090 – Environmental Review**

- A. CEQA review.** After acceptance of a complete application, the project shall be reviewed in compliance with the California Environmental Quality Act (CEQA) to determine whether:
1. The proposed project is exempt from the requirements of CEQA;
  2. The proposed project is not a “project” as defined by CEQA;
  3. A Negative Declaration may be issued;
  4. A Mitigated Negative Declaration may be issued; or
  5. An Environmental Impact Report (EIR) shall be required.
- B. Compliance with CEQA.** These determinations and, where required, the preparation of appropriate environmental documents, shall be in compliance with CEQA and the City’s CEQA guidelines.
- C. Special studies required.** One or more special studies, paid for in advance by the applicant, may be required to complete the City’s CEQA compliance review. These studies shall become public documents and neither the applicant nor any consultant who prepared the studies shall assert any rights to prevent or limit the documents’ availability to the public.

**17.600.100 – Water Quality Management Plan (WQMP) Required**

- A. General requirements.**
1. New development and modifications to existing development shall be designed to control pollutants in stormwater and urban runoff in order to prevent any deterioration of water quality that would impair subsequent or competing uses of the receiving waters.
  2. The City Engineer shall have the authority to approve the Best Management Practices (BMPs), that when implemented will serve to prevent deterioration, as well as the manner of implementation.
  3. New development and modifications to existing development shall comply with all of the requirements specified in this Section.
- B. Construction runoff compliance.**
1. All individual grading and building projects with active Grading or Building Permits shall implement measures, including adherence to the Storm Water

Pollution Prevention Plan (SWPPP), to ensure that all pollutants from the site will be either eliminated or reduced to the maximum extent practicable, and will not cause or contribute to an exceedance of water quality objectives described in the Santa Ana Regional Water Quality Control Board Basin Plan.

2. All grading and building activities will be in compliance with the grading, erosion, and sediment control ordinance; the grading manual; other applicable ordinances; Federal, State and local permits; and other applicable requirements.

**C. Water Quality Management Plan (WQMP) required.** New development and modifications to existing development projects shall comply with all of the following:

1. A Water Quality Management Plan (WQMP) shall be required for all new development or modifications to existing development projects. A development project application shall not be found complete, in compliance with Section 17.600.070 (Initial Application Review), until an approved WQMP is submitted with the application.
2. Projects not requiring a WQMP shall be required to implement all of the minimum BMPs approved by the City Engineer.
3. A WQMP shall be required if the City Engineer determines that the development may result in the discharge of significant levels of a pollutant into a tributary to the stormwater drainage system.
4. If the City Engineer determines that the project will have a de minimis impact on the quality of stormwater and urban runoff, then the City Engineer may issue a written waiver of the requirement for the preparation and acceptance of a WQMP.

**D. Contents of a WQMP.**

1. The BMPs identified in the WQMP shall address site design, source controls, and treatment controls by:
  - a. Controlling the post development urban runoff discharge velocities, volumes, durations, and peak flow rates to maintain or reduce predevelopment urban discharge velocity, volume, durations, and peak flow rates;
  - b. Conserving natural areas where feasible;
  - c. Identifying pollutants for which water bodies receiving the development's runoff are listed as impaired under CWA Section 303(d)

- and all identifying pollutants associated with the land use of the development;
- d. Correctly designing BMPs to effectively remove or treat the pollutants associated with the project;
  - e. Minimizing directly connected impervious areas;
  - f. Protecting slopes and channels from downstream erosion, including all of the following:
    - (1) Storm drain stenciling and signage;
    - (2) Properly designed outdoor material storage areas;
    - (3) Properly designed trash storage areas; and
    - (4) Proof of a mechanism to ensure ongoing long-term BMP maintenance, and following any transfers of ownership.
  - g. Increasing permeable areas;
  - h. Implementing BMPs close to pollutant sources and prior to discharging into receiving waters;
  - i. Ensuring that post development runoff does not contain pollutants which cause or contribute to an exceedance of water quality objectives, as outlined in the Santa Ana Region Water Quality Control Board (SARWQCB) basin plan, and have been reduced to the maximum extent practicable (MEP);
  - j. Not constructing BMPs in receiving waters; and
  - k. Not using a receiving water as a BMP.
2. The applicant shall obtain the City Engineer's acceptance of a WQMP before the issuance of a permit, land use approval or, at the City's discretion, before recordation of a map.
  3. The City Engineer shall review all WQMPs and impose terms, conditions, and requirements on the project in compliance with this Section before the City's issuance of a permit, approval, or map.
  4. New development and modifications to existing development shall implement and adhere to the terms, conditions, and requirements of the approved WQMP.

5. A WQMP shall be certified, signed, and recorded as required by the Area-Wide Urban Runoff Management Program of the California Water Quality Control Board, Santa Ana Region.
- E. **Santa Ana River Region Drainage Area Management Plan (DAMP).** All new development and modifications to existing development projects shall also be undertaken and implemented in a manner that is consistent with the Santa Ana River Region Drainage Area Management Plan (DAMP), and shall also fulfill any conditions and requirements established by the Department and City Engineer which are related to the reduction or elimination of pollutants in stormwater and urban runoff from the project site.
- F. **Terms, conditions, and requirements.** All terms, conditions, and requirements which the Department and City Engineer have initially imposed in compliance with this Section for either a new development or modifications to existing development project shall remain in effect upon the transfer of the property. Any owner of the property, or their successors or assigns, shall be in violation of this Section, if they fail to implement and/or adhere to the terms, conditions, and requirements imposed in compliance with this Section on a new development or modifications to existing development project.

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## Chapter 17.603 – Commercial Marijuana Cultivation Permits (CMCP)

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### Sections:

- 17.603.010 – Purpose and Intent
- 17.603.020 – Applicability
- 17.603.030 – Review Authority
- 17.603.040 – Application Requirements
- 17.603.050 – Phased Expansion and Build-Out
- 17.603.060 – Investigation and Action on Application
- 17.603.070 – Permit Disapproval
- 17.603.080 – Conditions of Approval
- 17.603.090 – Use of Property Before Final Action
- 17.603.100 – Permit Renewals; Expiration
- 17.603.110 – Suspension or Revocation of Permits
- 17.603.120 – Appeal of Disapproval, Suspension, and Revocation
- 17.603.130 – Reservation of Right to Review Commercial Marijuana Cultivation Permit – Changed Conditions
- 17.603.140 – Inspection
- 17.603.150 – Regulations Nonexclusive
- 17.603.160 – Fees
- 17.603.170 – Violations and Penalties
- 17.603.180 – Enforcement

### 17.603.010 – Purpose and Intent

- A. **Purpose.** The purpose of a Commercial Marijuana Cultivation Permit (CMCP) is to provide a process for the appropriate review of commercial marijuana cultivation uses.
- B. **Intent.** The intent is to ensure that all approved site and structural development:
  - 1. Respects the physical and environmental characteristics of the site;
  - 2. Ensures safe and convenient access and circulation for pedestrians and vehicles;
  - 3. Exemplifies the best professional high-quality design practices;
  - 4. Allows for and encourages individual identity for specific uses and structures;
  - 5. Encourages the maintenance of a distinct neighborhood and/or community identity;
  - 6. Minimizes or eliminates negative or undesirable visual impacts; and

7. Provides for the adequate dedication of land for public purposes and the provision of public infrastructure, associated with the development.

### **17.603.020 – Applicability**

A Commercial Marijuana Cultivation Permit (CMCP) is required to authorize commercial marijuana cultivation identified by Chapter 17.435 – Commercial Marijuana Cultivation as being allowable in the applicable zone subject to the approval of a Commercial Marijuana Cultivation Permit.

### **17.603.030 – Review Authority**

The City Manager shall be responsible for the granting, disapproving, revoking, renewing, suspending, and canceling Commercial Marijuana Cultivation Permits for proposed or existing uses. The City Manager shall also be responsible for ascertaining whether a proposed commercial marijuana cultivation use for which a permit is being considered complies with all applicable zoning laws and/or regulations. In connection with these reviews, if the City Manager determines that the applicant has completed the application improperly, or otherwise deems the application to be incomplete, the City Manager shall, within 10 business days of receipt of the original application, notify the applicant and on the request of the applicant, grant the applicant an extension of time of 10 business days or less to complete the application properly. The applicant may also request that the application be placed on hold so the applicant can resubmit it at a later date without being disapproved. The time period for granting or disapproving a permit shall be stayed during the period in which the applicant is granted an extension of time or the application is placed on hold.

### **17.603.040 – Application Requirements**

- A. By applying for a permit under this Code, the applicant shall be deemed to have consented to the provisions of this Code, and to the exercise of authority by the City Manager, the Police Chief, and all other City employees and agencies charged with enforcing the laws, ordinances, and codes applicable in the City.
- B. The applicant shall provide a notice address, which shall be the address to which notice of action on the application is to be mailed. The applicant shall also provide the name, address and phone number of the person who is responsible for providing access to the proposed site for inspection purposes.
- C. The applicant for a permit under this Chapter or a permittee shall have a continuing duty to promptly supplement any information required by this Code in the event information changes in any way from what was stated in previous submittals. The failure to comply within 20 business days from the date the changes occur, by

supplementing the application on file with the City Manager shall be grounds for suspension or revocation of a permit.

- D. Alcohol and/or tobacco cannot be sold, shipped, manufactured, or stored on site.
- E. Submission of the materials required for a Commercial Marijuana Cultivation Permit or a Commercial Marijuana Cultivation Regulatory Permit shall not preclude the need for the applicant to obtain other standard approvals from the City in compliance with the standards of this Development Code. Appropriate land use entitlements include, but are not limited to, administrative site plans and design review entitlements, and building and other permits as required. The provisions of the 20-business day application process shall not apply to any other required application process.
- F. Every person who proposes to establish, maintain, operate, or conduct a commercial marijuana cultivation use in the City shall file a Commercial Marijuana Cultivation Permit application with the City Manager upon a form provided by the City. The applicant shall attach a copy of the receipt indicating that the requisite fees were paid to the City. The fees paid shall not be refunded if substantial processing of the application has occurred.
- G. In addition to the regular required information for a Land Use Development Case, all Commercial Marijuana Cultivation Permit applications shall include the following information:
  - 1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, and the permanent address and use address of the applicant.
  - 2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
  - 3. If the applicant is a corporation, the corporation shall provide its complete corporate name, the date and state of its incorporation, evidence that the corporation is in good standing under the laws of the State, the names and capacity of all officers and directors, and principal stockholders (with 10 percent or more of all outstanding shares of stock), the name of the registered corporate agent and the address of the registered office for service of process.
  - 4. Location and address of the proposed commercial marijuana cultivation use.
  - 5. Legal description of the subject property.

6. Proposed hours of operation, number of employees and hours of shifts and employees per shift.
7. A site plan prepared in accordance with Chapter 17.435 – Commercial Marijuana Cultivation, including a plan for all utility services (water, electric and gas).
8. A detailed description of the type of commercial marijuana cultivation use for which the permit is requested, and the nature of commercial marijuana cultivation activities that are to occur on site. All manufacture activities should be described and indicated on the site plan.
9. A parking plan providing for adequate contiguous on-site parking for the intended use, and in compliance with the requirements for parking set forth in Section 17.435.050 (Development and Performance Standards) of this Code. The amount of parking shall comply with Section 17.330 (Off-Street Parking and Loading Standards) of this Code.
10. A lighting plan prepared by a licensed lighting engineer and in compliance with the requirements of subsection 17.435.050 of this Code.
11. The name or names of the person or persons having responsibility for the management or supervision of the applicant's use.
12. Statement of the nature and character of the applicant's use, if any, to be carried on in conjunction with cultivation. All manufacturing activities shall be identified.
13. A current certificate and straight-line drawing prepared within 30 days prior to application depicting the site and the surrounding area within a 300-foot radius of the property line in a manner that clearly establishes compliance with the minimum proximity standards for commercial marijuana cultivation uses set forth in this Chapter 17.435 – Commercial Marijuana Cultivation.
14. A sketch or diagram showing the floor plan and interior configuration of the premises, including a statement of the total floor area occupied by the commercial marijuana cultivation use. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The floor plan shall identify where the commercial cultivation uses are proposed to be conducted within the site.
15. A blueline print showing all four elevations of any proposed structures and signs, and listing proposed exterior building materials. Elevations shall be

colored or a materials board shall be submitted. In the case of existing structures where a change of use is proposed and no structural changes or exterior modification are proposed, photographs may be accepted in lieu of elevation drawings if they show a front and rear elevation of the structure. In addition, building information shall be submitted to the Building Official to determine appropriate occupancy for the use in compliance with the Building Code.

16. All state licenses for the commercial marijuana cultivation use, including copies of the application materials submitted in application for the state license. If issuance of a state license is contingent upon first obtaining the City's approval, then the application shall include a detailed description of the state licenses to be obtained. The application may only be granted conditional upon obtaining the identified state licenses.
  - a. The application shall include copies of all applications for state licenses for the commercial marijuana cultivation use. If the applications for state licenses have not yet been submitted to the relevant state agency, then the planning permit application shall be supplemented with a copy of the state license application within 2 business days of submittal to the State.
  - b. If the planning permit application is submitted before the State establishes requirements for marijuana-related licenses, then the planning permit application shall be supplemented with a copy of any state license application thereafter submitted.
- H. The application shall include the documentation submitted for any regulatory permit in conjunction with the commercial marijuana cultivation use at the site, including but not limited to any permit required by Chapter 9.28B of the San Jacinto Municipal Code.

### **17.603.050 – Phased Expansion and Build-Out**

The application for a Commercial Marijuana Cultivation Permit may include a plan for a phased expansion or build-out of the commercial marijuana cultivation use. The phased plan shall not extend expansion or build-out beyond three years of initial approval. If such plan is included and approved, the applicant shall give notice to the City Manager not less than 30 days prior to the start of any expansion or build-out activities and not less than 10 days after completion of such expansion or build-out. Approval of any phased plan shall not result in or be construed as the granting of any vested rights to complete development of the site in accordance with the phased plan.

**17.603.060 – Investigation and Action on Application**

- A. Upon receipt of a completed application required by this Chapter and payment of the requisite application and permit fees, the City Manager or his/her designee shall immediately stamp the date on which the application was received and promptly investigate the information contained in the application to determine whether the applicant shall be issued a permit.
- B. When an application has been deemed complete by the City, the City Manager shall complete the investigation, grant or disapprove the application in compliance with the provisions of this Section, and so notify the applicant as follows:
1. The City Manager shall write or stamp “Granted” or “Disapproved” on the application and date and sign the application.
  2. The City Manager shall grant the application and issue the permit, unless the application is denied for one or more of the reasons set forth below in Section 17.603.070 (Permit Disapproval).
  3. If the application is granted, the City Manager shall attach the requested permit to the application.
  4. If the application is disapproved, the City Manager shall attach to the application a statement of the reasons for disapproval. The City’s decision to grant or disapprove the permit shall not include information authorized or required to be kept confidential in compliance with Welfare and Institutions Code Sections 600 to 900.
  5. A copy of the application as granted or disapproved and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the notice address stated in the application.
  6. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, and the expiration date.
- C. If the applicant has not obtained a state license for the commercial marijuana cultivation use at the time the application is granted, then the granting of the application shall be deemed to be conditional upon obtaining and submitting proof acceptable to the City Manager of the appropriate state license within 180 days. This timeframe may only be extended upon showing that the applicant timely and diligently pursued the state license and the failure to obtain the state license was not due to the applicant. Nothing herein shall authorize commencement of a use without first obtaining an appropriate state license.

- D. If the City Manager takes action on a Commercial Marijuana Cultivation Permit application before the State requires licenses for commercial marijuana cultivation uses, then the granting of the Commercial Marijuana Cultivation Permit application shall be deemed to be conditional upon obtaining and submitting proof acceptable to the City Manager of the acquisition of appropriate state licenses. No use shall be authorized that is not in compliance with all state licensing requirements.

### **17.603.070 – Permit Disapproval**

- A. The City Manager shall disapprove an application for any of the following applicable reasons:
1. The site, building, structure, equipment and/or location to be used by the use for which the permit is required, does not, or cannot, be corrected to comply with the locational requirements set forth in this Chapter and the applicable zoning, land use, development, health, fire, building and safety laws of the City and State.
  2. The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit required by this Chapter or in any report or record required to be filed in connection with the application.
  3. The applicant is under 21 years of age.
  4. The required permit application fee has not been paid.
  5. The applicant failed to submit a complete application after being notified by the City Manager that the application was incomplete.
  6. The applicant or the applicant's commercial marijuana cultivation use is in violation of, or is not in full compliance with, provisions of this Chapter related to the establishment and maintenance of a commercial marijuana cultivation use.
  7. That on or after the date that the use for which a permit is required by this Chapter commences, there will be no responsible person on the premises to act as manager at all times during which the adult use is open.
  8. Within five years immediately preceding the date of the filing of the application for permit under this Chapter, the applicant, manager, partner, agent, director, officer, stockholder, or employee has been convicted of

- possession with the intent to sell, manufacture, transportation, or cultivation of a controlled substance.
9. The applicant, manager, partner, agent, director, officer, or stockholder has had any type of Commercial Marijuana Cultivation Permit or regulatory permit suspended or revoked by any city, county, or state within two years immediately preceding the date of the application, because of failure to comply with regulations, standards or conditions of the regulatory agency.
  10. The granting of the permit would violate a statute, ordinance, or court order.
  11. The applicant or property owner is overdue in payment to the City of any taxes, fees, fines, or penalties assessed against or imposed in relation to an existing or former commercial marijuana cultivation use.
  12. The application does not include an adequate plan for gas, water and electric utility services or will serve letters from the same.
- B. A Commercial Marijuana Cultivation Permit shall be disapproved if a concurrent application for a Commercial Marijuana Cultivation Regulatory Permit is disapproved. An application for a Commercial Marijuana Cultivation Regulatory Permit shall be disapproved if a concurrent application for a Commercial Marijuana Cultivation Permit is disapproved.
- C. A Commercial Marijuana Cultivation Permit shall be disapproved if the applicant is unable to obtain a state license for the commercial marijuana cultivation use within the time set forth by this Chapter.
- D. A Commercial Marijuana Cultivation Permit application shall be denied if the use is for medical marijuana, in whole or in part, and the related medical marijuana entity is not properly organized in strict compliance pursuant with all State laws relating to medical marijuana.
- E. If the application is disapproved and all appeal rights have been exhausted, the applicant shall be ineligible to apply for any Commercial Marijuana Cultivation Permit in the City for a minimum of two years from the date the application was disapproved. If, subsequent to disapproval, the City Manager finds the basis for disapproval of the permit has been corrected, the applicant shall be granted a permit if at least 90 days have elapsed since the date the disapproval became final.
- F. After any final disapproval of a permit under this Chapter, the applicant may seek prompt judicial review of the decision in a court of competent jurisdiction as provided by law, in compliance with California Code of Civil Procedure Section 1094.5 et seq.,



and in compliance with the expedited judicial review set forth in California Code of Civil Procedure Section 1094.8.

### **17.603.080 – Conditions of Approval**

In approving a Commercial Marijuana Cultivation Permit, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Section 17.603.010 (Purpose and Intent), above.

### **17.603.090 – Use of Property Before Final Action**

No permits or approvals shall be issued for any use involved in an application for a Commercial Marijuana Cultivation Permit until and unless the same shall have become final, in compliance with Section 17.660.030 A (Effective Date of Permits).

### **17.603.100 – Permit Renewals; Expiration**

Any Commercial Marijuana Cultivation Permit approved in compliance with this Chapter shall become null and void if not exercised within 12 months from the date of the approval. If a commercial marijuana cultivation use ceases to operate for a period of six months, the Commercial Marijuana Cultivation Permit shall become null and void. A permit extension may be granted if prior to the expiration date the permittee demonstrates to the satisfaction of the City Manager that it has a good faith intent to presently commence the proposed use. Extensions of a Commercial Marijuana Cultivation Permit shall not exceed a total of two six-month extensions.

### **17.603.110 – Suspension or Revocation of Permits**

- A. A permittee may be subject to suspension or revocation of a permit granted under this Chapter, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes of action arising from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, operator, or manager of a commercial marijuana cultivation use:
1. The permittee, employee, agent, partner, director, stockholder, operator, or manager has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the City.
  2. The permittee, employee, agent, partner, director, stockholder, operator, or manager failed to disclose the conviction of an act for which disapproval of a permit would have been required in compliance with this Chapter.

3. The permittee, employee, agent, partner, director, stockholder, operator, or manager refused to allow an inspection of the premises of the commercial marijuana cultivation use as authorized by this Chapter.
  4. The permittee, employee, agent, partner, director, stockholder, operator, or manager does not have a necessary state license for the operation of the use or the state license of the permittee, employee, agent, partner, director, stockholder, operator, or manager is suspended, revoked, or is otherwise inapplicable to the commercial marijuana cultivation use on the site.
  5. The permittee, employee, agent, partner, director, stockholder, operator, or manager operated the commercial marijuana cultivation use in violation of a Federal, State, or local law, including but not limited to laws and regulations related to building, fire, health, or zoning statutes, codes, ordinances, or regulations, applicable in the City, based on the investigation by the City or other agency responsible for the enforcement of the applicable rules or laws.
  6. The permittee, employee, agent, partner, director, stockholder, operator, or manager failed to abide by any action previously imposed by an appropriate officer of the City or other agency responsible for the enforcement of this Chapter and other County and State codes and laws.
- B. On determining that grounds for permit revocation exist, the City Manager shall furnish written notice of the proposed suspension or revocation to the permittee. The notice shall set forth the time and place of a hearing by the City Manager, and the ground or grounds upon which the hearing is based, the pertinent code sections, and a brief statement of the factual matters in support of permit suspension or revocation. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be delivered to the permittee personally, at least 10 business days prior to the hearing date. Hearings shall be conducted in compliance with procedures established by the City, but at a minimum shall include the following:
1. All parties involved shall have a right to offer testimonial, documentary, and tangible evidence bearing on the issues; and may be represented by counsel.
  2. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
  3. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or witness.

- C. After holding the hearing in compliance with the provisions of this Section, if the City Manager finds and determines that there are grounds for the action, the City Manager shall impose one of the following:
1. A warning.
  2. Suspension of the permit for a specified period not to exceed six months.
  3. Modification of the permit to impose additional conditions or to revoke a portion of the permit.
  4. Revocation of the permit.
- D. The City Manager's decision may be appealed in compliance with Section 17.603.120 (Appeal of Disapproval, Suspension, or Revocation).
- E. If any decision of the City Manager to revoke a permit is upheld after the permittee has exhausted the permittee's appeal rights, the permittee shall cease conducting use in the City. A revoked permit shall not be renewed and no other permit shall be issued to the same permittee or his or her successors-in-interest within 12 months of the date revocation became effective.

### **17.603.120 – Appeal of Disapproval, Suspension, and Revocation**

- A. After disapproval of an application for a permit submitted in compliance with this Chapter, or after disapproval of renewal of a permit, or suspension or revocation of a permit, the applicant or permittee may appeal the administrative action in compliance with the provisions of this Section.
- B. An appeal of a disapproval, suspension or revocation shall be submitted to and received by the City Clerk within 10 business days of the date of the decision. The appeal shall be in writing on forms provided by the City together with an appeal fee established in compliance with Section 17.603.160, below. All appeals shall set forth the appellant's reason for asserting the action was in error, or in violation of this Development Code, or other applicable law. Any action appealed shall be suspended until action has been taken on the appeal.
- C. When a timely appeal is filed, the City Manager shall appoint a hearing officer or body to conduct a hearing on the matter. The hearing officer may be a person or body designated by the City Manager to perform all or a portion of his or her duties, or may be another official or body from another city or agency, or other person qualified to conduct a review of the matter. Appointment may be done in consultation with the appellant. The hearing for an appeal of a permit disapproval or disapproval of a renewal

of a permit shall take place within 10 business days of the receipt of the appeal; the hearing for an appeal for suspension or revocation of a permit shall take place within 20 business days of the date of the receipt of the appeal. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; and may be represented by counsel. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or a witness.

- D. The hearing officer or body from another jurisdiction shall render a written decision on the matter within five business days of the close of the hearing on the appeal.
- E. All decisions made by the appointed hearing officer regarding the permit disapproval, disapproval of renewal, suspension or revocation of a permit, shall be final. If the permit disapproval, disapproval of renewal, suspension or revocation of a permit is affirmed on review by the appointed hearing officer, the applicant or permittee may seek prompt judicial review of the administrative action in a court of competent jurisdiction as provided by law, in compliance with California Code of Civil Procedure Section 1094.5 et seq. The City shall make all reasonable efforts to expedite judicial review in compliance with Code of Civil Procedure Section 1094.8. Any action under judicial review shall be suspended pending final administrative determination.

### **17.603.130 – Reservation of Right to Review Commercial Marijuana Cultivation Permit – Changed Conditions**

Any Commercial Marijuana Cultivation Permit granted or approved in compliance with this Chapter shall be granted or approved with the City reserving the right and jurisdiction to review and modify the Commercial Marijuana Cultivation Permit – including the conditions of approval – based on changed circumstances. Changed circumstances include, but are not limited to, modification of the use, change in scope, emphasis, size, or nature of the use, and expansion, alteration, or change of use or a change in federal or state law or policy relating to marijuana. The reservation of the right to review a Commercial Marijuana Cultivation Permit granted or approved under this Chapter is in addition to, not in lieu of, the right of the City to review and revoke or modify any permit granted or approved in compliance with this Chapter for any violations of the conditions imposed on the permit.

### **17.603.140 – Inspection**

An applicant or permittee shall permit the City Manager, Police Chief and representatives of the Department, the fire department, or other City departments or County agencies to inspect the premises of a commercial marijuana cultivation use for the purpose of insuring compliance with the law and the development and performance standards applicable to commercial marijuana cultivation uses, at any time it is occupied or opened for use. A person who operates a

commercial marijuana cultivation use or his or her agent or employee is in violation of the provisions of this Section if he or she refuses to permit a lawful inspection of the premises at any time it is occupied or open for use. Inspections shall be conducted in a reasonable manner.

### **17.603.150 – Regulations Nonexclusive**

The provisions of this Chapter are not intended to be exclusive and compliance with this Chapter shall not excuse noncompliance with any other regulations pertaining to the operation of uses as adopted by the Council, including but not limited to Chapters 9.28, 9.28A, and 9.28B.

### **17.603.160 – Fees**

The Council shall establish by resolution, and from time to time may amend, the fees for administration of this Chapter. If additional fees are required for further investigation of an applicant, the permit shall not be issued until the additional fees are paid to the Department. Fees required by this Chapter shall be in addition to any fees required by other City code or ordinance.

### **17.603.170 – Violations and Penalties**

- A. It shall be unlawful for any person to operate a commercial marijuana cultivation use without a valid permit(s) issued by the City Manager in compliance with this Chapter.
- B. Violation of any of the provisions of Subsection A, above, shall constitute a misdemeanor. Each person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of any provisions of this Chapter is committed, continued, or allowed by that person. Despite the foregoing, the City Attorney may elect to prosecute any provision of this Chapter as an infraction.
- C. Violation of any requirement of this Chapter applicable to a Commercial Marijuana Cultivation Permit issued in compliance with this Chapter shall constitute grounds for revocation of the permit. A permittee shall be responsible for the conduct of all employees, independent contractors, or other persons who work at the permittee's commercial marijuana cultivation use, and a permit may be subject to revocation for any violations of this Chapter arising from the acts or omissions by employees, independent contractors, or other persons who work at the commercial marijuana cultivation use.

### **17.603.180 – Enforcement**

The City Manager or his or her designee is responsible for enforcing the provisions of this Chapter.

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## Chapter 17.605 – Conditional Use Permits and Minor Use Permits

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### Sections:

- 17.605.010 – Purpose
- 17.605.020 – Applicability
- 17.605.030 – Review Authority
- 17.605.040 – Application Requirements
- 17.605.050 – Project Review, Notice, and Hearing
- 17.605.060 – Findings and Decision
- 17.605.070 – Action of Commission
- 17.605.080 – Existing Conditional Uses
- 17.605.090 – Conditions of Approval
- 17.605.100 – Use of Property Before Final Action
- 17.605.110 – Modification of Permit
- 17.605.120 – Periodic Review
- 17.605.130 – Permit to Run with the Land
- 17.605.140 – Post-Decision Procedures

### 17.605.010 – Purpose

- A. **Purpose.** The purpose of a Conditional Use Permit or Minor Use Permit is to provide sufficient flexibility in the use regulations in order to further the objective of this Development Code.
- B. **Process for reviewing uses.** A Conditional Use Permit or Minor Use Permit provides a process for reviewing uses and activities that may be appropriate in the applicable zone, but whose effects on a site and surroundings cannot be determined before being proposed for a specific site.
- C. **Special consideration.** Certain types of land uses require special consideration in a particular zone or in the City as a whole because they possess unique characteristics or present special problems that make automatic inclusion as permitted uses either impractical or undesirable.

### 17.605.020 – Applicability

A Conditional Use Permit or Minor Use Permit is required to authorize proposed land uses identified by Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards) as being allowable in the applicable zone subject to the approval of a Conditional Use Permit or Minor Use Permit.

### 17.605.030 – Review Authority

- A. Conditional Use Permits.** Conditional Use Permits shall be approved or disapproved by the Commission, except as specified in Chapter 17.310 (Affordable Housing – Density Bonuses) and Chapter 17.645 (Transfer of Development Rights) where the Council is the review authority for applications, with the Commission first making a written recommendation to the Council.
- B. Minor Use Permits.**
1. Minor Use Permits shall be approved or disapproved by the Director.
  2. The Director may choose to refer any Minor Use Permit application to the Commission for review and final decision.

### 17.605.040 – Application Requirements

An application for a Conditional Use Permit and/or Minor Use Permit shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Conditional Use Permit and Minor Use Permit applications, including the submission of landscape and irrigation plans pursuant to Chapter 17.325 – Water Efficient Landscape and Irrigation, together with the required fee in compliance with the City’s Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.605.060 (Findings and Decision), below. (ord. 16-01, adopted April 5, 2016)

### 17.605.050 – Project Review, Notice, and Hearing

Each application shall be reviewed by the Director to ensure that the proposal complies with all applicable requirements of this Development Code.

- A. Conditional Use Permits.**
1. The Commission shall conduct a public hearing on an application for a Conditional Use Permit before a decision on the application.
  2. Notice of the hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.710 (Public Hearings).
- B. Minor Use Permits.** Before a decision on a Minor Use Permit, the City shall provide notice in compliance with Chapter 17.710 (Public Hearings), and as follows.
1. **Notice.**
    - a. The notice shall state that the Director will decide whether to approve or disapprove the Minor Use Permit application on a date specified in the



notice, and that a public hearing will be held only if requested in writing by any interested person at least five days before the specified date for the decision.

- b. The written request for a hearing shall be based on issues of significance directly related to the application (e.g., provision of evidence that the request cannot meet one or more of the findings identified in Section 17.605.060 [Findings and Decision], below).
  - c. If the Director determines that the evidence has merit and can be properly addressed by a condition(s) added to the Minor Use Permit approval, the Director may consider the permit in compliance with Subparagraph 3. (If no hearing is requested), below.
2. **If hearing is requested.** If a public hearing is requested, and the provisions of Subparagraph B. 1. c., above do not apply the Director shall schedule the hearing that shall be noticed and conducted in compliance with Chapter 17.710 (Public Hearings).
  3. **If no hearing is requested.** If no public hearing is requested, the Director shall render a decision on the date specified in the notice referred to in Subparagraph B. 1. a., above.
  4. **Appeals.** The Director's decision is appealable to the Commission in compliance with Chapter 17.715 (Appeals).

#### 17.605.060 – Findings and Decision

- A. **Review authority's action.** An application for a Conditional Use Permit or Minor Use Permit may be approved subject to conditions, or disapproved by the review authority.
- B. **Required findings.** The review authority may approve a Conditional Use Permit or Minor Use Permit only if it first makes all of the following findings:
  1. The proposed use is consistent with the General Plan and any applicable specific plan;
  2. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Development Code and the Municipal Code;
  3. The design, location, size, and operating characteristics of the proposed activity will be compatible with the existing and future land uses in the vicinity;

4. The site is physically suitable in terms of:
  - a. Its design, location, shape, size, and operating characteristics of the proposed use;
  - b. The provision of public and emergency vehicle (e.g., fire and medical) access;
  - c. Public protection services (e.g., fire protection, police protection, etc.); and
  - d. The provision of utilities (e.g., potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.).
5. The measure of site suitability shall be required to ensure that the type, density, and intensity of use being proposed will not adversely affect the public convenience, health, interest, safety, or general welfare, constitute a nuisance, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zone in which the property is located.
6. The applicant agrees in writing to comply with any and all of the conditions imposed by the review authority in the approval of the Conditional Use Permit or Minor Use Permit.

#### **17.605.070 — Action of Commission**

An action to approve a Conditional Use Permit shall require a majority vote of those Commissioners who may lawfully vote on the application.

#### **17.605.080 — Existing Conditional Uses**

A conditional use legally established prior to the effective date of this Development Code or prior to the effective date of subsequent amendments to the applicable regulations or zone boundaries, shall be allowed to continue; provided that it is operated and maintained in compliance with the conditions prescribed at the time of its establishment, if any.

#### **17.605.090 — Conditions of Approval**

In approving a Conditional Use Permit or Minor Use Permit, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Section 17.605.060 (Findings and Decision), above.

**17.605.100 — Use of Property Before Final Action**

No permits or approvals shall be issued for any use involved in an application for a Conditional Use Permit or Minor Use Permit until and unless the same shall have become final, in compliance with Section 17.660.030 (Effective Date of Permits).

**17.605.110 — Modification of Permit**

An approved Conditional Use Permit or Minor Use Permit may be modified in compliance with Section 17.660.100 (Changes to an Approved Project).

**17.605.120 — Periodic Review**

The City may conduct a periodic review of the permit to ensure proper compliance with this Development Code and any developmental or operational conditions imposed by the review authority.

**17.605.130 — Permit to Run with the Land**

A Conditional Use Permit or Minor Use Permit approved in compliance with the provisions of this Chapter shall continue to be valid upon a change of ownership of the business, parcel, service, structure, or use that was the subject of the permit application in the same area, configuration, and manner as it was originally approved in compliance with this Chapter.

**17.605.140 — Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Conditional Use Permit or Minor Use Permit application.

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## Chapter 17.610 – Development Agreements

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### Sections:

- 17.610.010 – Purpose
- 17.610.020 – Application
- 17.610.030 – Application Filing, Processing, and Review
- 17.610.040 – Content of Development Agreement
- 17.610.050 – Execution and Recordation
- 17.610.060 – Amendment and Cancellation of Development Agreements
- 17.610.070 – Modification or Suspension of Development Agreements
- 17.610.080 – Periodic Review
- 17.610.090 – Effect of Development Agreements
- 17.610.100 – Approved Development Agreements
- 17.600.110 – Newly Annexed Lands

### 17.610.010 – Purpose

- A. Purpose and intent.** A development agreement is a contract between the City and a person with a legal or equitable interest in land subject to development, in compliance with Government Code Article 2.5 (Development Agreements). A development agreement is intended to provide assurance to the applicant that an approved project may generally proceed subject to the policies, rules, regulations, and conditions of approval applicable to the project at the time of approval, regardless of any changes to City policies, rules, and regulations after project approval. In return, the City is provided assurance that the project would further important Citywide goals and policies that have been officially recognized by the Council, and provide the City with significant, tangible benefits beyond those that may be required by the City through project conditions of approval.
- B. Construing the provisions.** In construing the provisions of any development agreement entered into in compliance with this Chapter, those provisions shall be read to fully effectuate, and to be consistent with, the language of this Chapter, Government Code Article 2.5, and the agreement itself. Should any apparent discrepancies between the meaning of these documents arise, reference shall be made to the following documents, and in the following order:
1. The provisions of Government Code Article 2.5;
  2. The provisions of this Chapter; and
  3. The plain terms of the development agreement itself.

**17.610.020 – Application**

- A. Equitable interest.** Person(s) having a legal or equitable interest in real property may apply through the Director to enter into a development agreement provided the following criteria are met:
1. The status of the applicant, having a legal or equitable interest in the subject real property, is established to the satisfaction of the Director. An applicant may also include an authorized agent; and
  2. The application is made on approved forms, contains all lawfully required documents, materials, and information, and is filed with the Department in compliance with Chapter 17.600 (Permit Application Filing and Processing).
- B. Director’s review and recommendations.** The Director is empowered to receive, review, process, and prepare, together with recommendations for Commission and Council consideration, all applications for development agreements. The Director may call upon all other City departments for timely assistance in complying with this Chapter.
- C. Fees.** Processing fees, as established by the City’s Planning Fee Schedule, shall be collected for an application for a development agreement made in compliance with this Chapter. Additionally, appropriate fees shall be established and collected for amendments to a development agreement and the periodic review identified in Section 17.610.080 (Periodic Review), below.

**17.610.030 – Application Filing, Processing, and Review**

- A. Filing.** An application for a development agreement shall be filed with the Department in compliance with Chapter 17.600 (Permit Application Filing and Processing).
- B. Contents.** The application shall be accompanied by detailed data/materials identified in the Department handout for development agreement applications.
- C. Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.
- D. Notice and hearings.**
1. The Director, upon finding the application for a development agreement complete and in compliance with the provisions of the California Environmental Quality Act (CEQA), shall set the application, together with recommendations, for public hearing before the Commission. Following conclusion of the public hearing, the Commission shall make a written recommendation to the Council

that it approve, conditionally approve, or disapprove the application, based on the findings identified in Subsection E. (Findings and decision), below.

2. Upon receipt of the Commission's recommendations, the City Clerk shall set the application and written report of the Commission for a public hearing before the Council. Following conclusion of the public hearing, the Council shall approve, conditionally approve, or disapprove the application, based on the findings identified in Subsection E. (Findings and decision), below.
3. Notice of the hearings identified in Subsections 1. and 2., above shall be given in the form of a notice of intention to consider approval of a development agreement in compliance with Government Code Section 65867 and Chapter 17.710 (Public Hearings).

**E. Findings and decision.** The review authority may approve a development agreement only if it first makes all of the following findings:

1. The development agreement is in the best interests of the City;
2. The development agreement is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, any applicable specific plan, and this Development Code;
3. The development agreement will promote the public convenience, health, interest, safety, and general welfare of the City;
4. The project will be compatible with the uses authorized in, and the regulations prescribed for, the zone in which the real property is located;
5. The project will not adversely affect the orderly development of property or the preservation of property values;
6. The project will further important Citywide goals and policies that have been officially recognized by the Council; and
7. The project will provide the City with important, tangible benefits beyond those that may be required by the City through project conditions of approval.

#### **17.610.040 – Content of Development Agreement**

**A. Mandatory contents.** A development agreement shall contain the applicable provisions identified below, in compliance with Government Code Section 65865.2:

1. Specify the:
  - a. Duration of the agreement;

- b. Allowed uses for the subject property; and
  - c. Density/intensity of the allowed uses.
2. Describe the:
    - a. Maximum height and size of proposed structures by clearly identifying and referring to the documents and exhibits approved;
    - b. Provisions, if any, for reservation or dedication of land for public purposes; and
    - c. Provisions, if any, for the protection from either a future growth control ordinance or a future increase in development and/or effect fees;
  3. Provide for a tiered amendment review procedure that may incorporate the following:
    - a. Director approval for minor modifications;
    - b. Commission approval for major modifications; and
    - c. Council approval for major amendments.
  4. Provide for the possibility of subsequent discovery of health and safety issues like a "compelling public necessity" (e.g., a new environmental health hazard is discovered), which would necessitate a reconsideration/amendment of the previously approved development agreement.

**B. Permissive contents.** A development agreement may contain the applicable provisions identified below, in compliance with Government Code Section 65865.2:

1. Conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided, the conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density/intensity of development specified in the agreement;
2. Provisions that require that construction shall be commenced within a specified time and that the project, or any single phase, be completed within a specified time;
3. Terms and conditions relating to applicant financing of necessary public improvements and facilities including applicant participation in benefit assessment proceedings; and



4. Other terms, conditions and requirements as the Council may deem necessary and proper, including requirement(s) for ensuring, to the satisfaction of the Director, performance of all provisions of the agreement in a timely manner by the applicant/contracting party.

#### **17.610.050 – Execution and Recordation**

##### **A. Adoption of ordinance becomes effective.**

1. If the Council approves the development agreement, it shall do so by the adoption of an ordinance.
2. The City shall not execute a development agreement until on or after the date upon which the ordinance approving the agreement, enacted in compliance with Subsection 17.610.030.D. (Notice and hearings), above, becomes effective.
3. The development agreement may be signed by the Mayor or City Manager.

- B. Recordation of agreement.** A development agreement shall be recorded in the County Recorder's Office no later than 10 days after it is executed.

#### **17.610.060 – Amendment and Cancellation of Development Agreements**

- A. Proposed amendment or cancellation.** Either party to the agreement may propose an amendment to or cancellation of the development agreement.

- B. Same procedures.** The procedure and notice requirements for amendment or cancellation of the development agreement are the same as the procedure for entering into an agreement in compliance with this Chapter.

- C. City initiated amendment or cancellation.** Where the City initiates the amendment or cancellation of the development agreement, it shall first give notice to the property owner of its intention to initiate the proceedings at least 15 days before giving public notice to consider the amendment or cancellation, in compliance with Chapter 17.710 (Public Hearings).

#### **17.610.070 – Modification or Suspension of Development Agreements**

The City may modify or suspend a development agreement if the City determines that failure of the City to do so would place the residents of the area subject to the development agreement, or the residents of the City, or both, in a condition dangerous to their health or safety, or both, in compliance with Government Code Section 65865.3(b).

**17.610.080 – Periodic Review****A. Subject to periodic review.**

1. Every development agreement approved and executed in compliance with this Chapter, shall be subject to periodic City review during the full term of the agreement.
2. The City shall review the development agreement upon initiation by the applicant/ contracting party or its successor(s)-in-interest, but at least every 12 months from the date the agreement is entered into.
3. The time for review may be shortened either by agreement between the parties or by initiation in one or more of the following ways:
  - a. Affirmative vote of at least three members of the Commission; or
  - b. Affirmative vote of at least three members of the Council.
4. The review schedule shall be specified in the development agreement.

**B. Purpose of periodic review.** The purpose of the periodic reviews shall be to determine whether the applicant/contracting party or its successor(s)-in-interest has complied in good faith with the terms or conditions of the development agreement. The burden of proof shall be on the applicant/contracting party or its successor(s) to demonstrate compliance, to the full satisfaction of, and in a manner prescribed by, the City.

**C. Notice of periodic review.**

1. The applicant/contracting party or its successor(s)-in-interest shall initiate the review proceeding by making application to the Director in compliance with this Section.
2. Upon receipt of a complete application, the Director shall begin the review proceeding by giving notice that the City intends to undertake a periodic review of the development agreement to the applicant/contracting party or its successor(s)-in-interest, and any person who has filed a written request for notice with the Director and has paid the required fee for the notice.
3. The Director shall give the notice at least 15 days in advance of the time when the matter will be considered by the Commission in compliance with Subsection 17.610.030.D. (Notice and hearings), above.

- D. Review by Commission.** Review shall be conducted by the Commission.
1. The Commission shall conduct a hearing at which the applicant/contracting party or its successor(s)-in-interest shall demonstrate good faith compliance with the terms of the development agreement.
  2. The burden of proof of this issue is on the applicant/contracting party or its successor(s)-in-interest.
- E. Findings upon hearing.** The Commission shall determine, upon the basis of substantial evidence, whether or not the applicant/contracting party or its successor(s)-in-interest has, for the period under review, complied in good faith with the terms and conditions of the development agreement.
- F. Procedure upon findings.**
1. **Has complied.**
    - a. If the Commission finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor(s)-in-interest has complied in good faith with the terms and conditions of the development agreement during the period under review, the review for that period is concluded, and a notice of that determination shall be sent to the Council and the applicant/contracting party or its successor(s)-in-interest.
    - b. The Council shall review the Commission's action.
    - c. If the Council so desires, it can schedule a public hearing for further review.
  2. **Has not complied.** If the Commission finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor(s)-in-interest has not complied in good faith with the terms and conditions of the development agreement, the Commission shall forward its recommendation to the Council and the Council may modify or terminate the agreement.
- G. Modification or termination of development agreement.**
1. **Proceedings upon modification or termination.** If, upon a finding under Subsection F. (Procedure upon findings), above, the City determines to proceed with modification or termination of the development agreement, the City shall give notice to applicant/contracting party or its successor(s)-in-interest of its intention to do so. The notice shall contain all of the following:

- a. The time and place of the hearing, which shall be conducted by the Council;
- b. A statement as to whether or not the City proposes to terminate or to modify the development agreement; and
- c. Other information that the City considers necessary to inform applicant/contracting party or its successor(s)-in-interest of the nature of the proceedings.

**2. Hearing on modification or termination of development agreement.**

- a. At the time and place set for the hearing on modification or termination, the applicant/contracting party or its successor(s)-in-interest shall be given an opportunity to be heard.
- b. At the hearing, the Council may affirm, modify, or reject the determination of the Commission.
- c. The Council may refer the matter back to the Commission for further proceedings or for report and recommendation.
- d. The Council may impose those conditions to the action it takes as it considers reasonable and necessary to protect the interests of the City.
- e. The decision of the Council on the modification or termination shall be final.

**17.610.090 – Effect of Development Agreements**

- A. Rules in force at the time of execution.** Unless otherwise provided by the development agreement, the policies, regulations, and rules governing allowed uses of the land, density, design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, are the policies, regulations, and rules in force at the time of execution of the agreement.
- B. Application of new rules.** In compliance with Government Code Section 65866, a development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new policies, regulations, and rules that do not conflict with those policies, regulations, and rules applicable to the property, nor shall a development agreement prevent the City from conditionally approving or disapproving any subsequent development project application on the basis of existing or new policies, regulations, and rules.

**17.610.100 – Approved Development Agreements**

Development agreements approved by the Council shall be on file with the City Clerk.

**17.610.110 – Newly Annexed Lands**

For newly annexed land comprising territory that was formerly unincorporated, any development agreement entered into by the County before the effective date of the annexation shall remain valid for the duration of the agreement in compliance with the provisions and limitations of Government Code Section 65865.3(a).

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## Chapter 17.615 – Home Occupation Permits

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### Sections:

- 17.615.010 – Purpose
- 17.615.020 – Applicability
- 17.615.030 – Application Filing, Processing, and Review
- 17.615.040 – Allowed Home Occupations
- 17.615.050 – Prohibited Home Occupations
- 17.615.060 – Director’s Decision
- 17.615.070 – Compliance with Standards and Conditions
- 17.615.080 – Findings and Decision
- 17.615.090 – Conditions of Approval
- 17.615.100 – Permit Expiration
- 17.615.110 – Inspections
- 17.615.120 – Acknowledgment
- 17.615.130 – Permit Not Transferable
- 17.615.140 – Changes in Home Occupation
- 17.615.150 – Post-Decision Procedures

### **17.615.010 – Purpose**

The purpose of this Chapter is to allow for the conduct of home occupations that are deemed incidental to, and compatible with, surrounding residential uses. A home occupation represents a legal commercial enterprise conducted by an occupant(s) of the dwelling.

### **17.615.020 – Applicability**

The Home Occupation Permit is intended to allow for home occupations that are conducted within a dwelling located in a residential zone, and are clearly incidental and secondary to the use of the dwelling for residential purposes and compatible with surrounding residential uses.

### **17.615.030 – Application Filing, Processing, and Review**

- A. Filing.** An application for a Home Occupation Permit shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Home Occupation Permit applications, together with the required fee in compliance with the City’s Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.615.080 (Findings and Decision), below.

- B. **Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.
- C. **Public notice not required.** A public notice and hearing shall not be required for the Director's decision on a Home Occupation Permit application.

#### 17.615.040 – Allowed Home Occupations

- A. **Where allowed.** Home occupations are allowed in residential zones in compliance with Article 2 (Zones, Allowable Land Uses, and Zone-Specific Standards).
- B. **Allowed home occupations.** Any activity producing income, or intended to produce income, conducted entirely within a residential dwelling by the inhabitants of the dwelling, which use is clearly incidental and secondary to the use of the structure for residential purposes, which does not change the character of the dwelling, and only when conducted in compliance with the applicable locational and operational standards identified in Section 17.615.070 (Compliance with Standards and Conditions), below.

#### 17.615.050 – Prohibited Home Occupations

The following uses are not incidental to or compatible with residential activities and are prohibited as home occupations:

- A. Adult businesses;
- B. Alcohol sales;
- C. Ammunition, explosives, or fireworks, sales, use, or manufacturing;
- D. Barber and beauty shops;
- E. Businesses that entail the commercial breeding, boarding, grooming, harboring, kenneling, raising, and/or training of dogs, cats, or other animals on the premises;
- F. Carpentry (on-site) and cabinet making (does not prohibit a normal wood-working hobby operation);
- G. Dance club/night clubs;
- H. Food preparation for commercial purposes;
- I. Fortune telling (Psychic);
- J. Lawn mower and/or small engine repair;



- K. Massage establishments (on-site);
- L. Medical and dental offices, clinics, and laboratories;
- M. Mini storage;
- N. Plant nursery;
- O. Retail or wholesale sales of products stored at the residence;
- P. Storage and/or sales of equipment, materials, and other accessories to the construction and service trades;
- Q. Tattoo parlors;
- R. Television, radio, or appliance repair;
- S. Tobacco/hookah lounges/parlors;
- T. Vehicle repair (body or mechanical), upholstery, automobile detailing (e.g., washing, waxing, etc.) and painting. (This does not prohibit "mobile" minor repair or detailing at the customer's location);
- U. Vehicle sales;
- V. Welding and machining; and
- W. Other similar uses determined by the Director not to be incidental to or compatible with residential activities.

#### **17.615.060 – Director’s Decision**

- A. Director’s actions.** The Director may approve a Home Occupation Permit that would be operated in compliance with Section 17.615.070 (Compliance with Standards and Conditions) below, or the Director may defer action and refer the application to the Commission for review and final decision.
- B. Business License required.** Immediately following the effective date of an approved Home Occupation Permit, when no appeal has been filed, the applicant shall obtain a Business License in compliance with Municipal Code Chapter 5.04 (Business Licenses Generally).

**17.615.070 – Compliance with Standards and Conditions**

- A. Compliance required.** Home occupations shall comply with the applicable locational, developmental, and operational standards identified in this Section as well as any conditions imposed on the Home Occupation Permit.
- B. Required standards.** Each home occupation shall comply with all of the following standards.
1. Only the permanent resident(s) of the subject dwelling shall be employed on the premises in the conduct of a home occupation.
  2. The home occupation shall be conducted within a dwelling and shall be clearly incidental to the use of the structure as a dwelling.
  3. The home occupation shall not be conducted in an accessory structure, and there shall be no storage of equipment or supplies within an accessory structure or outside the dwelling.
  4. There shall be no direct on-site sale of products, either wholesale or retail.
  5. There shall be no exterior use or storage of material or mechanical equipment, as determined by the Director to be for the home occupation use and not for normal household or hobby use.
  6. The use shall not generate pedestrian or vehicular traffic beyond that determined by the Director to be normal for the zone or neighborhood in which it is located.
  7. Commercial vehicles or trailers, except those normally incidental to residential use, shall not be kept on the site, and any need for parking generated by the home occupation shall be met off the street and other than in a required yard.
  8. The use shall not involve excessive storage of materials or supplies on the premises, as determined by the Director. Combustible and/or hazardous substances shall receive approval of the Fire Department.
  9. There shall be no signs allowed other than the address for the main dwelling. There shall be no other advertising using the home address, with the exception of advertising in the telephone directory or via the Internet.
  10. Not more than one room or the equivalent of 20 percent of the floor area of the entire dwelling unit, whichever is greater, shall be employed for the home occupation. Use of the garage is allowed; provided that all required vehicle storage is maintained in compliance with this Development Code, and the garage doors shall be closed at all times.

11. The appearance of the dwelling or any accessory structure shall not be altered so that the dwelling may be reasonably recognized as serving a nonresidential use (either by color, construction, dust, materials, odors, lighting, noise, signs, sounds, vibrations, etc. or that disturbs the peace). The existence of a home occupation shall not be apparent beyond the boundaries of the subject site.
12. There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes as defined in the zone.

#### **17.615.080 – Findings and Decision**

The Director shall review all applications and shall record the decision in writing with the findings on which the decision is based. The Director (or the Commission on a referral) may approve a Home Occupation Permit application, with or without conditions, only if it first makes all of the following findings:

- A. The proposed home occupation will be consistent with the General Plan, any applicable specific plan, and the development and design standards of the subject residential zone;
- B. The proposed home occupation will not be detrimental to the public convenience, health, interest, safety, or welfare, or materially injurious to the properties or improvements in the immediate vicinity; and
- C. The proposed home occupation will not interfere with the use or enjoyment of neighboring existing or future residential developments, and will not create traffic or pedestrian hazards.

#### **17.615.090 – Conditions of Approval**

In approving a Home Occupation Permit application, the Director (or the Commission on a referral) may impose conditions (e.g., buffers, hours of operation, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, surfacing, time limits, traffic circulation, etc.) deemed reasonable and necessary to ensure that the approval would be in compliance with the purpose of this Chapter.

#### **17.615.100 – Permit Expiration**

Home Occupation Permits shall immediately expire upon discontinuance of the home occupation.

#### **17.615.110 – Inspections**

The Director shall have the right at any time, upon request, to enter and inspect the premises subject to a Home Occupation Permit in order to verify compliance with the locational,

developmental, and operational standards identified in Section 17.615.070 (Compliance with Standards and Conditions), above.

#### **17.615.120 – Acknowledgment**

A Home Occupation Permit shall not be valid until signed by the applicant, with the signature acknowledging the applicant's full understanding and agreement with all of the conditions, and agreement to waive any right to later challenge any conditions imposed as unfair, unnecessary, or unreasonable.

#### **17.615.130 – Permit Not Transferable**

A new Home Occupation Permit and Business License, for the same or different home occupation conducted by a new resident, shall be obtained before conducting an allowed home occupation.

#### **17.615.140 – Changes in Home Occupation**

A change in the type of home occupation activity (e.g., a change from one allowed activity to another allowed activity) conducted by the original resident/permittee shall also require a new Home Occupation Permit and Business License before conducting an allowed home occupation.

#### **17.615.150 – Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Home Occupation Permit application.

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## Chapter 17.620 – Planned Development Permits

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### Sections:

- 17.620.010 – Purpose
- 17.620.020 – Applicability
- 17.620.030 – Review Authority
- 17.620.040 – Application Filing, Processing, and Review
- 17.620.050 – Project Review, Notice, and Hearing
- 17.620.060 – Findings and Decision
- 17.620.070 – Planned Development Permit Amendment
- 17.620.080 – Specific Development Standards
- 17.620.090 – Development Schedule
- 17.620.100 – Conditions of Approval
- 17.620.110 – Use of Property Before Final Action
- 17.620.120 – Post-Decision Procedures

### 17.620.010 – Purpose

The purpose of this Chapter is to provide a process for approving a Planned Development Permit that is intended to:

- A. **Ensure efficient use of land and better living environment.** Provide a method whereby land may be designed and developed as a single unit by taking advantage of modern site planning techniques thereby resulting in a more efficient use of land, a better living environment, and a superb site plan, and excellence of design than is otherwise possible through strict application of the development standards identified in Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards);
- B. **Ensure high standards of environmental quality.** Ensure development that meets high standards of environmental quality, public health and safety, the efficient use of the City's resources, and the purpose, intent, goals, policies, actions, and land use designations of the General Plan and any applicable specific plan; and
- C. **Provide for enhanced amenities.** Incorporate a program of enhanced amenities (e.g., enhanced landscaping, LEED or other "green" related standards, additional and enhanced open space, additional public art, improvements to an existing public facility [e.g., park or trail, etc.]) than typically required by this Development Code.

### 17.620.020 — Applicability

- A. **Allowed development projects.** A Planned Development Permit may only be requested for a residential, industrial, office, retail, mixed-use, or business campus-type development project.
- B. **Minimum site area.** A Planned Development Permit may only be requested for a site(s) with a minimum of two acres.
- C. **Planned Development Permit precedes Building or Grading Permits.** For projects proposing a Planned Development Permit, a Building or Grading Permit shall not be issued until the Planned Development Permit has been approved in compliance with this Chapter.
- D. **Activities only allowed in base zone.** A Planned Development Permit may not authorize a land use activity that is not allowed in the base zone.
- E. **Modify standards.**
  - 1. The permit may adjust or modify, where necessary and justifiable, all applicable development standards (e.g., building envelope [coverage, FAR, height, and setbacks], fence and wall heights, landscaping, parking, open space, street layout, etc.) identified in this Development Code, with the exception of an increase in the applicable density or intensity above the allowable maximums identified in Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards).
  - 2. Residential development projects with density or intensity standards increased above the maximums identified in Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards) may only be approved in compliance with Government Code Section 65915 and Chapter 17.310 (Affordable Housing — Density Bonuses).

### 17.620.030 — Review Authority

The Commission may approve, approve in modified form, conditionally approve, or disapprove the Planned Development Permit application, based upon the findings contained in Section 17.620.060 (Findings and Decision), below.

### 17.620.040 — Application Filing, Processing, and Review

An application for a Planned Development Permit shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Planned Development Permit applications, including the submission of landscape and irrigation plans pursuant to Chapter 17.325 – Water Efficient Landscape and Irrigation, together with the required fee in

compliance with the City's Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.620.060 (Findings and Decision), below. (ord. 16-01, adopted April 5, 2016)

### **17.620.050 – Project Review, Notice, and Hearing**

#### **A. Application consistent with the purpose of Chapter.**

1. Each Planned Development Permit application shall be analyzed by the Director to ensure that the application is consistent with the purpose and intent of this Chapter.
2. The Director shall submit a staff report and recommendation to the Commission for its consideration.

#### **B. Notice and hearings.**

1. A public hearing shall be required for the Commission's action on a Planned Development Permit application.
2. The public hearing shall be scheduled once the Director has determined the application complete in compliance with Section 17.600.070 (Initial Application Review).
3. Notice of the public hearing shall be given and the hearing shall be conducted in compliance with Chapter 17.710 (Public Hearings).

### **17.620.060 – Findings and Decision**

**A. Commission's authority.** The Commission may approve, conditionally approve, or disapprove an application for a Planned Development Permit and shall record the decision and the findings upon which the decision is based.

**B. Required findings.** The Commission may approve a Planned Development Permit application, with or without conditions, only if it first makes all of the following findings:

1. The Planned Development Permit will:
  - a. Be allowed within the subject base zone;
  - b. Be consistent with the purpose, intent, goals, policies, actions, and land use designations of the General Plan and any applicable specific plan;
  - c. Be generally in compliance with all of the applicable provisions of this Development Code relating to both on-site and off-site improvements

that are necessary to accommodate flexibility in site planning and property development and to carry out the purpose, intent, and requirements of this Chapter and the subject base zone, including prescribed development standards and applicable design guidelines, except for those provisions modified in compliance with this Chapter; and

- d. Ensure compatibility of property uses within the zone and general neighborhood of the proposed development.
2. The proposed project will produce a comprehensive development of superior quality and excellence of design (e.g., appropriate variety of structure placement and orientation opportunities, appropriate mix of structure sizes, high quality architectural design, significantly increased amounts of landscaping and improved open space, improved solutions to the design and placement of parking and loading facilities, incorporation of a program of highly enhanced amenities [e.g., additional public art], LEED or other “green” related standards, etc.) than might otherwise occur from more typical development applications;
3. Proper standards and conditions have been imposed to ensure the protection of the public health, safety, and welfare;
4. Proper on-site traffic circulation (e.g., pedestrian and vehicular) and control is designed into the development to ensure protection for fire suppression and police surveillance equal to or better than what would normally be created by compliance with the minimum setback and parcel width standards identified in Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards);
5. The subject parcel is adequate in terms of size, shape, topography, and circumstances to accommodate the proposed development;
6. Adequate public services and facilities exist, or will be provided, in compliance with the conditions of approval, to serve the proposed development and the approval of the proposed development will not result in a reduction of public services to properties in the vicinity to be a detriment to public health, safety, and general welfare;
7. The proposed development, as conditioned, will not have a substantial adverse effect on surrounding property or their allowed use;
8. If the development proposes to mix residential and commercial uses whether done in a vertical or horizontal manner, the residential use is designed in a manner that it is appropriately buffered from the commercial use and is provided sufficiently enhanced amenities to create a comfortable and healthy residential environment and to provide a positive quality of life for the residents.



The enhanced amenities may include additional landscaping, additional private open space, private or separated entrances, etc;

9. The design, location, operating characteristics, and size of the proposed development will be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection; and
10. The applicant agrees in writing to comply with any and all of the conditions imposed by the review authority in the approval of the Planned Development Permit.

#### **17.620.070 – Planned Development Permit Amendment**

- A. **Commission action on requested changes.** Requested changes in the Planned Development Permit, other than those allowed by this Section, shall be submitted to the Commission for review and approval.
- B. **Added stipulations deemed reasonable and necessary.** The Commission may, as a condition of approval, impose added stipulations or changes to the Planned Development Permit as it deems reasonable and necessary to carry out the purpose and intent of this Chapter.
- C. **Minor changes by Director.** Minor changes in the Planned Development Permit that do not involve an increase in the number of dwelling units or an intensity of use may be approved by the Director in compliance with Section 17.660.100 (Changes to an Approved Project).

#### **17.620.080 – Specific Development Standards**

- A. **Landscaping.** Landscaping shall be provided in compliance with Chapter 17.325 (Water Efficient Landscape and Irrigation). (ord. 16-01, adopted April 5, 2016)
- B. **Off-street parking.** Off-street parking provisions shall be provided in compliance with Chapter 17.330 (Off-Street Parking and Loading Standards), unless modified in compliance with this Chapter.
- C. **Signs.** Signs shall be provided in compliance with Chapter 17.335 (Signs), unless modified in compliance with this Chapter.

#### **17.620.090 – Development Schedule**

An application for a Planned Development Permit shall include a development schedule in compliance with the following:

- A. Permit application shall include development schedule.** An application for a Planned Development Permit shall be accompanied by a development schedule clearly identifying, to the best of the applicant's knowledge, the approximate date when the construction of the project can be expected to begin, the anticipated rate of development, and the completion date.
1. The development schedule for a Planned Development Permit shall indicate the approximate time period, after the Planned Development Permit becomes effective, when construction of the project can be expected to begin, the anticipated rate of development, and the anticipated completion date.
  2. The development schedule, if approved by the Commission, shall become a part of the Planned Development Permit and shall be adhered to by the owner of the property and the owner's successor(s)-in-interest.
  3. The Director shall require the posting of cash, a savings and loan certificate, or a performance bond issued by a corporate surety company, in an amount to be determined by the City Engineer, in compliance with Section 17.660.070 (Performance Guarantees), to cover the costs of the public improvements adjacent to the proposed development before the issuance of the Building Permit for the first phase of construction.
- B. Development schedule for phased developments.** The development schedule, if it shows the total project is to be developed in phases, shall indicate the open space and amenities proposed for each individual phase. The developer shall construct all amenities shown and landscape all open spaces within each phase as it is completed, and before occupancy of any structure located within each particular phase of the development.
- C. Director to review overall progress.** From time to time, the Director shall compare the actual development accomplished in the planned development with the approved development schedule.
- D. Commission may extend development schedule.** Upon a written request by the developer/property owner, for good cause shown, the Commission may extend the time limits of the development schedule; provided, any request for an extension of time limits shall be on file in the office of the Director no later than 30 days before the date of expiration.
- E. Suspension during processing of extension request.** The filing of the time extension request shall suspend the actual expiration of the Planned Development Permit until the extension request is approved by the Commission, except that no Building Permit shall be issued related to the Planned Development Permit during the period of suspension.

**17.620.100 — Conditions of Approval**

In approving a Planned Development Permit, the Commission may impose conditions deemed reasonable and necessary to ensure that the approval would be in compliance with the findings required by Section 17.620.060 (Findings and Decision), above.

**17.620.110 — Use of Property Before Final Action**

No permits or approvals shall be issued for any use or construction involved in an application for a Planned Development Permit until and unless the Planned Development Permit shall have become final, in compliance with Section 17.660.030 (Effective Date of Permits).

**17.620.120 — Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Planned Development Permit application.

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## Chapter 17.625 – Reasonable Accommodation

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### Sections:

- 17.625.010 – Purpose
- 17.625.020 – Applicability
- 17.625.030 – Application Requirements
- 17.625.040 – Review Authority
- 17.625.050 – Review Procedures
- 17.625.060 – Findings and Decision
- 17.625.070 – Rescission of Approval of Reasonable Accommodation

### 17.625.010 – Purpose

It is the policy of the City to provide individuals with disabilities reasonable accommodation in rules, policies, practices, and procedures to ensure the equal access to housing and facilitate the development of housing for individuals with disabilities in compliance with the California Fair Employment and Housing Act, the Federal Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (referred to in this Chapter as the “Acts”). This Chapter provides a procedure for making requests for reasonable accommodations in land use, zoning and building regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of the fair housing laws.

Nothing in this Chapter requires persons with disabilities or operators of group homes for persons with disabilities acting or operating in accordance with applicable zoning, licensing, or land use laws or practices to seek reasonable accommodation under this Chapter. (ord.14-04, adopted May 6, 2014)

### 17.625.020 – Applicability

#### A. Eligible applicants.

1. A request for reasonable accommodation may be made by any person with a disability, his or her representative (e.g. family member, care provider, etc.), or a provider of housing for persons with disabilities in the City’s land use and zoning regulations, policies, or practices when the application of such may act as a barrier to affording such person(s) equal opportunity to use and enjoy a dwelling.
2. A person with a disability is a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having this type of impairment or anyone who has a record of this type of impairment. While a person recovering from substance abuse is considered a person with a

disability, a person who is currently engaging in the current illegal use of controlled substances is not.

3. This Chapter is intended to apply to those persons who are defined as disabled or handicapped under the Acts. (ord. 14-04, adopted May 6, 2014)

**B. Eligible requests.**

1. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to a dwelling of his or her choice.
2. A request for a reasonable accommodation shall comply with Section 17.625.030.
3. The City will provide the assistance necessary to an applicant in making a request for reasonable accommodation. A request by an applicant for reasonable accommodation may be made orally or in writing. It is usually helpful for all parties if the request is made in writing as it will help avoid misunderstandings and keep an accurate record of the request. The City shall assist the applicant with furnishing all information maintained by the City as a public record, such as City ordinances, policies, rules, and regulations necessary for processing the reasonable accommodation request.
4. Notice of the availability of the reasonable accommodation shall be prominently displayed at all public information counters in the City's Community Development Department, and the City Clerk's office. Forms for requesting reasonable accommodations shall be available to the public in the Community Development Department or upon request.
5. Should the information provided by the applicant include medical information or records of the applicant, including records indicating medical condition, diagnosis or medical history of the applicant, the City, to the extent allowed by law, shall treat such information as confidential information of the City. The City shall provide written notice to the Applicant, and any person designated by the Applicant to represent the Applicant in the application proceeding, of any request received by the City for disclosure of the medical information or documentation which the Applicant has provided to the City. The City will cooperate with the Applicant, to the extent allowed by law, in actions initiated by the Applicant to oppose the disclosure of such medical information or documentation. (ord.14-04, adopted May 6, 2014)

**17.625.030 – Application Requirements**

**A. Application.** The Community Development Department shall provide applicants for a reasonable accommodation with an application form eliciting the following information:

1. The applicant's name, address and telephone number;
2. Name, address, and telephone number of property owner and the current address for which the request is being made;
3. The current actual use of the property;
4. The basis for the claim that the applicant is considered disabled under the Acts or provides housing for persons considered disabled under the Acts. (For example, an individual applicant may submit a letter by the individual himself or herself containing information showing that he or she is under 65 years of age and receives Supplemental Security Income or Social Security Disability Insurance benefits, or from a doctor or other medical professional, a peer support group, a non-medical service agency, or reliable third party who is in a position to know about the individual's disability. Only that information necessary to evaluate the reasonable accommodation shall be requested. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry. All such information shall be retained in a manner so as to respect privacy rights of the applicant and shall not be made available for public inspection);
5. The Development Code provision, regulation or policy from which reasonable accommodation is being requested;
6. Explanation why the reasonable accommodation is necessary to make specific property available for the individual.

The Department shall assist the applicant in completing the form, as necessary, or, shall elicit oral information from the applicant necessary for the Department to complete the form itself. In the event the Department completes the form by eliciting oral information from the applicant, the Department shall read the completed form to the applicant to ensure its accuracy and shall provide a copy of the completed form to the applicant.

7. A reasonable accommodation shall not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation. (ord. 14-04, adopted May 6, 2014)

**17.625.040 — Review Authority**

- A. A request for a reasonable accommodation shall be reviewed, and a determination shall be made, by the Director. (ord. 14-04, adopted May 6, 2014)

**17.625.050 — Review Procedures**

- A. **Director's review.** The Director shall make a written determination within 30 days following the submittal of a complete application and either approve, approve with modifications, or disapprove a request for a reasonable accommodation in compliance with Section 17.625.060 (Findings and Decision), below.
- B. **Findings and Decision.** The written determination to approve or disapprove the request for reasonable accommodation shall be made in compliance with Section 17.625.060 (Findings and Decision), below.
- C. **Stays.** If necessary to reach a determination on the request for reasonable accommodation, the reviewing authority may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for a reasonable accommodation is made, the 30-day period to issue a decision is stayed until the applicant responds to the request. (ord. 14-04, adopted May 6, 2014)

**17.625.060 — Findings and Decision**

- A. **Findings.** The written decision to approve or disapprove a request for reasonable accommodation that will be consistent with the Acts and shall be based on consideration of all of the following factors:
1. Whether the housing, which is the subject of the request, will be used by one or more individuals with a disability as defined under the Acts;
  2. Whether the request for a reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
  3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City. The determination of undue financial and administrative burden will be done on a case-by-case basis involving various factors;
  4. Whether the requested reasonable accommodation would fundamentally alter the nature of a City program or law, including but not limited to land use and zoning;
  5. Should the City determine that the applicant's initial request would impose an undue financial or administrative burden on the City, or fundamentally alter a City program or law, it may propose an alternative accommodation that would



provide an equivalent benefit. In the event the City makes a determination not to accommodate an applicant's initial request, this determination shall be documented.

- B. **Written decision.** The written decision on the request for a reasonable accommodation shall include the reviewing authority's findings and any other relevant information upon which the decision is based. All written decisions shall give notice of the applicant's right of appeal and to request reasonable accommodation in the appeals process in compliance with Chapter 17.715 (Appeals), provided however, that the appeal period shall be extended to thirty (30) days, rather than fifteen (15) days. The notice of decision shall be sent to the applicant by certified mail.
- C. **Appeal.** The written decision of the reviewing authority shall be final unless appealed in compliance with Chapter 17.715 (Appeals). (ord. 14-04, May 6, 2014)

#### **17.625.070 — Rescission of Approval of Reasonable Accommodation**

- A. **Rescission.** A grant or grant with modifications made in compliance with this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances (e.g., the individual defined as disabled under the Acts vacates the subject site, etc.)." (ord. 14-04, adopted May 6, 2014)

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## Chapter 17.630 — Site Plan and Design Review

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### Sections:

- 17.630.010 — Purpose and Intent
- 17.630.020 — Applicability
- 17.630.030 — Review Authority
- 17.630.040 — Application Filing, Processing, and Review
- 17.630.050 — Findings and Decision
- 17.630.060 — Conditions of Approval
- 17.630.070 — Issuance of Other Required Permits and Approvals
- 17.630.080 — Minor Changes by Director
- 17.630.090 — Post-Decision Procedures

### 17.630.010 — Purpose and Intent

- A. **Purpose.** The purpose of this Chapter is to provide a process for the appropriate review of development projects.
- B. **Intent.** The intent is to ensure that all approved site and structural development:
  1. Respects the physical and environmental characteristics of the site;
  2. Ensures safe and convenient access and circulation for pedestrians and vehicles;
  3. Exemplifies the best professional high quality design practices;
  4. Allows for and encourages individual identity for specific uses and structures;
  5. Encourages the maintenance of a distinct neighborhood and/or community identity;
  6. Minimizes or eliminates negative or undesirable visual impacts; and
  7. Provides for the adequate dedication of land for public purposes and the provision of public infrastructure, associated with the development.

### 17.630.020 — Applicability

- A. **Site Plan and Design Review required.** No one shall construct any structure, or relocate, rebuild, or significantly enlarge or modify any existing structure or site until a Site Plan and Design Review has been approved in compliance with this Chapter.

- B. Referral to Director.** The Building Official shall refer to the Director all applications for Building or Grading Permits subject to the requirements of this Chapter.
- C. Compliance with Chapter required.**
1. Building or Grading Permits, Business Licenses, or Certificates of Occupancy shall not be issued until the requirements of this Chapter and Chapter 17.325 – Water Efficient Landscape and Irrigation are met. (ord. 16-01, adopted April 5, 2016)
  2. Any permit or approval specified in Subparagraph 1., above, issued in violation of this provision shall be deemed void.
- D. Density/intensity incentives.** Determinations regarding density/intensity incentives, as provided for in Sections 17.215.040 (Residential Zone Density Incentives) shall be decided by the level of review authority based on the size of the proposed project as specified in Table 6-2 (Review Authority for Site Plan and Design Review), below.
- E. Definitions.** The term “significantly enlarge or modify” shall be defined as follows:
1. **Residential enlargement or modification.** Residential enlargements or modifications larger than 500 square feet or 25 percent of the existing gross floor area before the addition, whichever is less;
  2. **Commercial or industrial enlargement or modification.** Commercial or industrial enlargement, modification, reconstruction, rehabilitation, or remodel equal to or exceeding 25 percent of the existing square footage of the structure before the construction; and
  3. **Unimproved commercial and industrial property.** In the case of improvements to unimproved commercial and industrial property or improvements to commercial and industrial property that would not require modification of a structure, all plans shall be reviewed.

#### 17.630.030 – Review Authority

- A. Site Plan and Design Review required.** Structures erected or modified to accommodate the land use activities listed in Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards) shall require the approval of a Site Plan and Design Review.
- B. Required before issuance of other required permits.** Site Plan and Design Review approval shall be required before the issuance of a Building or Grading Permit, Business License, or Certificate of Occupancy for any new structure (not including fences or walls), and existing structures to be reconstructed or remodeled (including facade improvements) that increase the gross floor area by 500 square feet (for residential

projects only) or 25 percent of the existing square footage of the structure before the construction, whichever is less, or to increase structure height.

- C. **Applicable review authority.** The applicable review authority shall be as specified in Table 6-2 (Review Authority for Site Plan and Design Review), below.

**Table 6-2  
Review Authority for Site Plan and Design Review**

| Type of Construction Activity   | Role of Review Authority (1) (2)                  |   |                           |
|---|---|---|---------------------------|
|   | Director (Very Minor Review)                      | Development Review Committee (Minor Review) | Commission (Major Review) |
| Cargo containers.   | Decision  | Appeal                                      | Appeal                    |
| Facade improvements.  | Decision  | Appeal                                      | Appeal                    |
| Nonresidential enlargements or modifications, up to a maximum of 25 percent of the existing gross floor area.   | Decision  | Appeal                                      | Appeal                    |
| Residential enlargements or modifications larger than 500 square feet or 25 percent of the existing gross floor area.   | Decision  | Appeal                                      | Appeal                    |
| Residential construction proposing up to a maximum of 8 dwelling units.   | Decision  | Appeal                                      | Appeal                    |
| Nonresidential construction, up to a maximum of 9,999 square feet of gross floor area.  | Recommend   | Decision                                    | Appeal                    |
| Residential construction proposing 9 to 50 dwelling units, excluding single-family residential tract maps.  | Recommend   | Decision                                    | Appeal                    |
| Single-family residential tract maps for 9 to 50 dwelling units.  | Recommend   | Recommend                                   | Decision                  |
| Nonresidential construction, 10,000 square feet or more of gross floor area.  | Recommend   | Recommend                                   | Decision                  |
| Residential construction proposing 51 or more dwelling units.   | Recommend   | Recommend                                   | Decision                  |
| All development located on hillsides having a natural slope gradient of 15 percent or greater shall also be subject to Section 17.305.070 (Hillside Development). | Recommend   | Recommend                                   | Decision                  |
| All development subject to Chapter 17.500 (Floodplain Management).  | Recommend   | Decision by the Floodplain Administrator    |                           |
| Density/Intensity Incentives (based on project size).   | In compliance with Subsection 17.630.020.D. above |   |                           |

**Notes:**

- (1) "Recommend" means that the review authority makes a recommendation to a higher decision-making body; "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 17.715 (Appeals).
- (2) The review authority may defer action and refer the request to the next higher review authority for the final decision.

**17.630.040 – Application Filing, Processing, and Review**

- A. **Application filing.** An application for a Site Plan and Design Review shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Site Plan and Design Review applications, together with the

required fee in compliance with the City's Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.630.050 (Findings and Decision), below.

- B. Review with other land use applications.** If the project for which the request for Site Plan and Design Review is being made also requires some other discretionary approval (e.g., Conditional Use Permit, etc.), then the applicant shall file the information required by Subsection A. (Application filing), above, together for concurrent review with the application for discretionary approval. Only the formal application and associated fee for the other discretionary approval shall be required in order to comply with the Site Plan and Design Review filing requirements.
- C. Application review.** Each application for a Site Plan and Design Review shall be reviewed to ensure that the application is consistent with the purpose of this Chapter; applicable development standards and regulations of this Development Code; and adopted design guidelines and policies that may apply.
1. A Site Plan and Design Review is initiated when the Department receives a complete application package including the required information and materials specified in the Department handout and any additional information required by the applicable review authority in order to conduct a thorough review of the proposed project.
  2. Upon receipt of a complete application the applicable review authority shall review the location, design, site plan configuration and the effect of the proposed development on adjacent properties by comparing the project plans to established development standards, regulations, and applicable design guidelines/policies.
  3. During the course of the review process, the review authority may require the submittal of additional information or revised plans. The applicant shall be notified in writing of any revisions or additional information required and shall submit the requested information to the Department within 30 days after the date of the notice or within the period of time designated by the review authority. Failure to submit the required information within the 30-day period or within the period of time designated by the review authority may be cause for disapproval.
  4. Within 30 days after the Site Plan and Design Review application has been deemed complete in compliance with Section 17.600.070 (Initial Application Review), the review authority shall either approve or disapprove the Site Plan and Design Review application and, if approved, may impose conditions deemed reasonable and necessary to protect the public health, safety and general

welfare and ensure compliance with this Chapter and various regulations of the City.

5. The following criteria shall be considered during the review of a Site Plan and Design Review application:
  - a. Compliance with this Chapter, this Development Code, and all other applicable City regulations and policies;
  - b. Efficient site layout and design;
  - c. Compatibility with neighboring properties and developments;
  - d. Efficiency and safety of public access and parking;
  - e. The arrangement and relationship of proposed structures and signs to one another and to other developments in the vicinity and whether the relationship is harmonious and based on good standards of design;
  - f. The compatibility in scale and aesthetic treatment of proposed structures with public areas;
  - g. The adequacy of proposed driveways, landscaping, parking spaces, potential on-site and off-site parking and traffic impacts and other potential impacts upon the environment;
  - h. Appropriate open space and use of water efficient landscaping;
  - i. Consistency with the General Plan and any applicable specific plan; and
  - j. Consistency with any adopted design guidelines/standards.
- D. **On-site inspection.** An application for a Site Plan and Design Review may require that the Director perform an on-site inspection of the subject parcel before confirming that the request complies with all of the applicable criteria and provisions identified in this Chapter.
- E. **Public hearing and appeal provisions.**
  1. A public hearing shall not be required for the Director's or Development Review Committee's decision on a Site Plan and Design Review application.
  2. A public hearing shall be required for the Commission's decision on a Site Plan and Design Review application. Notice of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 17.710 (Public Hearings).

3. The review authority's decision may be appealed, in compliance with Chapter 17.715 (Appeals).

### 17.630.050 – Findings and Decision

- A. **Meets requirements of this Chapter.** The review authority shall determine whether or not the application meets the requirements of this Chapter in compliance with Section 17.600.070 (Initial Application Review).
- B. **Review authority's action within 30 days.** Within 30 working days after the filing of the completed application, the review authority shall approve, approve with conditions, or disapprove the Site Plan and Design Review application.
- C. **Referral to the Commission.** If the Site Plan and Design Review application submitted is of significant consequence or magnitude or involves potential public controversy, the Director or Development Review Committee may defer action and refer the application to the Commission for review and final decision.
- D. **Next Commission agenda.** The referral shall be placed on the agenda of the next available regular Commission meeting following the referral.
- E. **Other review authority.** The decision to approve or disapprove the Site Plan and Design Review shall be made by the authority responsible for reviewing the other discretionary land use application (e.g., Conditional Use Permit, etc.) in compliance with the applicable review procedure for the other discretionary review. The decision to approve or disapprove the Site Plan and Design Review shall be made in compliance with Subsection F. (Required findings), below.
- F. **Required findings.** The review authority may approve a Site Plan and Design Review application, only if it first makes all of the following findings. The proposed development will:
  1. Be allowed within the subject zone;
  2. Be in compliance with all of the applicable criteria identified in Subparagraph 17.630.040.C.5., above;
  3. Be in keeping with the character of the neighborhood, in terms of the structure(s) general appearance; and
  4. Not be detrimental to the harmonious and orderly growth of the City.



### 17.630.060 — Conditions of Approval

- A. **May impose conditions.** In approving a Site Plan and Design Review application, the review authority may impose conditions deemed reasonable and necessary to ensure that the approval would be in compliance with the findings required by Section 17.630.050 (Findings and Decision), above.
- B. **Requirements for dedication and infrastructure.** The conditions may include requirements for the offers of adequate dedication of land for public purposes and the provision of public infrastructure to the extent necessitated by the development.

### 17.630.070 — Issuance of Other Required Permits and Approvals

- A. **Permits or approval for grading, structures, and uses.** No permits or approvals shall be issued for any development involved in an application for a Site Plan and Design Review or a revised Site Plan and Design Review until and unless the same shall have become final, in compliance with Section 17.660.030 (Effective Date of Permits).
- B. **Compliance with Site Plan and Design Review.** Grading shall not be commenced and no structure shall be altered, enlarged, erected, moved, or rebuilt subject to the provisions of this Chapter, except in compliance with the approved Site Plan and Design Review and the conditions imposed on the review.
- C. **Determination by Director.** Compliance shall be determined by the Director, or in the case of disagreement with the applicant, by the applicable review authority.

### 17.630.080 — Minor Changes by Director

The Director may approve minor changes in a Site Plan and Design Review that do not involve an increase in structure area or height, an increase in the number of dwelling units, a significant architectural change, or an intensity of use in compliance with Section 17.660.100 (Changes to an Approved Project).

### 17.630.090 — Post-Decision Procedures

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Site Plan and Design Review application.

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## Chapter 17.635 – Specific Plans

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### Sections:

- 17.635.010 – Purpose
- 17.635.020 – Intent
- 17.635.030 – Applicability
- 17.635.040 – Initiation of Specific Plans
- 17.635.050 – Application Filing and Initial Review
- 17.635.060 – Preparation and Content
- 17.635.070 – Application Processing
- 17.635.080 – Adoption of Specific Plan
- 17.635.090 – Amendment of Specific Plan

### 17.635.010 – Purpose

The purpose of this Chapter is to provide a process for preparing, processing, reviewing, adopting, and amending specific plans in compliance with Government Code Section 65450 et seq. or as that section may be amended or replaced from time to time.

### 17.635.020 – Intent

- A. **General Plan implementation.** After the Council has adopted the General Plan, or any amendment to the General Plan, the Department may, or as directed by the Council, shall prepare or cause the preparation of specific plans for the systematic implementation of the General Plan.
- B. **Specific plan adoption.**
  - 1. Specific plans, including any associated conditions, programs, regulations, and proposed legislation shall be adopted by ordinance in compliance with Government Code Article 8 and Section 65453(a).
  - 2. A specific plan shall replace the base zone(s) for the subject property, and the development standards and guidelines identified in the specific plan shall take precedence over the general standards and guidelines contained in this Development Code.

### 17.635.030 – Applicability

- A. **Specific plan required.** A specific plan shall be required in compliance with Section 17.230.010 (Purposes of Special Purpose Zones), and shall be prepared, processed, approved and implemented, or disapproved in compliance with this Chapter.

- B. **Flexibility and innovation.** A specific plan is designed to provide for flexibility, innovative use of land resources and development, a variety of housing and other development types, and an effective and safe method of pedestrian and vehicular circulation.
- C. **Commission and Council review.** An application for a specific plan shall be considered by the Commission and Council.

#### 17.635.040 – Initiation of Specific Plans

A specific plan or its amendment may be initiated in the following manner:

- A. **Council.** By the Council with or without a recommendation from the Commission;
- B. **Commission.** By the Commission; or
- C. **Property owner(s).** By an application filed by the owner(s) of one or more parcels that would be the subject of the specific plan. If initiated by a property owner(s), the following is strongly encouraged.
  - 1. **Pre-application conference.** A pre-application conference with the Pre-Development Review Committee before the filing of a specific plan application is strongly encouraged, in compliance with Section 17.600.040 (Application Preparation and Filing).
  - 2. **Neighborhood meeting(s).** A neighborhood meeting is strongly encouraged with surrounding property owners and arranged by the project proponent(s).

#### 17.635.050 – Application Filing and Initial Review

If initiated by a property owner(s), the specific plan application or an amendment shall comply with all of the following.

- A. **Filing.** An application for a specific plan shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified by the Department for specific plan applications, together with the required fee in compliance with the City's Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the finding required by Section 17.635.080 (Adoption of Specific Plan), below.
- B. **Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.

**C. Notice and hearings.**

1. Public hearings shall be required for the Commission's recommendation and the Council's action on a specific plan or an amendment.
2. The public hearings shall be scheduled once the Director finds the application complete in compliance with Section 17.600.070 (Initial Application Review).
3. Notice of the public hearings shall be given and the hearings shall be conducted in compliance with Chapter 17.710 (Public Hearings).

**17.635.060 – Preparation and Content**

If initiated by a property owner(s), the specific plan application shall comply with all of the following.

- A. Organization of specific plan.** The applicant shall prepare a draft specific plan for review by the City that includes detailed information in the form of text and diagram(s), organized in compliance with Government Code Section 65451.
- B. Required information.** The following information shall be provided:
  1. The distribution, location, and extent of land uses proposed within the area covered by the specific plan, including open space areas;
  2. The proposed distribution, extent, intensity, and location of major components of public and private circulation/transportation, drainage, energy, sewers, solid waste disposal, water, and other essential facilities proposed to be located within the specific plan area and needed to support the proposed land uses;
  3. Standards, criteria, and guidelines by which development would proceed, and standards for the conservation, development, and utilization of natural resources, where applicable;
  4. A program of implementation measures, including financing, regulations, programs, and public works projects, necessary to carry out the proposed land uses, infrastructure, and development and conservation standards and criteria;
  5. A discussion of the relationship of the specific plan to the goals, policies, and actions of the General Plan; and
  6. Additional information deemed to be necessary by the Director based on the characteristics of the area to be covered by the specific plan; applicable goals, policies, and actions of the General Plan; or any other issue(s) determined by the Director to be significant.

### 17.635.070 – Application Processing

If initiated by a property owner(s), the draft specific plan shall be processed in the same manner as required for General Plans by State law, and as follows.

**A. Director’s evaluation.**

1. After the filing of a draft specific plan, the Director shall review the draft plan to determine whether it is in compliance with the provisions of this Chapter.
2. If the draft plan is not in compliance, it shall be returned to the applicant with written specification(s) as to why it does not comply, and with suggested revisions to ensure compliance.
3. When a draft plan is returned by the applicant to the Department and the Director determines it is complete and in compliance with this Chapter, the plan shall be deemed to be accepted for processing, in compliance with Section 17.600.070 (Initial Application Review).

**B. Environmental review required.** The draft specific plan shall be subject to environmental review as identified in Section 17.600.090 (Environmental Review).

**C. Notification and consultation with California Native American tribes required.**

1. In compliance with Government Code Section 65352.3 and prior to the adoption or amendment of a specific plan, proposed on or after March 1, 2005, the City shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to features, objects, or places described in Public Resources Code Sections 5097.9 and 5097.993 that are located within the City's jurisdiction.
2. From the date on which a California Native American tribe is contacted by the City in compliance with this Subsection, the tribe shall have 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.
3. Consistent with the guidelines developed and adopted by the State Office of Planning and Research in compliance with Government Code Section 65040.2, the City shall protect the confidentiality of information concerning the specific character, identity, location, and use of those features, objects, and places.

**D. Staff report.** A written staff report shall be prepared for the draft specific plan that shall include detailed recommendations and, if appropriate, suggested changes to the text

and/or diagrams of the specific plan, as determined to be necessary to make it acceptable for adoption.

#### **17.635.080 — Adoption of Specific Plan**

- A. Mandatory finding for adoption.** A specific plan may only be adopted if first found consistent with the General Plan in compliance with Government Code Section 65454.
- B. Method of adoption.** The specific plan shall be adopted by ordinance in compliance with Government Code Section 65453(a).
- C. Findings for projects under a specific plan.** No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no Development Code Text or Zoning Map amendment may be approved within an area covered by a specific plan unless it is first found consistent with the adopted specific plan in compliance with Government Code Section 65455

#### **17.635.090 — Amendment of Specific Plan**

- A. Process for amendment.** A specific plan may be amended through the same procedure specified by this Chapter for the adoption of a specific plan.
- B. Mandatory finding for amendment.** A specific plan may only be amended if first found consistent with the General Plan in compliance with Government Code Section 65454.
- C. Frequency of amendments.** The specific plan may be amended as often as deemed necessary by the Council in compliance with Government Code Section 65453.

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## Chapter 17.640 – Temporary Use Permits

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### Sections:

- 17.640.010 – Purpose
- 17.640.020 – Definition
- 17.640.030 – Applicability
- 17.640.040 – Exempt Temporary Uses
- 17.640.050 – Allowed Temporary Uses
- 17.640.060 – Application Filing, Processing, and Review
- 17.640.070 – Director’s Review
- 17.640.080 – Findings and Decision
- 17.640.090 – Conditions of Approval
- 17.640.100 – Extensions for Temporary Use Permits
- 17.640.110 – Condition of Site Following Temporary Use
- 17.640.120 – Post-Decision Procedures

### 17.640.010 – Purpose

The purpose of this Chapter is to allow for short term activities that would be compatible with adjacent and surrounding uses when conducted in compliance with this Chapter.

### 17.640.020 – Definition

For purposes of this Chapter, a temporary (short-term) land use activity is defined as a land use that is interim, non-permanent, and/or seasonal in nature, and generally not conducted for more than 30 consecutive days in duration.

### 17.640.030 – Applicability

- A. **Minor short-term activities.** A Temporary Use Permit allows short-term activities that might not meet the normal development or use standards of the applicable zone, but may otherwise be acceptable because of their temporary nature.
- B. **Temporary Use Permit required.** Temporary land uses shall not be established, operated, or conducted in any manner without the approval and maintenance of a valid Temporary Use Permit approved in compliance with this Chapter.
- C. **Categories of land uses.** The following two categories of temporary land uses identify the level of permit required, if any, based on the proposed duration, size, and type of use:

1. **Exempt temporary uses.** Exempt temporary uses are identified in 17.640.040 (Exempt Temporary Uses), below; and
2. **Temporary uses requiring a Temporary Use Permit.** Temporary uses requiring a Temporary Use Permit are identified in 17.640.050 (Allowed Temporary Uses), below.

### 17.640.040 — Exempt Temporary Uses

The following minor and limited duration temporary uses are exempt from the requirement for a Temporary Use Permit. Uses that do not fall within the categories defined below shall comply with 17.640.050 (Allowed Temporary Uses), below.

#### A. **Construction yards** — on-site.

1. On-site contractors' construction yard(s), in conjunction with an approved construction project on the same parcel.
2. One adult caretaker may be present during non-construction hours.
3. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the companion Building Permit, authorizing the construction project, whichever first occurs.

#### B. **Emergency facilities.** Emergency public health and safety needs/land use activities, as determined by the Council.

#### C. **Publicly-owned property.** Events that are to be conducted on publicly owned property and are sponsored by educational, fraternal, religious, or service organizations directly engaged in civic or charitable efforts, or to tax exempt organizations in compliance with 501(c) of the Federal Internal Revenue Code.

### 17.640.050 — Allowed Temporary Uses

The following temporary uses are allowed, subject to the issuance of a Temporary Use Permit, and only when conducted in compliance with Section 17.640.090 (Conditions of Approval), below.

#### A. **Car washes.** Car washes, limited to one event each month for each sponsoring organization, not exceeding three days in length. Sponsorship shall be limited to educational, fraternal, religious, or service organizations directly engaged in civic or charitable efforts, or to tax exempt organizations in compliance with 501(c) of the Federal Internal Revenue Code.

- B. Contractors' construction yards — off-site.** The permit may be effective for up to 12 months, or the expiration of the companion Building Permit, authorizing the construction project, whichever first occurs.
- C. Events.**
1. Amusement rides, arts and crafts exhibits, auctions, carnivals, circuses, concerts, fairs, farmer's markets, festivals, flea markets, food events, outdoor entertainment/sporting events, rodeos, rummage sales, second-hand sales, and swap meets for 14 consecutive days or less, or six two-day weekends, within a 12-month period.
  2. Outdoor display and sale events conducted by a retail business holding a valid Business License may be allowed a maximum of three outdoor sale events (excluding City sponsored activities [e.g., Cinco De Mayo or Potato Festival] each calendar year in compliance with the standards identified in Section 17.430.240 (Outdoor Displays and Sales). For purposes of this Subsection an outdoor sale event shall be no longer than four consecutive days in duration.
  3. Outdoor gatherings/meetings and group activities for seven consecutive days or less, within a 12-month period.
  4. Outdoor vehicle sales events conducted by established vehicle sales facilities for 30 consecutive days or less, within a 12-month period.
  5. Seasonal sales (i.e., Halloween pumpkin sales and Christmas tree sale lots) only by businesses holding a valid Business License; provided, the activity may only be held from October 1<sup>st</sup> through October 31<sup>st</sup>, of the same year for the Halloween pumpkin sales, and from the day after Thanksgiving through December 26<sup>th</sup>, of the same year for Christmas tree sales.
- D. On-location filming.** The temporary use of a specified and approved on-location site for occasional commercial filming (e.g., commercials, movie(s), videos, etc.) on location in compliance with Government Code Section 65850.1. The Director shall find that the approval would not result in a frequency of use likely to create incompatibility between the temporary filming activity and the surrounding areas.
- E. Storage during construction.** Storage of equipment during construction activities for up to 12 months, or the expiration of the companion Building Permit, authorizing the construction project, whichever first occurs;
- F. Temporary sales trailers.**
1. A trailer may be used for temporary sales activities (e.g., model home sales, etc.).

2. A permit for temporary sales trailer(s) may be approved for up to 12 months.
- G. Temporary structures.** A temporary classroom, office, or similar portable structure, including a manufactured or mobile unit, may be approved, for a maximum time period of 12 months, as an accessory use or as the first phase of a development project, in the commercial and industrial zones.
- H. Temporary work trailers.**
1. A trailer or mobile home may be used as a temporary work site for employees of a business:
    - a. During construction or remodeling of a permanent commercial, industrial, or mixed-use structure, when a valid Building Permit is in force; or
    - b. Upon demonstration by the applicant that the temporary work site is a short-term necessity, while a permanent work site is being obtained.
  2. A permit for temporary work trailer(s) may be approved for up to 12 months.
- I. Other similar temporary uses.** Similar temporary uses that, in the opinion of the Director, are compatible with the subject zone and surrounding land uses.

#### **17.640.060 – Application Filing, Processing, and Review**

- A. Filing.** An application for a Temporary Use Permit shall be filed with the Department in the following manner:
1. An application for a Temporary Use Permit shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Temporary Use Permit applications, together with the required fee in compliance with the City's Planning Fee Schedule.
  2. The application shall be filed with the Department at least 30 days before the date that the proposed temporary use is scheduled to take place.
- B. Evidence.** It is the responsibility of the applicant to establish evidence in support of the findings required by Section 17.640.080 (Findings and Decision), below.
- C. Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.

- D. Public hearing not required.** A public hearing shall not be required for the Director's decision on a Temporary Use Permit application.

#### **17.640.070 – Director's Review**

The Director may approve a Temporary Use Permit for a temporary use that would be operated in compliance with Section 17.640.090 (Conditions of Approval) below; or the Director may defer action and refer the application to the Commission for review and final decision.

#### **17.640.080 – Findings and Decision**

- A. Director's review.** The Director shall review applications and shall record the decisions in writing with the findings on which the decisions are based.
- B. Required findings.** The Director (or the Commission on a referral) may approve a Temporary Use Permit application, with or without conditions, only if it first makes all of the following findings:
1. The operation of the requested temporary use at the location proposed and within the time period specified will not jeopardize, endanger, or otherwise constitute a menace to the public convenience, health, safety, or general welfare;
  2. The proposed parcel is adequate in size and shape to accommodate the temporary use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the parcel;
  3. The proposed parcel is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the temporary use will or could reasonably be expected to generate;
  4. Adequate temporary parking to accommodate vehicular traffic to be generated by the temporary use will be available either on-site or at alternate locations acceptable to the Director; and
  5. The applicant agrees in writing to comply with any and all of the conditions imposed by the review authority in the approval of the Temporary Use Permit.

#### **17.640.090 – Conditions of Approval**

- A. May impose conditions.** In approving a Temporary Use Permit application, the Director (or the Commission on a referral) may impose conditions that are deemed reasonable and necessary to ensure that the permit would be in full compliance with the findings required by Section 17.640.080 (Findings and Decision), above.

- B. Appropriate conditions.** The conditions may address any pertinent factors affecting the operation of the temporary event, or use, and may include the following:
1. **Fixed period of time.** Unless otherwise stated in the permit, a provision for a fixed period of time not to exceed 30 days for a temporary use not occupying a structure, including promotional activities, or 12 months for all other temporary uses or structures, or for a shorter period of time as determined appropriate by the Director, unless granted an extension of time in compliance with Section 17.640.100 (Extensions for Temporary Use Permits), below;
  2. **Operating hours and days.** Regulation of operating hours and days, including limitation of the duration of the temporary use, as identified in Subsection 1., above;
  3. **Temporary pedestrian and vehicular circulation.** Provision for adequate temporary pedestrian and vehicular circulation, parking facilities (including vehicular ingress and egress), and public transportation, if applicable;
  4. **Regulation of nuisance factors.** Regulation of nuisance factors including prevention of glare or direct illumination on adjacent parcels, dirt, dust, gases, heat, noise, odors, smoke, trash, and vibration;
  5. **Regulation of temporary structures.** Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
  6. **Sanitary and medical facilities.** Provision for sanitary and medical facilities, as appropriate;
  7. **Waste collection, recycling, and/or disposal.** Provision for solid, hazardous, and toxic waste collection, recycling, and/or disposal;
  8. **Police/security and safety measures.** Provision for police/security and safety measures, as appropriate;
  9. **Signs.** Regulation of signs;
  10. **Performance bond or other security.** Submission of a performance bond or other security measures, in compliance with Section 17.660.070 (Performance Guarantee) and satisfactory to the Director, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition, or better, as determined by the Director;

11. **Compliance with applicable provisions.** A requirement that the approval of the requested Temporary Use Permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful approval of any/all required permits from any other department or governing agency; and
12. **Other conditions.** Other conditions that would ensure the operation of the proposed temporary use in an orderly and efficient manner, and in full compliance with the purpose of this Chapter.

#### **17.640.100 – Extensions for Temporary Use Permits**

Time extensions for Temporary Use Permits may be granted in compliance with Section 17.660.090 (Time Extensions).

#### **17.640.110 – Condition of Site Following Temporary Use**

Each site occupied by a temporary use shall be cleaned of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall continue to be used in compliance with this Development Code.

#### **17.640.120 – Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Temporary Use Permit application.

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## Chapter 17.645 – Transfer of Development Rights

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### Sections:

- 17.645.010 – Purpose
- 17.645.020 – Applicability
- 17.645.030 – General Requirements
- 17.645.040 – Application Filing, Processing, and Review
- 17.645.050 – Findings and Decision
- 17.645.060 – Conditions of Approval
- 17.645.070 – Post-Decision Procedures

### 17.645.010 – Purpose

This Chapter provides requirements for the transfer of development rights from one site to one or more other sites located within or proposed for annexation to the City.

### 17.645.020 – Applicability

#### A. Availability.

1. An existing agricultural use may be relocated to another site in the RE, RL and RR zones in compliance with the provisions of this Chapter and the following:
  - a. Relocated uses and structure shall cease operations prior to the initiation of use or activity on the relocated site;
  - b. Development on a transfer site shall comply with the development standards of the applicable zone; and
  - c. Opportunity to initiate this provision shall cease on December 8, 2017.
2. All other types of development.

#### B. Conditional Use Permit required.

1. A Conditional Use Permit shall be required to authorize the transfer of development rights in compliance with Chapter 17.605 (Conditional Use Permits and Minor Use Permits) and this Chapter.
2. The Council shall be the applicable review authority for Conditional Use Permits proposing the transfer of development rights in compliance with this Chapter.

### 17.645.030 — General Requirements

- A. **Total gross floor area.** The combined total gross floor area allowed on all of the sites involved in the transfer of development rights shall not exceed the combined total gross floor area allowed for the sites by the zone in which they are located.
- B. **Floor area for a donor site.** The maximum gross floor area allowed on a donor site shall be reduced by the amount of the transfer of development intensity to the receiver site.
- C. **Nonconforming developments.** Where a transfer of development intensity involves a parcel that does not conform to current development intensity limits, the nonconforming condition shall be eliminated and the total gross floor area following the transfer of development rights shall be as provided in Subsection A., above.
- D. **Traffic study.** Depending upon the distance between sites involved in a transfer of development rights, a traffic study may be required by the Director in order to ensure against a net negative effect on the circulation system.

### 17.645.040 — Application Filing, Processing, and Review

An application for a Conditional Use Permit shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Conditional Use Permit and Minor Use Permit applications, together with the required fee in compliance with the City's Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.645.050 (Findings and Decision), below.

### 17.645.050 — Findings and Decision

- A. **Commission's action.** Following a public hearing, the Commission shall forward a written recommendation, and findings and supporting documentation for the recommendation, to the Council whether to approve, conditionally approve, or disapprove the Conditional Use Permit application, based on the findings identified in Subparagraph C. (Required findings), below.
- B. **Council's action.** Upon receipt of the Commission's recommendation, the Council shall conduct a public hearing and either approve, conditionally approve, or disapprove the Conditional Use Permit application, based on the findings identified in Subparagraph C. (Required findings), below.
- C. **Required findings.** When approving a Conditional Use Permit, the review authority shall first make all of the following findings in addition to those required under Chapter 17.605 (Conditional Use Permits and Minor Use Permits):

1. The reduced density/intensity on the donor site provides benefits to the City, for example;
  - a. The provision of extraordinary open space, public visual corridor(s), parking or other amenities;
  - b. Preservation of an historic building or property or natural landscapes;
  - c. Improvement of the area's scale and development character;
  - d. Consolidation of parcels to achieve a better architectural design than could be achieved without parcel consolidation; and/or
  - e. Reduction of local vehicle trips and traffic congestion.
2. The transfer of development rights will result in a more efficient use of land for both sites;
3. The transfer of development rights will result in a net benefit to the aesthetics of both areas;
4. The increased development on the receiver site does not create abrupt changes in scale between the proposed development and development in the surrounding area;
5. The proposed uses on both sites are compatible with the surrounding area;
6. The increment of development transferred to the receiver site complements and is in scale with surrounding development and does not materially degrade the local circulation system or environmental quality;
7. The increased development on the receiver site will not result in significant impairment of public views; and
8. The receiver site is physically suitable for the development proposed taking into consideration site characteristics, including any slopes and sensitive resources.

#### **17.645.060 – Conditions of Approval**

- A. Council may impose conditions.** In approving a Conditional Use Permit, the Council may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Section 17.645.050 (Findings and Decision), above.
- B. Legally binding agreement required.** Additionally, a covenant or other suitable, legally binding agreement subject to the approval of the City Attorney and Director shall be

recorded against the donor site ensuring that all of the above requirements will be met by the current and future property owners and their successor(s)-in-interest.

#### **17.645.070 – Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the decision on a Conditional Use Permit application authorizing a transfer of development rights in compliance with this Chapter.

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## Chapter 17.650 — Variances and Minor Variances

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### Sections:

- 17.650.010 — Purpose
- 17.650.020 — Applicability
- 17.650.030 — Review Authority
- 17.650.040 — Application Filing, Processing, and Review
- 17.650.050 — Findings and Decision
- 17.650.060 — Disapproval of Minor Variance
- 17.650.070 — Precedents
- 17.650.080 — Burden of Proof
- 17.650.090 — Conditions of Approval
- 17.650.100 — Use of Property Before Final Action
- 17.650.110 — Post-Decision Procedures

### 17.650.010 — Purpose

- A. The purpose of this Chapter is to ensure that:
  - 1. Variances and Minor Variances are only approved when, because of special circumstances applicable to the property, the strict application of this Development Code denies the owner of the property privileges enjoyed by other property located nearby and in an identical zone; and
  - 2. Conditions are applied that would ensure that the Variance or Minor Variance shall not constitute an approval of special privilege(s) inconsistent with the limitations upon other property in the vicinity and zone in which the subject property is located.
- B. Does not extend to land uses.
  - 1. The power to approve Variances and Minor Variances does not extend to land uses.
  - 2. Flexibility in allowable land uses is provided in Chapter 17.605 (Conditional Use Permits and Minor Use Permits).

### 17.650.020 — Applicability

- A. **Minor Variances.** The Director may approve a Minor Variance for only those items specified in Table 6-3 (Types of Minor Variances Allowed), below, and only after first making the findings specified in Section 17.650.050 (Findings and Decision), below.

**Table 6-3  
Types of Minor Variances Allowed**

| Types of Minor Variances Allowed |   | Maximum Variance |
|----------------------------------|---|------------------|
| 1.                               | <b>Allowable height of a fence, hedge, or wall.</b> An increase of the allowed maximum height of a fence, hedge, or wall located within a side or rear yard.                                  | Up to eight feet |
| 2.                               | <b>Distances between structures.</b> A decrease of the minimum required distances between detached accessory structures and main structures on the same site.                                 | 15 percent       |
| 3.                               | <b>Floor area ratio (FAR).</b> An increase in the allowable floor area ratio.   | 10 percent       |
| 4.                               | <b>Impervious surface coverage.</b> An increase of the maximum allowable impervious surface coverage.   | 10 percent       |
| 5.                               | <b>Parcel dimensions (e.g., area, depth, or width).</b> A decrease in the minimum required parcel area, parcel depth, or parcel width.  | 15 percent       |
| 6.                               | <b>Parking and loading requirements.</b> Reduction in the number of require off-street parking and loading spaces and/or of off-street parking space design, layout, and landscape standards. | 10 percent       |
| 7.                               | <b>Projections.</b> An increase in the allowed projection of chimneys, eaves, fireplaces, landings, overhangs, stairways, and steps into any required front, side, or rear setbacks.          | 10 percent       |
| 8.                               | <b>Reduction of landscape standards.</b> Reduction of required on-site landscaping standards.   | 15 percent       |
| 9.                               | <b>Setbacks.</b> A decrease of the maximum required setback areas (e.g., front, rear, and side) for structures.   | 15 percent       |
| 10.                              | <b>Signs.</b> Sign regulations (other than prohibited signs).   | 15 percent       |
| 11.                              | <b>Structure coverage.</b> An increase of the maximum allowable structure coverage.   | 10 percent       |
| 12.                              | <b>Structure heights.</b> An increase in the maximum allowed height of structures.  | 10 percent       |

- B. Variances.** The Commission may approve a Variance that allows for an adjustment from any of the development standards required by this Development Code.

### 17.650.030 – Review Authority

- A. Responsibility.** The applicable review authority shall approve or disapprove Variance and Minor Variance applications, and impose conditions deemed reasonable and necessary to preserve the public convenience, health, interest, safety, or welfare, and necessary to make the findings required by Section 17.650.050 (Findings and Decision) below.

- B. Applicable authority.** Variances and Minor Variances may be approved in compliance with the following:
- 1. Director.** The Director may approve Minor Variances, or may defer action and refer the application to the Commission for review and final decision, in compliance with this Chapter and State law; and
  - 2. Commission.** The Commission may approve Variances in compliance with this Chapter and State law.

#### **17.650.040 – Application Filing, Processing, and Review**

- A. Filing.** An application for a Variance or Minor Variance shall be filed and processed in compliance with Chapter 17.600 (Permit Application Filing and Processing). The application shall include the information and materials specified in the Department handout for Variance or Minor Variance applications, together with the required fee in compliance with the City’s Planning Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 17.650.050 (Findings and Decision), below.
- B. Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.
- C. Notice and hearings.**
- 1. Variances – public hearing required.** A public hearing shall be required for the Commission’s decision on a Variance application.
    - a. Scheduling of hearing.** The public hearing shall be scheduled once the Director has determined the application complete.
    - b. Giving of notice.** Notice of the public hearing shall be given and the hearing shall be conducted in compliance with Chapter 17.710 (Public Hearings).
  - 2. Minor Variances.** A public hearing shall not be required for the Director’s decision on a Minor Variance application in compliance with Government Code Section 65901; however, the Director shall have the discretion to provide notice. Letters from adjacent property owners may be submitted to support the request.

#### **17.650.050 – Findings and Decision**

- A. Authorized actions.** The Commission (Variance) or the Director (Minor Variance) shall record the decision in writing and shall recite the findings upon which the decision is

based, in compliance with Government Code Section 65906 or as that section may be amended from time to time. The Director may defer action on a Minor Variance and refer the application to the Commission for review and final decision.

**B. Required findings.** The applicable review authority may approve a Variance or Minor Variance application, with or without conditions, only if it first makes all of the following findings.

**1. General findings.**

- a. There are special circumstances applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;
- b. Strict compliance with Development Code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
- c. Approving the Variance or Minor Variance would not constitute a grant of special privileges inconsistent with the limitations on other properties in the same vicinity and zone in which the subject property is situated; and
- d. The requested Variance or Minor Variance would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

**2. Findings for off-site parking Variance.** The approval of a Variance to allow some or all of the parking spaces required for a nonresidential project to be located off-site, or to allow in-lieu fees or facilities instead of the required on-site parking spaces, shall require that the review authority first make both of the following findings in compliance with Government Code Section 65906.5, instead of those required by Subparagraph B.1. (General findings), above:

- a. The Variance will be an incentive to, and a benefit for, the nonresidential development; and
- b. The Variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.



**17.650.060 — Disapproval of Minor Variance**

The Director's decision to disapprove a Minor Variance application shall not prohibit or affect the right of the applicant to file an application for a Variance in compliance with Subsection 17.650.020.B. (Variances), above.

**17.650.070 — Precedents**

Each application shall be reviewed on an individual case-by-case basis and the approval of a prior Variance or Minor Variance is not admissible evidence for the approval of a new Variance or Minor Variance.

**17.650.080 — Burden of Proof**

The burden of proof to establish the evidence in support of the findings, required by Section 17.650.050 (Findings and Decision), above, is the responsibility of the applicant.

**17.650.090 — Conditions of Approval**

In approving a Variance or Minor Variance application, the applicable review authority may impose conditions deemed reasonable and necessary to ensure that the approval would be in compliance with the findings required by Section 17.650.050 (Findings and Decision), above.

**17.650.100 — Use of Property Before Final Action**

No permits or approvals shall be issued for any improvement involved in an application for a Variance or Minor Variance until and unless the same shall have become final, in compliance with Section 17.660.030 (Effective Dates of Permits).

**17.650.110 — Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply flowing the decision on a Variance or Minor Variance application.

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## Chapter 17.655 – Zoning Clearances

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### Sections:

- 17.655.010 – Purpose
- 17.655.020 – Applicability
- 17.655.030 – Review Procedure
- 17.655.040 – Post-Decision Procedures

### 17.655.010 – Purpose

Zoning Clearance is an administrative procedure used by the City to verify that a proposed land use, improvement, or structure complies with the list of activities allowed in the applicable zone and the development standards applicable to the use, improvement, or structure.

### 17.655.020 – Applicability

Where Article 2 (Zones, Allowable Land Uses, and Zone Specific Standards) or another provision of this Development Code requires a Zoning Clearance as a prerequisite to establishing a land use, improvement, or structure, a Zoning Clearance shall be required in conjunction with Landscape and Irrigation Approval (see Chapter 17.325 – Water Efficient Landscape and Irrigation) at the time of the Director's review of any of the following:

- A. **Initiation of a land use.** A Zoning Clearance shall be obtained before the initiation or commencement of any use of land not requiring the construction of a structure or improvement.
- B. **Change of use.**
  - 1. Whenever a use is proposed to be changed from a use for which a Zoning Clearance has been issued, whether or not the new use involves a new lessee, operator, or owner, a new Zoning Clearance shall be obtained.
  - 2. A Zoning Clearance shall also be required even if the lessee, operator, or owner of the previous use did not file for or receive a Zoning Clearance.
- C. **Business License.** A Zoning Clearance shall be obtained before the City issues a new or modified Business License.
- D. **Building Permit, Grading Permit, or other construction permit.** A Zoning Clearance shall be obtained before the City issues a new or modified Building Permit, Grading Permit, or other construction-related permit required for the alteration, construction, modification, moving, or reconstruction of any structure.

- E. New paving or impervious surfaces not requiring a construction permit.** A Zoning Clearance shall be obtained before installing asphalt, concrete, or other paving flatwork on the ground that would affect the impervious surface coverage or structure coverage standards specified in Tables 2-3 and 2-4 in Article 2 or Section 17.305.090 (Paving within Residential Front Setback Areas). (ord. 16-01, adopted April 5, 2016)

#### **17.655.030 – Review Procedure**

- A. Director’s responsibility.** The Director shall issue the Zoning Clearance after first determining that the request complies with all Development Code provisions applicable to the proposed use or structure.
- B. Form of approval.**
1. An approval may be in the form of a stamp, signature, or other official notation on approved plans, a letter to the applicant, or other certification, at the discretion of the Director.
  2. The approval shall reference this Chapter.

#### **17.655.040 – Post-Decision Procedures**

The procedures and requirements in Chapter 17.660 (Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Administration) shall apply following the Director’s action on a Zoning Clearance.

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## Chapter 17.660 – Implementation, Time Limits, and Extensions

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### Sections:

- 17.660.010 – Purpose
- 17.660.020 – Conformance to Approved Plans
- 17.660.030 – Effective Dates of Permits
- 17.660.040 – Acknowledgement and Acceptance of Conditions
- 17.660.050 – Applications Deemed Approved
- 17.660.060 – Permits to Run with the Land
- 17.660.070 – Performance Guarantees
- 17.660.080 – Expiration
- 17.660.090 – Time Extensions
- 17.660.100 – Changes to an Approved Project
- 17.660.110 – Resubmittals
- 17.660.120 – Covenants of Easements

### 17.660.010 – Purpose

This Chapter provides requirements for the implementation or "exercising" of the permits or approvals required by this Development Code, including time limits and procedures for approving extensions of time.

### 17.660.020 – Conformance to Approved Plans

- A. **Compliance.** All work performed under a Building Permit, Encroachment Permit, Grading Permit, or Zoning Clearance for which project drawings and plans have received approval by the Director, Department staff, Development Review Committee, Commission, or Council shall be in compliance with the approved drawings and plans, and any conditions of approval imposed by the review authority.
- B. **Changes.** Changes to an approved project shall be submitted and processed in compliance with Section 17.660.100 (Changes to an Approved Project), below.

### 17.660.030 – Effective Dates of Permits

- A. **Approvals, Permits, and Variances.**
  - 1. A Zoning Clearance and Commercial Marijuana Cultivation Planning Permit shall become effective immediately following its issuance.
  - 2. A Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Reasonable Accommodation, Site Plan

and Design Review, Temporary Use Permit, or Variance shall become effective 15 days following the actual date the decision was rendered by the applicable review authority.

**B. Plans/Amendments.**

1. Council actions to adopt or amend a development agreement, this Development Code, a specific plan, or the Zoning Map shall become effective on the 31<sup>st</sup> day following the date the ordinance is actually adopted by the Council. For example, an ordinance adopted on October 1<sup>st</sup> will actually be effective on November 1<sup>st</sup>, unless otherwise provided in the adopting ordinance.
2. Council actions to adopt or amend the General Plan shall become effective on the actual date the decision is rendered by the Council, unless otherwise provided in the adopting resolution.

**C. Condition compliance review required.** The applicant shall file a request for condition compliance review with the Department before issuance of any required Grading or Building Permits.

**D. Issued on the effective date.** Permits, certificates, and/or other approvals shall not be issued until the effective date, and then only if no appeal of the review authority's decision has been filed, in compliance with Chapter 17.715 (Appeals).

**17.660.040 — Acknowledgement and Acceptance of Conditions**

**A. Full understanding and acceptance.** The applicant, upon receipt of the approved copy of the permit with attached conditions, shall execute an Acknowledgment and Acceptance of Conditions agreement with the City, certifying full understanding and acceptance of the final conditions of approval.

**B. Signed and dated.** The applicant shall return the Acknowledgment and Acceptance of Conditions agreement to the Department, properly signed and dated, within 30 days following the date of the Acknowledgement.

**C. Appeal.** If the applicant wishes to appeal any or all of the final conditions of approval, the applicant shall file an appeal within 15 days following the actual date the decision was rendered by the applicable review authority in compliance with Chapter 17.715 (Appeals).

**17.660.050 — Applications Deemed Approved**

**A. Applicable provisions.** Any application deemed approved by operation of law in compliance with Government Code Section 65956(b) shall be subject to all applicable provisions of this Development Code, which shall be fully satisfied by the applicant

before a Building Permit is issued or a land use not requiring a Building Permit is exercised or established.

- B. Public hearing.** The application shall be deemed approved only if the application received proper notice in compliance with Chapter 17.710 (Public Hearings) and Government Code Section 65956(b).

#### **17.660.060 — Permits to Run with the Land**

- A. Run with the land.** A Conditional Use Permit, development agreement, Minor Use Permit, Minor Variance, Planned Development Permit, Site Plan and Design Review, Temporary Use Permit, transfer of development rights, or Variance approval that is approved in compliance with Chapter 17.600 (Permit Application Filing and Processing) shall be deemed to run with the land through any change of ownership of the subject site, from the effective date of the permit, except in any case where a permit expires and becomes void in compliance with Section 17.660.080 (Expiration), below.
- B. Conditions shall apply.** All applicable conditions of approval shall continue to apply after a change in property ownership.

#### **17.660.070 — Performance Guarantees**

- A. Deposit of security.**
1. As a condition of approval of a Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Site Plan and Design Review, Temporary Use Permit, or Variance, upon a finding that the City's health, safety, and welfare warrant, the review authority may require the execution of a covenant to deposit security and the deposit of security in a reasonable amount and form approved by the City Manager or the City Manager's designee to ensure the faithful performance of one or more of the conditions of approval of the permit or Variance in the event that the obligor fails to perform.
  2. The applicant/owner may offer to provide adequate security for the faithful performance of a condition(s) of approval imposed as part of the approval process if the Director determines that the condition(s) may be implemented at a later specified date (e.g., inability to install required landscaping due to weather conditions).
  3. The security shall, as required by law or otherwise at the option of the City Manager or the City Manager's designee, be in the form of cash deposit or a certified or cashier's check.

4. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director in conjunction with the City Engineer.
  5. Security required in compliance with this Section shall be payable to the City.
- B. Release of security.** Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.
- C. Failure to comply.**
1. Upon failure to perform any secured condition, the City may perform the condition, or cause it to be done, and may collect from the obligor all costs incurred, including administrative, engineering, legal, and inspection costs.
  2. Any unused portion of the security shall be refunded to the obligor after deduction of the cost of the work.
  3. Any cost in excess of the security shall be an obligation of the applicant/owner and a lien on the property benefitted by the provisions of this Section.
  4. To the extent that the Director can demonstrate that the obligor willfully breached an obligation in a manner that the obligor knew, or should have known, would create irreparable harm to the City, the entire amount of the security may be withheld.
  5. The Director's determination may be appealed to the Council by the obligor by filing an appeal with the City Clerk within 15 days after the decision to withhold the security, in compliance with Chapter 17.715 (Appeals).

#### **17.660.080 — Expiration**

- A. Expiration of permit or approval.** Unless otherwise specified in the permit or approval, any discretionary permit issued by the City, including, without limitation, any Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Site Plan and Design Review, Temporary Use Permit, or Variance, shall comply with the following expiration provisions:

1. **Exercised.**
  - a. To ensure continued compliance with the provisions of this Development Code, the permit or approval shall be exercised by the applicant within 24 months following the date of final approval, unless otherwise specified in the permit or approval, or an extension is approved by the applicable review authority, in compliance with Section 17.660.090 (Time



Extensions). In the event the permit or approval has not been fully exercised in that time period, the permit or approval shall be subject to review by the review authority who originally granted the permit or approval to determine whether a good faith intent to exercise the permit or approval has been demonstrated.

- b. Additionally, if after construction has started, commencement work is discontinued for a period of 24 months, or the proposed use is discontinued for a period of 24 months, the permit or approval shall be subject to review by the review authority who originally granted the permit or approval to determine whether a good faith intent to commence the contemplated use or development granted by the permit or approval has been demonstrated.

## 2. Phasing.

- a. Where the permit or approval provides for development in two or more phases or units in sequence, the permit or approval shall not be approved until the review authority has approved the final phasing plan for the entire project site. The project applicant shall not be allowed to develop one phase in compliance with the preexisting base zone and then develop the remaining phases in compliance with this Chapter, without prior review authority approval.
- b. Pre-approved phases.
  - (1) If a project is to be built in pre-approved phases, each subsequent phase shall have 24 months following the previous phase's date of construction commencement to the next phase's date of construction commencement to have occurred, unless otherwise specified in the permit or approval, or the permit or approval shall be subject to review by the review authority who originally granted the permit or approval to determine whether a good faith intent to commence the contemplated use or development granted by the permit or approval exists.
  - (2) If the application for the permit or approval also involves the approval of a tentative map, the phasing shall be consistent with the tentative map and the permit or approval shall be exercised before the expiration of the associated tentative map.

- 3. **Definition of "exercise" and evidence of "Good Faith".** The following shall be a non-exclusive list of factors that the review authority may consider when determining whether or not a good faith intent to exercise the permit or approval has been demonstrated:

- a. Whether the applicant has obtained a Building Permit.
- b. Whether the applicant has obtained a Grading Permit.
- c. Whether the applicant has diligently continued the approved grading and construction activities in a timely manner in compliance with the subject Building Permit.
- d. Whether the applicant has actually implemented the allowed land use, in its entirety, on the subject property in compliance with the conditions of approval.

**4. Procedure for determination.**

- a. The determination of whether or not a good faith intent to exercise the permit or approval has been demonstrated, as specified in Subparagraph 3., above, shall be made by the original review authority following a public hearing noticed and conducted in compliance with Chapter 17.710 (Public Hearings).
- b. At the public hearing, the original review authority shall investigate the facts bearing on each case and render its decision in writing within 40 days after the date of the first hearing, unless continued for further investigation, study, or hearing.
- c. The original review authority shall cause to be served on the applicant, and if different, the property owner, its written decision, in compliance with Section 17.710.060 (Decision and Notice).
- d. The decision of the original review authority shall be final following a 10 day appeal period, unless appealed to the applicable review authority in compliance with Chapter 17.715 (Appeals).

- 5. Burden of Proof.** It shall be the applicant's burden to prove to the original review authority, by a preponderance of the evidence, that, no later than the date that the City delivered the public notice required by Chapter 17.710 (Public Hearings), a good faith intent to exercise the permit or approval has been demonstrated.

- B. Effect of expiration.** If the review authority who originally granted the permit or approval determines that a good faith intent to exercise the permit or approval has not been demonstrated, the review authority shall determine that the permit or approval has expired. Thereafter, the following provisions shall control:

1. No further action is required by the City;

2. No further reliance may be placed on the previously approved permit or approval;
3. The applicant shall have no rights previously granted under the permit or approval;
4. The applicant shall be required to file a new application(s) and obtain all required approvals before any further construction can commence or any use may be implemented; and
5. Any security provided by the applicant under the previously approved permit or approval may be utilized by the City to provide suitable protection from any harm that may result from the terminated development or use.

### **17.660.090 – Time Extensions**

Requests for a time extension for a permit or approval shall be filed and processed in the following manner:

- A. Before expiration.** The applicant's written request for an extension of time shall be on file with the Department before expiration of the permit or approval, together with the filing fee required by the City's Planning Fee Schedule.
- B. Public hearing not required.**
  1. A public hearing shall not be required for the applicable review authority's decision on an extension of time.
  2. However, the applicable review authority may conduct a public hearing in compliance with Chapter 17.710 (Public Hearings) if deemed appropriate by the review authority.
- C. Suspension of expiration.**
  1. The filing of a written extension request shall suspend the actual expiration of the permit or approval until the extension request has been acted upon by the Director, Commission, and/or Council.
  2. Building or Grading Permits shall not be issued in compliance with the permit or approval during the period of the suspension.
- D. Director's action on extension.**
  1. Upon good cause shown, an extension may be approved, approved with modifications, or disapproved by the Director, subject to the findings identified in Subsection F. (Required findings), below.

2. The Director may defer action and refer the request to the Commission for consideration and final action.
3. The Director's decision may be appealed to the Commission, in compliance with Chapter 17.715 (Appeals).
4. The permit or approval may be extended for a maximum of 12-months beyond the expiration date of the original approval, unless otherwise allowed by State law.

**E. Commission's action on extension.**

1. Upon good cause shown, an extension may be approved, approved with modifications, or disapproved by the Commission, subject to the findings identified in Subsection F. (Required findings), below.
2. The Commission's decision may be appealed to the Council, in compliance with Chapter 17.715 (Appeals).
3. The permit or approval may be extended for one additional 12-month period, unless otherwise allowed by State law, following the expiration of the original 24-month period of approval, for a grand total of 48 months following the original date of approval (original 24 months, plus 12 months by the Director, and 12 more months by the Commission).

**F. Required findings.** An extension of the permit or approval may be granted only if the applicable review authority first makes all of the following findings:

1. There have been no changes in circumstances or law that would preclude the review authority from making the findings upon which the original approval was based; and
2. Appropriate evidence has been provided by the applicant to document that:
  - a. A good faith intent to exercise the permit or approval has been demonstrated; and
  - b. The extension is required due to an unusual hardship that was not the result of personal action(s) undertaken by the applicant.

**17.660.100 – Changes to an Approved Project**

**A. Application.**

1. A development or new land use allowed through a Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Minor Variance, Planned

Development Permit, Site Plan and Design Review, Temporary Use Permit, or Variance shall be in substantial compliance with the approved drawings and plans, and any conditions of approval imposed by the review authority, except where changes to the project are approved in compliance with this Section.

2. An applicant shall request desired changes in writing to the Director, and shall also furnish appropriate supporting materials and an explanation of the reasons for the request.
  3. Requested changes may involve changes to the project (e.g., hours of operation, expansion of a use, etc.) as originally proposed by the applicant or approved by the review authority.
  4. Requested changes may also involve changes to one or more conditions imposed by the review authority, but only when actual changes to the project would justify a change to one or more conditions of approval (e.g., reduction in the area of a use would result in a reduction in anticipated traffic, thereby possibly reducing the traffic related conditions).
  5. Changes shall not be implemented until first approved by the applicable review authority in compliance with this Section, and may be requested either before or after construction or establishment and operation of the approved use.
- B. Notice and hearing.** If the project application originally required a noticed public hearing, the review authority shall hold a public hearing, except for the minor changes outlined below (See Subsection C.), and shall give notice, in compliance with Chapter 17.710 (Public Hearings).
- C. Minor changes by Director.** The Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use only if the changes:
1. Are consistent with all applicable provisions of this Development Code and are in substantial compliance with the original approval; and
  2. Do not involve a feature of the project that was:
    - a. A basis for findings in a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report for the project, or determining that the project was exempt from CEQA review;
    - b. A basis for conditions of approval for the project; or
    - c. A specific consideration by the review authority (e.g., the Director, Commission, or Council) in granting the permit or approval.

- D. Major changes.** Major changes include changes to the project involving features specifically described in Subparagraph C. 2., above, and shall only be approved by the review authority (e.g., original, appeal, or call for review authority that rendered the final City action on the application) through a new application, processed in compliance with this Development Code.

#### 17.660.110 — Resubmittals

- A. Resubmittal after disapproval with prejudice.** The review authority may disapprove a discretionary permit or amendment, on the ground that a similar application for the same site has been disapproved in the past two years, or other time period as the previous review authority may have specifically stated in its disapproval (also known as disapproval with prejudice).
- B. Exception to Subsection A., above.** The review authority may allow exception to Subsection A., above, based on one or more of the following findings:
1. New evidence material to a revised decision will be presented that was unavailable or unknown to the applicant at the previous hearing(s) and that could not have been discovered in the exercise of reasonable diligence by the applicant.
  2. There has been a substantial and permanent change of circumstances since the previous hearing(s), which materially affects the applicant's real property.
  3. A mistake was made at the previous hearing(s) that was a material factor in the disapproval(s) of the previous application.
- C. Resubmittal after disapproval without prejudice.** There shall be no limitation on subsequent applications for a site where a project was disapproved without prejudice.

#### 17.660.120 — Covenants of Easements

- A. Applicability.** When necessary to achieve the land use goals of the City, the City may require a property owner holding property in common ownership to execute and record a Covenant of Easement in favor of the City, in compliance with Government Code Sections 65870 et seq.
1. **Required provisions.** A Covenant of Easement may be required to provide for emergency access, ingress and egress, landscaping, light and air access, open space, parking, reciprocal access, or for solar access.
  2. **Condition of approval.** The Covenant of Easement may be imposed as a condition of approval by the applicable review authority.

- B. Definitions.** For purposes of this Section, the following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
1. **Easement.** An easement is usually for the benefit of one or more individuals, and it is actually an interest in land that belongs to someone else and creates an encumbrance on that land. It is created by grant of easement and accompanied by a legal description and plat of the easement.
  2. **Irrevocable offer of dedication.** This is an actual offer of dedication for future right-of-way which cannot be revoked by the grantor. The offer is recorded, but does not go into effect until the Council authorizes and accepts the right-of-way. The exhibits used are the same as for any other dedication, a legal description and a plat showing its location.
  3. **Partial Reconveyance.** If a landowner has a loan against the subject property, there is a first deed of trust on the property. The City requires that all property purchased from a property owner be free and clear of all encumbrances. This requires a release from the lender for that portion of the property the City is acquiring. This is called a Partial Reconveyance.
  4. **Reciprocal Access Easement.** This is an agreement between parties owning adjacent properties. This allows all owners of property that have entered into this agreement the right to cross over the others property. This instrument is used for ingress and egress, parking, sanitary sewer, water and storm drainage across, over, or under each property for the benefit of each party.
  5. **Right-of-entry.** Gives the City the right to enter across, over, under, or upon the grantor's property and is usually used to allow construction to proceed before right-of-way being acquired.
- C. Form of covenant.** The form of the Covenant shall be approved by the City Attorney, and the Covenant of Easement shall:
1. **Describe property.** Describe the real property subject to (i.e., burdened by) the easement;
  2. **Describe property to be benefited.** Describe the real property to be benefited by the easement;
  3. **Planning permit.** Identify the City approval or planning permit approved that relied on or required the Covenant; and
  4. **Purpose of easement.** Identify the purpose(s) of the easement.

- D. Recordation.** The Covenant of Easement shall be recorded in the County Recorder's Office.
- E. Effect of covenant.** From and after the time of its recordation, the Covenant of Easement shall:
- 1. Act as an easement.** Act as an easement in compliance with Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the Civil Code, except that it shall not merge into any other interest in the real property. Civil Code Section 1104 shall be applicable to the conveyance of the affected real property; and
  - 2. Impart notice.** Impart notice to all persons to the extent afforded by the recording laws of the State. Upon recordation, the burdens of the Covenant shall be binding on, and the Covenant shall benefit, all successors-in-interest to the real property.
- F. Enforceability of covenant.** The Covenant of Easement shall be enforceable by the successors-in-interest to the real property burdened or benefited by the Covenant and the City. Nothing in this Section creates standing in any person, other than the City, and any owner of the real property burdened or benefited by the Covenant, to enforce or to challenge the Covenant or any requested amendment or release.
- G. Release of covenant.** The release of the Covenant of Easement may be affected by the Director, or under an appeal, only following a noticed public hearing in compliance with Chapter 17.710 (Public Hearings).
- 1. May be released by City.** The Covenant of Easement may be released by the City, at the request of any person, including the City or an affected property owner, on a finding that the Covenant, on the subject property, is no longer necessary to achieve the land use goals of the City.
  - 2. Recordation of notice.** A notice of the release of the Covenant of Easement shall be recorded by the Director with the County Recorder's Office.
- H. Fees.** The City shall impose fees to recover the City's reasonable cost of processing a request for a release. Fees for the processing shall be established by the City's Planning Fee Schedule.

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