

DIVISION 6: ZONING CODE ADMINISTRATION, HEARING PROCEDURES, AND LEGISLATIVE ACTIONS

Chapter 17.XX. Administrative Responsibilities

Sections:

- 17.XX.010 – Purpose
- 17.XX.020 – ~~Community~~ Development Services Director
- 17.XX.030 – Planning Commission
- 17.XX.040 – City Council

17.XX.010 Purpose

The purpose of this Chapter is to describe and establish the authority and responsibilities of the Development Services Director, Planning Commission, and City Council in the administration of this Zoning Code.

17.XX.020 – ~~Community~~ Development Services Director

- A. **Definition of the Term "Director."** When used in this Zoning Code or any permit or condition approved in compliance with this Zoning Code, the term "Director" shall be as defined in Chapter 7 (Definitions) and shall include designee(s) of the Director.
- B. **Duties and Authority.** The Director shall:
1. Have the responsibility to perform all of the functions designated by State law, including, but not limited to the following:
 - a. Annual report related to implementation of the General Plan in compliance with Government Code Section 65400;
 - b. Review of public works projects for conformity to the General Plan in compliance with Government Code Section 65401; and
 - c. Review of acquisition of property for conformity to the General Plan in compliance with Government Code Section 65402.
 2. Perform the duties and functions prescribed in this Zoning Code, including the review of administrative development projects, in compliance with Table 5-1: Review Authority, Government Code Section 65901 et seq., and the California Environmental Quality Act (CEQA);
 3. Defer action on matters where the Director is the Review Authority and refer the matter to the Planning Commission for final determination;
 4. Perform other responsibilities assigned by the Council or City Manager;

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5. Delegate the responsibilities of the Director to ~~Community Development Services~~ Department staff under the supervision of the Director; and
6. Serve in an advisory capacity, in compliance with State law (Map Act Section 66415). The Director is charged with the responsibility of making investigations and reports on the design and improvement of proposed divisions of real property.

17.XX.030 – Planning Commission

- A. **Appointment.** The appointment, terms, removal, and the filling of vacancies of the Planning Commission shall be in compliance with Chapter 2.38 (Planning Commission) of the Municipal Code.
- B. **Duties and Authority.** The Planning Commission shall perform the duties and functions prescribed by State law and this Zoning Code, including the following:
 1. The review of development projects;
 2. The recommendation to the Council for final decisions on Development Agreements, Zoning Code Amendments, General Plan amendments, specific plans, zoning map amendments, and other applicable policy or ordinance matters related to the City's planning process;
 3. Reviewing and acting upon environmental documents prepared pursuant to the California Environmental Quality Act (CEQA) for those projects for which the Planning Commission has final authority.
 4. The investigation and preparation of an annual report to the Council regarding the status of the General Plan, and the Housing Element in particular, and progress in its implementation in compliance with State law; and
 5. The above-listed functions shall be performed in compliance with Section 17.XX.XXX (Authority for Land Use and Zoning Practices), Table 5-1 (Review Authority), and CEQA.

17.xx.040 – City Council

The City Council, referred to in this Zoning Code as the Council, in matters related to the City's planning process shall perform the duties and functions prescribed in the Municipal Code and this Zoning Code, which include the following:

- A. **Review Authority on Specific Planning Matters.** Final decisions on Development Agreements, Zoning Code amendments, General Plan amendments, specific plans, zoning map amendments, environmental documents prepared pursuant CEQA for those projects for which the Council has final authority, and other applicable policy or ordinance matters related to the City's planning process;
- B. **Appeals.** The review of appeals filed from Commission decisions; and
- C. **Compliance.** The above-listed functions shall be performed in compliance with Section 17.XX.XXX (Authority for land use and zoning practices), Table 5-1 (Review Authority), and the California Environmental Quality Act (CEQA).

Chapter 17.XXX: Permit Implementation, Time Limits, and Extensions

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Conformance with Approved Plans
- 17.xx.030 – Effective Date of Permits
- 17.xx.040 – Performance Guarantees
- 17.xx.050 – Time Limits and Extensions
- 17.xx.060 – Changes to an Approved Project
- 17.xx.070 – Resubmittals

17.xx.010 – Purpose

This Chapter establishes the requirements for implementing, or “exercising,” the permits or entitlements identified in this Zoning Code, including time limits and procedures for granting extensions of time.

17.xx.020 – Conformance with Approved Plans

- A. **Compliance.** Work performed under a building permit, for which project drawings and plans have received approval by the Director, Planning Commission, or Council, shall be in substantial compliance with the approved drawings and plans, statements (written or oral) made in support of the application, and 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.XX.070** (Changes to an Approved Project).

17.xx.030 – Effective Date of Permits

- A. **Permits and Variances.** A Conditional Use Permit, Home Occupation Permit, Site Plan Review, Temporary Use Permit, Variance, or designation of a Local Landmark shall become effective on the 21st day following the date the decision is rendered by the applicable Review Authority, unless appealed.
- B. **General Plan Amendments.** An amendment to the General Plan shall become effective immediately upon the Council's action.
- C. **Plans and Code Amendments.** Council actions to adopt or amend a Development Agreement, Specific Plan, the zoning map, or this Zoning Code shall become effective on the 30th day following the second reading by the Council.
- D. **Effective Date.** Certificates of occupancy, building permits, and other permits shall not be issued until the effective date, provided that no appeal of the Review Authority's decision has been filed in compliance with Chapter 17.XX (Appeals). In the event of an appeal, permits shall not be issued until after the Planning Commission's or Council's final determination. Permits shall not have force or effect until the applicant actually receives the permit, signed by the Director designating the conditions of its issue, and executes a written consent on a form prescribed by the Department to the conditions imposed.

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17.xx.040 – Performance Guarantee

A permit applicant may be required by conditions of approval, or by action of the Director, to provide adequate security to guarantee the faithful performance of conditions of approval imposed by the Review Authority. The Director, in consultation with the Building Official, shall be responsible for setting the amount of the required security.

17.xx.050 – Time Limits and Extensions

Commented [LJ1]: This should be a standard code section referenced with the various entitlement permits.

A. Time Limits

1. **When Permits Expire.** To ensure continued compliance with the provisions of this Title, each approved permit or entitlement shall expire 18 months from the date of approval, unless otherwise specified in the permit or entitlement, if the use or entitlement has not been exercised.

~~2. **Time Extensions Allowed.** A time extension may be granted in compliance with subsection C (Extensions of Time) and subsection D (Action on Expiration/Extension) of this section if a written request is submitted by the applicant and received by the Department at least 30 days before the expiration of the permit or entitlement.~~

~~23. **Approval Voided.** If a permit or entitlement has not been exercised within the established time frame and a time extension is not granted pursuant to the provisions of subsection C (Extensions of Time) and subsection D (Action on Expiration/Extension), shall deem the permit or entitlement shall be deemed void.~~

B. Permit Implementation—Exercising the Permit or Entitlement

1. **“Exercised” Defined.** An approved permit or entitlement shall be exercised before its expiration. The permit or entitlement shall not be deemed exercised until the applicant has completed one of the following:

Commented [TO2]: We should discuss all of these.

- a. Obtained a building permit and ~~continuous on site~~ diligently pursuing construction activity including pouring of foundations, installation of utilities, or other similar substantial improvements has commenced.
- b. Obtained a grading permit and has completed at least 50 percent of on-site grading, as determined by the Director;
- c. Obtained a permit authorizing occupancy of the improvements to the site or structure(s), or has occupied the site or structure(s) where no building permit or certificate of occupancy is required by the City;
- d. Diligently continued the approved construction/grading activities without stopping for more than 180 consecutive days; or
- e. Actually implemented the allowed land use, in its entirety, on the subject property in compliance with the conditions of approval.

Commented [LS3R2]: Let's do. We need to do this first week of the year to be ready for PC session.

2. Project Phasing

- a. **Two or More Phases.** Where the permit or entitlement provides for development in two or more phases or units in sequence, the permit or entitlement shall not be approved until the Director has approved a phasing plan for the entire project site. The applicant shall not be allowed to develop a portion of the proposed development under the original approval, and then develop the remaining portion(s) in compliance with this section, without first obtaining Director approval.

- b. **Commencement for Each Phase.** If a project is to be built in preapproved phases, each subsequent phase shall have 18 months from 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 entitlement, or the permit or entitlement shall expire and be deemed void, unless an extension has been granted pursuant to the provisions of this section.
 - c. **Tentative Map.** If the application for the permit or entitlement also involves the approval of a tentative map, the phasing shall be consistent with the tentative map, and the permit or entitlement shall be exercised before the expiration of the companion tentative map.
- C. **Extensions of Time**
- 1. **Application.** On the applicant's own motion and on the filing of a request for extension by the applicant at least 30 days before the expiration, the Director may extend the time to establish the approved permit.
 - 2. **Substantial Evidence**
 - a. The applicant shall file a written request for an extension of time with the Department, together with the filing fee established by the City's fee resolution.
 - b. The Director shall then determine whether the applicant has made a good faith effort to establish the permit.
 - c. The burden of proof shall be on the applicant to establish, with substantial evidence beyond the control of the applicant (e.g., demonstration of financial hardship, legal problems with the closure of the sale of the parcel, poor weather conditions in which to complete construction activities, etc.), why the permit should be extended.
- D. **Maximum Extension.** An applicant may request up to three extensions. -The maximum period of time that a permit or entitlement may be extended shall not exceed 12-36 months beyond the expiration of the original approval.

17.xx.060 – Changes to an Approved Project

A. Applicability

- 1. A development or land use allowed through a Conditional Use Permit, Home Occupation Permit, Site Development Permit/Plan Review, Temporary Use Permit, or Variance shall be in substantial compliance with the approved drawings and plans, statements (written or oral) made in support of the application, and 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, shall furnish appropriate supporting materials, including an explanation of the reasons for the request; and shall pay the appropriate fee required by the City's fee resolution.
- 3. Requested changes may involve changes to one or more conditions imposed by the Review Authority or actual changes to the entitlement (e.g., hours of operation, expansion of use, etc.) as originally proposed by the applicant or approved by the Review Authority.

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4. Changes shall be approved before implementation of the changes and may be requested either before or after construction or establishment and operation of the approved use.
- B. **Public Hearing – When Required.** If the matter originally required a noticed public hearing, the Review Authority shall hold a public hearing on the requested change(s) and give notice in compliance with Chapter 17.XX (Public Hearing Notice Procedures).
- C. **Minor Changes.** The Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use if the changes:
 1. Are consistent with applicable provisions of this Zoning Code and the spirit and intent of the original approval;
 2. Do not involve a feature of the project that was:
 - a. A basis for findings in a negative declaration or environmental impact report for the project,
 - b. A basis for conditions of approval for the project, or
 - c. A specific consideration by the Review Authority (e.g., the Director, Planning Commission, or Council) in the approval of the entitlement.
 3. Do not result in an expansion of the use.
- D. **Major Changes.** Major modifications are changes to the project that do not meet the definition of minor changes in subsection C, above, of this Section. Major changes shall only be approved by the Review Authority through a new entitlement application or modification and payment of applicable fees, and shall be processed in compliance with this Zoning Code.

17.xx.070 – Resubmittals

- A. **Resubmittals Prohibited within 12 Months.** For a period of 12 months following the approval, disapproval, or revocation/modification of a discretionary land use permit or entitlement, no application for the same or substantially similar discretionary permit or entitlement for the same site shall be filed. For the purposes of this Section, substantially similar shall mean a use with similar operating characteristic and/or a building or site development involving similar lot coverage, orientation to the streets and surroundings, or layout of proposed structures and other improvements.
- B. **Director's Determination.** The Director shall determine whether the new application is for a discretionary permit or entitlement that is the same or substantially similar to the previously approved or disapproved permit or entitlement. The determination of the Director may be appealed to the Planning Commission in compliance with Chapter 17.XX (Appeals).
- C. **Council Waiver.** The Council may waive the prohibition identified in subsection A of this Section upon finding that by reason of changed legal, physical, or sociological circumstances, reconsideration would be in the best interests of the City.

Commented [LJ4]: Is one year typical?

Chapter 17.XXX: Public Notices and Hearings

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Notice of Hearing
- 17.xx.030 – Scheduling of Hearing
- 17.xx.040 – Hearing Procedure
- 17.xx.050 – Effective Date of Decision

17.xx.010 – Purpose

This Chapter provides procedures for public hearings required by this Zoning Code. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted in compliance with this Chapter.

17.xx.020 – Notice of Hearing

A. **Generally.** When this Zoning Code requires a public hearing before a decision on a permit or other discretionary entitlement, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090, 65091, 65094, 65096, and 66451.3; Public Resources Code 21000 et seq.; and as required by this Chapter.

B. **Content of Notice.** Notice of a public hearing shall include all of the following information, as applicable.

1. **Hearing Information.** The date, time, and place of the hearing and the name of the Review Authority; a brief description of the City's general procedure concerning the conduct of hearings and decisions (e.g., the public's right to appear and be heard); and the phone number, street address, and email or website address of the City ~~Community~~ Development ~~Services~~ Department where an interested person could call or visit to obtain additional information.
2. **Project Information.** The ~~date of filing and the~~ name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; and a general description, in text or by diagram, of the location of the property that is the subject of the hearing.
3. **Statement on Environmental Document.** If a proposed Negative Declaration, Mitigated Negative Declaration, final Environmental Impact Report, or statement of exemption from the requirements of California Environmental Quality Act (CEQA) has been prepared for the project in compliance CEQA, the hearing notice shall include a statement that the Review Authority will also consider approval (or recommendation of adoption/approval for an application requiring Council action) of the proposed Negative Declaration, Mitigated Negative Declaration, certification of the final Environmental Impact Report, or statement of exemption.
4. **Statement Regarding Challenges of City Actions.** A notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or before, the public hearing" in compliance with Government Code Section 65009(b)(2).
5. **Statement Regarding Commission's Recommendations.** For Council items that involve a recommendation from the Planning Commission, the notice shall contain the Planning Commission's recommendations.

Commented [LJ5]: Though I believe that certain information identified here is necessary, but it seems a bit excessive to codify all of this. Is all of this necessary?

Commented [LS6R5]: State law doesn't indicate what is required in a notice, so it's helpful to include here

Commented [TO7]: This is ok to add, but why?

Commented [LS8R7]: Helpful for reference if they call with questions. Not required, so let us know what you prefer.

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C. **Method of Notice Distribution.** Notice of a public hearing required by this Chapter, and any other type of notice specified in Article 6 (Permit Processing Procedures), shall be given as follows, as required by Government Code Sections 65090 and 65091.

1. **Mailing.** Notice shall be mailed or delivered not less than 10 calendar days before the scheduled hearing to the following:

a. **Project Site Owners, Agent(s), and Applicant.** The owners of the property being considered in the application, the owners' agent(s), and the applicant, ~~in addition to the owner(s) of any mineral rights for maps in compliance with Government Code Section 65091(a)(2);~~

b. **Local Agencies.** Each local agency expected to provide roads, schools, sewage, streets, water, or other essential facilities or services to the property which is the subject of the application, whose ability to provide those facilities and services may be significantly affected;

~~c.~~ **Affected Owners.** All owners of real property as shown on the latest assessment rolls of the City or of the County, located within a radius of 500 feet of the exterior boundaries of the parcel that is the subject of the hearing; and any other person whose property might, in the judgment of the Director, be affected by the proposed project; the 500-foot radius shall be measured from the exterior boundaries of the subject parcel to the exterior boundaries of the neighboring parcels, without reference to structures existing on any of the parcels; and

~~d.~~ **Affected Occupants.** ~~All occupants/tenants of commercial and industrial spaces at addresses located within a radius of 500 feet of the exterior boundaries of the parcel that is the subject of the hearing; and~~

d. **Persons Requesting Notice.** Any person who has filed a written request for notice with the Director or City Clerk.

2. **Alternative to Mailing.** If the number of property owners to whom notice would be mailed in compliance with subparagraph C. 1., above is more than 1,000, the Director may choose to provide the alternative notice allowed by Government Code Section 65091(a)(3).

3. **Additional Notice.** In addition to the types of notice required above, the Director may require any additional notice with content or using a distribution method (e.g., posting on the City's web site) as the Director determines is necessary or desirable, including posting a notice on the property.

4. **Newspaper Notice.** Notices of public hearings shall also be given by publication in a newspaper of general circulation in the City at least 10 calendar days prior to the hearing.

D. **Affidavit of Method of Notice.** Upon completion of publication or other notice required by this Section, the secretary of the Planning Commission, if the hearing is held by the Commission, or the City Clerk, if the hearing is held by the Council, shall cause an affidavit of the mailing or publication to be filed in the permanent records of the particular proceedings to which the notices pertain.

E. **Failure to Receive Notice.** Failure to receive the mailed notice or failure to post notice shall not invalidate any proceedings.

Commented [LJ9]: We should only represent what we are required to do here. Concerned with codifying and subsequently being obligated to provide notice beyond what were obligated to do.

Commented [LS10R9]: We simplified to cover only the bare minimum required by law.

Commented [LJ11]: Since we do the mailing, how do we produce an affidavit of mailing? Is this an internal document that we create? I like the idea but am curious how to establish for our records.

Commented [TO12]: We file the newspaper clipping, or proof of publishing from newspaper

17.XX.030 – Scheduling of Hearing

After the completion of any environmental document required by CEQA, ~~and a Community Development Services Department staff report~~, a matter requiring a public hearing shall be scheduled on the next available agenda (Planning Commission or Council, as applicable) reserved for public hearings, but no sooner than any minimum time period established by State law.

17.XX.040 – Hearing Procedure

- A. **Time and Place of Hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. **Continued Hearing.** Any hearing may be continued from time to time without further notice, provided that the chair of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- C. **Deferral of Final Decision.**
 - 1. The Review Authority may announce a tentative decision and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.
 - 2. The date of the final action shall be as described in the motion, ordinance, or resolution that incorporates the findings and/or conditions.
- D. **Summary Information.** A summary of all pertinent testimony offered at a public hearing, together with the ~~information on names and addresses~~ of all persons testifying, shall be recorded and made a part of the permanent files of the case.
- E. **Formal Rules of Evidence or Procedure Not Applicable.** Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding subject to these Zoning Regulations, except as otherwise required by the City Charter or the Municipal Code, in compliance with Government Code Section 65010.

Commented [TO13]: We don't always have these addresses.

ARTICLE 5: LAND USE AND DEVELOPMENT REVIEW PROCEDURES

Chapter 17.XX: Amendments

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Authority to Initiate an Amendment
- 17.xx.030 – Application and Hearing Notice
- 17.xx.040 – Planning Commission Proceedings
- 17.xx.050 – Council Proceedings
- 17.xx.060 – Findings and Decision

17.xx.010 – Purpose

- A. This Chapter provides processing procedures for amendments to:
 1. **Zoning Map.** Zoning map amendment that has the effect of rezoning property from one zone to another;
 2. **Zoning Code.** Zoning Code amendment that may modify procedures, requirements, or standards applicable to the development, and/or use of property within the City; and
 3. **Specific Plans.** Specific Plan amendment that may modify procedures, requirements, or standards applicable to the development and/or use of property within the boundaries of the specific plan area.
- B. **Approval of Amendments.** The amendments may be approved by the Council whenever required by public convenience, health, interest, safety, or welfare of the City.

17.XX.020 – Authority to Initiate an Amendment

An amendment may be initiated by:

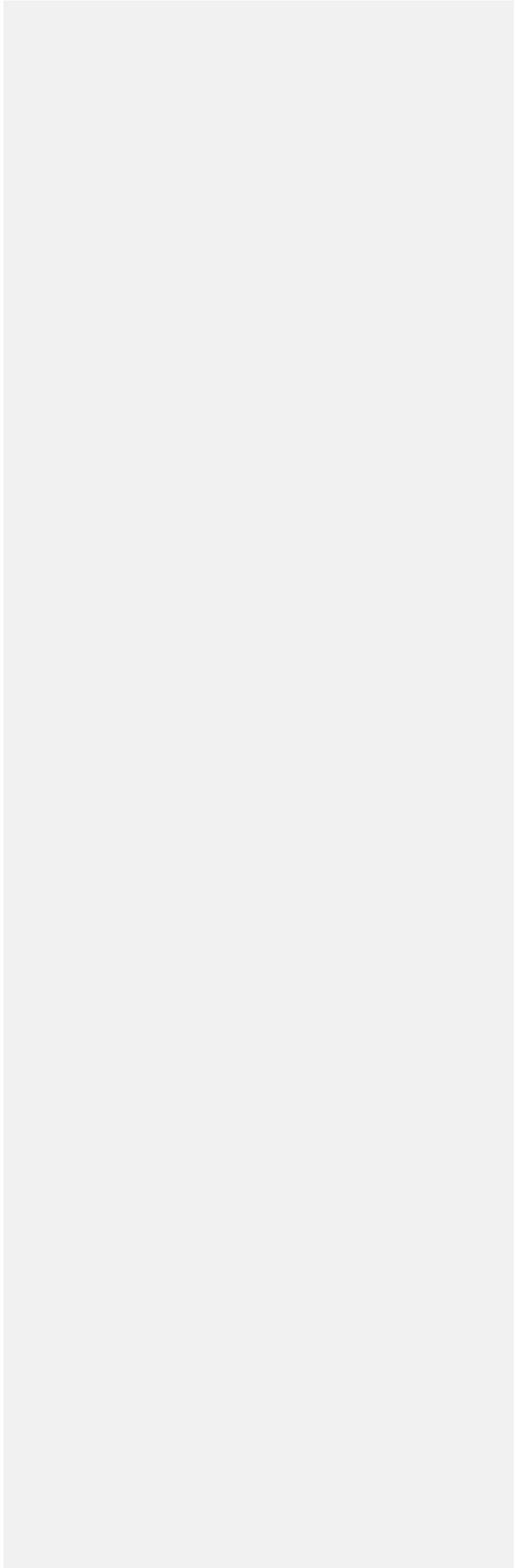
- A. ~~City Council.~~ Notification to the Development Services Director via a minute action of the Council;~~The filing with the Planning Commission of a resolution of intention of the Council;~~
- B. ~~Planning Commission.~~ Notification to the Development Services Director via a minute action of ~~Passage of a resolution of intention by~~ the Planning Commission;
- C. Development Services Director. Notification to the Council; or
- ~~DC.~~ Property Owners. Filing with the Director ~~commission of a petition~~ an application from ~~of~~ one or more record owners of land that is the subject of the proposed amendment, or their authorized agents.

Commented [LJ14]: So CC and PC must pass a resolution of intention in order to initiate an amendment? Why not simply a minute action? Also, why can't the Director initiate a zoning code text amendment?

17.XX.030 – Application and Hearing Notice

- A. **Application.** For those amendments requested by owners of land or their authorized agents, ~~if~~ the application shall be filed in compliance with Chapter 17.XX (Applications, Processing, and Fees) and shall be accompanied by the information identified in the Department handout for amendment applications and by a fee established by the City's fee resolution.

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B. Notice and Hearing.

1. **Date of Hearing.** Upon receipt of a complete application to amend the zoning map or this Zoning Code, or on initiation by the Director, Planning Commission, or Council, and following Director review, public hearings shall be set before the Planning Commission ~~and Council, as applicable, not later than 45 days after the receipt of the complete application or the Council's receipt of the Planning Commission's resolution, respectively.~~
2. **Notice.** Notice of the hearing shall be given in compliance with Section 17.xx.020 (Notice of Hearing) of this Chapter.

17.XX.040 – Planning Commission Proceedings

- A. **Planning Commission Action.** After the close of the public hearing, the Planning Commission shall forward a written recommendation to the Council whether to approve, approve in modified form, or disapprove the proposed amendment based on the findings contained in Section 17.XX.050 (Findings and Decision). The recommendations of the Planning Commission on proposed amendments shall be adopted by a majority of the total voting members of the Planning Commission.
- B. **Planning Commission Report.** The Planning Commission report of the hearing shall include a list of persons who testified at the hearing, a summary of the facts adduced at the hearing, the findings of the Planning Commission, and copies of maps or other data and documentary evidence submitted in connection with the proposed amendment. The recommendation shall include the findings of the Planning Commission constituting the basis for the recommendation ~~and shall be signed by the secretary of the Planning Commission.~~
- C. **Notice of Planning Commission's Action.** The secretary of the Planning Commission shall transmit the recommendation (together with the staff report) to the Council ~~within 90 days after the first notice of the Planning Commission hearing. However, that the period of time may be extended with the consent of the Council or the petitioner for the amendment.~~
- ~~D. **Automatic Approval of Amendment.** In the event the Planning Commission fails to report to the Council within the 90 day time period or within the agreed extension of time, the amendment shall be deemed approved by the Planning Commission.~~
- DE. **Applicant's Copy.** The applicant's copy of the recommendation shall be mailed to the address shown upon the application or provided to the applicant via electronic delivery.

Commented [LJ15]: Why are we listing out the PC and CC proceedings at great length specifically for these amendments? This appears to be a bit onerous, no?

Commented [LS16R15]: The law is pretty specific when it comes to amendments, particularly for the number of votes required. We trimmed other stuff that is in the Govt Code but doesn't occur often.

17.XX.050 – Council Proceedings

- A. **Hearing.** Following the receipt of either of the following, the City Clerk shall schedule a hearing in compliance with State law and this Zoning Code, and the Council shall conduct at least one public hearing on the amendment:
 1. Approval. A written recommendation from the Planning Commission recommending the approval of the amendment; or
 2. Disapproval. A written recommendation from the Planning Commission recommending disapproval of the amendment.
- B. **Effect of Commission's Recommendation to Disapprove Amendment.** If the matter under consideration is an amendment to the Zoning Code to change property from one zone to another and the Planning Commission has recommended against the adoption of the amendment, the Council shall not be required to take further action on

it unless otherwise provided by ordinance or unless an interested party requests a hearing before the Council by filing a written request with the City Clerk within 10 days after the Planning Commission files its recommendations with the Council.

- C. **Council's Action.** The Council shall approve, approve in modified form, or disapprove the recommendation of the Planning Commission.
- D. **Referral to Planning Commission.** If the Council proposes to adopt a substantial modification to the amendment not previously considered by the Planning Commission during its hearings, the proposed modification shall be first referred back to the Planning Commission for its recommendation, in compliance with State law, but the Planning Commission shall not be required to hold a public hearing on the referral. Failure of the Planning Commission to report within 40 days after the reference, or a longer period as may be designated by the Council, shall be deemed to be approval of the proposed modification.

17.XX.060 – Findings and Decision

- A. **Findings Required.** An amendment to the zoning map or this Zoning Code may be approved only if the following findings of fact can be made in a positive manner, as applicable to the type of amendment. It is the responsibility of the applicant to establish evidence in support of the required findings.
- B. **Mandatory Findings Required for All Amendments**
 - 1. The proposed amendment ensures and maintains internal consistency with the actions, goals, objectives, and policies of the General Plan, and would not create any inconsistencies with this Zoning Code, in the case of a Zoning Code amendment;
 - 2. The proposed amendment would not be detrimental to the public convenience, health, interest, safety, or welfare of the City; and
 - 3. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City's environmental review procedures.
- B. **Additional Finding for Zoning Map Amendments:** The site(s) is/are physically suitable (including access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zone and anticipated land use development(s).
- C. **Additional Finding for Zoning Code Amendments:** The proposed amendment is internally consistent with other applicable provisions of this Zoning Code.

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Chapter 17.XX: Appeals

Sections:

- 17.XX.010 – Standing to Appeal
- 17.XX.020 – Time to File Appeal
- 17.XX.030 – Content of Appeal Filing
- 17.XX.040 – Course of Appeals
- 17.XX.050 – Hearings and Notice

1
17.XX.010 – Standing to Appeal

Any person may appeal a decision of any official body, except that administrative decisions requiring no discretionary judgment may not be appealed.

17.XX.020 – Time to File Appeal

Appeals must be filed within ~~1020~~ calendar days of the rendering of a decision which is being appealed. If the ~~1020~~th day is a Saturday, Sunday, or holiday, the appeal period shall extend to the next business day.

17.XX.030 – Content of Appeal Filing

The appeal shall concern a specific action and shall state the grounds for appeal. Applicable fees for the appeal shall be paid as established by Council resolution.

17.XX.040 – Course of Appeals

- A. Decisions of the Director shall be appealed to the Planning Commission. Such appeals shall be filed with the Director.
- B. Decisions of the Planning Commission shall be appealed to the Council. Such appeals shall be filed with the City Clerk.
- C. The Director or City Clerk, as applicable, shall have the authority to combine multiple appeal filings for a single public hearing.

17.XX.050 – Hearings and Notice

- A. Within 30 days after the receipt of a notice of appeal and fee, or after the Planning Commission or Council has voted for a call for review, the appeal shall be transmitted to either:
 - 1. **Appeals to the Planning Commission.** The Director, who shall place the item on the commission agenda for a public hearing; or
 - 2. **Appeals to the Council.** The City Clerk, who shall place the item on the Council agenda for a public hearing.
- B. Action on appeals shall be “de novo” review and shall be considered at the same type of hearing and after the same notice that is required for the original decision.

Commented [LS17]: We overhauled this chapter to make it more current and simpler but kept time period for appeal filing. 20 days is a long time. Most cities have a 10-day appeal period.

Commented [TO18R17]: The Council decided 20 days, but I like 10 as well.

Commented [LS19R17]: We will make it 10 and see what they say.

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- C. In the event new or different evidence is presented on appeal, the Council may, but shall not be required to, return the matter to the Planning Commission for further consideration.

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Chapter 17.XX: Development Agreements

Sections:

- 17.xx.010 – Purpose and Scope
- 17.xx.020 – Authority
- 17.xx.030 – Initiation of Hearings
- 17.xx.040 – Applications – Legal Interest
- 17.xx.050 – Fees
- 17.xx.060 – Preapplication Review
- 17.xx.070 – Application – Contents
- 17.xx.080 – Public Notice
- 17.xx.090 – Failure to Receive Notice
- 17.xx.100 – Planning Commission Hearing and Recommendation
- 17.xx.110 – City Council Hearing
- 17.xx.120 – City Council Action
- 17.xx.130 – Development Agreement – Contents
- 17.xx.140 – Development Agreement – Adoption by Ordinance – Execution of Contract
- 17.xx.150 – Recordation of Executed Agreement
- 17.xx.160 – Ordinance, Regulations, and Requirements Applicable to Development
- 17.xx.170 – Subsequently Enacted State and Federal Laws
- 17.xx.180 – Enforcement – Continuing Validity
- 17.xx.190 – Amendment – Time Extension – Cancellation
- 17.xx.200 – Review for Compliance – Director’s Authority
- 17.xx.210 – Violation of Agreement – Council Review and Action
- 17.xx.220 – Modification or Termination for Violations
- 17.xx.230 – Consequences of Termination
- 17.xx.240 – Irregularity of Proceedings
- 17.xx.250 – Coordination of Approvals

17.xx.010 – Purpose and Scope

Development Agreements specify the rights and responsibilities of the City and developers. Used in conjunction with subdivision approval, annexation, rezoning, or architectural approval, Development Agreements establish the terms and conditions under which development projects may proceed. Development Agreements are best used for large, complex, or phased projects which require extended construction time and which involve numerous public improvements such as streets, utilities, flood improvements, schools, parks and open space, and other improvements of community-wide benefit. Under a Development Agreement, projects may proceed under the rules, standards, policies, and regulations in effect at the time of original project approval.

17.xx.020 – Authority

This Chapter establishes procedures and requirements for Development Agreements for the purposes specified in and as authorized by Article 2.5, Chapter 4, Title 7 of the Government Code, Sections 65864 *et seq.* The Planning Commission may recommend and the Council may enter into a Development Agreement for the development of real property with any person having a legal or equitable interest in such property, as provided in this Chapter. At its sole discretion, the Council may, but is not required to, approve a Development Agreement where a clear public benefit or public purpose can be demonstrated.

17.xx.030 – Initiation of Hearings

Hearings on a Development Agreement may be initiated upon the filing of an application as provided below or by the Council by a simple majority vote.

17.xx.040 – Applications – Legal Interest

Any person having a legal or equitable interest in real property or such other interest as specified in Section 17.xx.070(A)(3)(b) may apply for a Development Agreement, except that a person may not file, and the Director shall not accept, an application which is the same as, or substantially the same as, an application which was denied within the previous year, unless the application is initiated or otherwise authorized by the Council.

17.xx.050 – Fees

The Council shall establish, and from time to time may amend, a schedule of fees to cover the City's costs of processing applications for development agreements and conducting an annual review as required by the Government Code.

17.xx.060 – Preapplication Review

Before submitting an application and support materials, applicants shall discuss the proposal with the Director. At such review, the applicant should present a preliminary site plan and show basic features of the proposed project, including its public purposes and/or benefits. For large or complex projects, the applicant may request Council review of the preliminary concept. Such a review shall be at the Council's sole discretion and would allow the Council to review and comment on a proposal early in the review process.

17.xx.070 – Application – Contents

- A. A Development Agreement application shall include the following information:
1. A planning application and processing fee;
 2. The names and addresses of the applicant and of all persons having a legal or equitable interest in all or a part of the property proposed to be used;
 3. Evidence that the applicant:
 - a. Has a legal or equitable interest in the property involved, or
 - b. Has written permission from a person having a legal or equitable interest to make such application;
 4. Location of the subject property by address and vicinity map;
 5. Legal description of the property, including a statement of total area involved;
 6. A plan showing the location of all property included in the request for action, existing and proposed land uses, property lines and dimensions, topography, significant natural features, setbacks, the location of all highways, streets, alleys and the location and dimensions of all lots or parcels of land within a distance of 300 feet from the exterior boundaries of the property described in the application;

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7. Mailing list including addresses of all tenants occupying the subject property and properties within 5300 feet from the subject property boundaries; and a mailing list of owners of adjacent properties within 5300 feet from the subject property boundaries, as shown on the County Assessor's latest available assessment roll;
 8. The proposed Development Agreement, together with all explanatory text, plans, maps, drawings, pictures and other information as may be required to evaluate such proposal, and as further described in Section 17.xx.130; and
 9. Such other information as the Director may require.
- B. The Director may waive the filing of one or more of the above items where the required information is filed with an application for a rezoning, use permit, variance, subdivision approval, or other development entitlement to be considered concurrently with the Development Agreement.
1. The Director may reject any application that does not supply the required information or may reject incomplete applications.
 2. The accuracy of all information, maps, and lists submitted shall be the responsibility of the applicant.

17.xx.080 – Public Notice

- A. **Director Responsibilities.** When the Director certifies that the application is complete, the item shall be scheduled for Planning Commission hearing, and the Director shall give notice of the public hearing, as provided below.
- B. **Manner of Giving Public Notice.** Public notice shall be provided in compliance with Chapter 17.xx (Public Notices and Hearings).

17.xx.090 – Failure to Receive Notice

The failure to receive notice by any person entitled thereto by law or this Chapter does not affect the authority of the City to enter into a Development Agreement.

17.xx.100 – Planning Commission Hearing and Recommendation

The Planning Commission shall consider the proposed Development Agreement and shall make its recommendation to the Council. The recommendation shall include whether or not the proposed Development Agreement meets the following findings:

- A. The proposed Development Agreement is consistent with the General Plan and any applicable specific plan;
- B. The proposed Development Agreement complies with this Zoning Code, the subdivision ordinance, and other applicable ordinances and regulations;
- C. The proposed Development Agreement promotes the general welfare, allows more comprehensive land use planning, and provides substantial public benefits or necessary public improvements, making it in the City's interest to enter into the Development Agreement with the applicant; and

D. The proposed project and Development Agreement:

1. Will not adversely affect the health, safety, or welfare of persons living or working in the surrounding area; and
2. Will be appropriate at the proposed location and will be compatible with adjacent land uses.

17.xx.110 – Council Hearing

After the recommendation of the Planning Commission, the City Clerk shall give notice of a public hearing before the Council in the manner provided for in Chapter 17.xx (Public Notices and Hearings).

17.xx.120 – City Council Action

- A. **Referral.** After it completes the public hearing and considers the Planning Commission's recommendation, the Council may approve, conditionally approve, modify, or disapprove the proposed Development Agreement. The Council may refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for review and recommendation.
- B. **Approval.** The Development Agreement may be approved if the Council makes the findings for approval listed in Section 17.xx.100.

17.xx.130 – Development Agreement – Contents

- A. Development Agreements shall include the following:
 1. The duration of the agreement, including a specified termination date if appropriate;
 2. The uses to be permitted on the property;
 3. The density or intensity of use permitted;
 4. The maximum height, size, and location of buildings permitted, as well as other pertinent development standards;
 5. The reservation or dedication of land for public purposes to be secured, including, but not limited to, rights-of-way, open space preservation, and public access easements;
 6. Proposed exceptions from the Zoning Code or other development standard, and findings where required;
 7. The time schedule established for periodic review as required by Section 17.xx.200.
- B. Development Agreements may also include additional terms, conditions, and restrictions in addition to those listed in subsection A of this Section. These additional terms may include, but are not limited to:
 1. Development schedules providing that construction of the proposed development as a total project or in phases be initiated and/or completed within specified time periods;

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2. The construction of public facilities required in conjunction with such development, including but not limited to vehicular and pedestrian rights-of-way, public art and other landscape amenities, drainage and flood-control facilities, parks and other recreational facilities, and sewers and sewage treatment facilities;
3. Method of financing such improvements and, where applicable, reimbursement to developer or City;
4. Prohibition of one or more uses normally listed as permitted, accessory, or subject to a Conditional Use Permit in the zone normally allowed by right;
5. Limitations on future development or special terms or conditions under which subsequent development approvals not included in the agreement may occur;
6. The requirement of a faithful performance bond where deemed necessary to and in an amount deemed sufficient to guarantee the faithful performance of specified terms, conditions, restrictions and/or requirements of the agreement. In lieu of a bond, the applicant may deposit with the City Clerk certificates of deposit or other security acceptable to the finance director;
7. Specific design criteria for the exteriors of buildings and other structures, including colors and materials, landscaping, and signs;
8. Special setbacks, open spaces, trails, staging areas, buffer areas, fences and walls, public art, landscaping, and parking facilities, including vehicular and pedestrian ingress and egress;
9. Performance standards regulating such items as noise, vibration, smoke, ~~dust, dirt,~~ odors, gases, garbage, ~~heat,~~ and the prevention of glare or direct illumination of adjacent properties;
10. Limitations on operating hours and other characteristics of operation which the Council determines could adversely affect the reasonable use and enjoyment of surrounding properties.
11. Incorporate or reference any environmental mitigation measures to reduce potentially significant environmental impacts, if applicable.

17.xx.140 – Development Agreement – Adoption by Ordinance – Execution of Contract

- A. The Development Agreement shall be approved by the adoption of an ordinance. Upon the adoption of the ordinance, the City shall enter into the Development Agreement by the execution thereof by the Mayor or City Manager.
- B. No ordinance shall be finally adopted until it has been executed by the applicant and all other parties to the agreement. If the applicant has not executed the agreement or agreement as modified by the Council and returned the executed agreement to the City Clerk within 60 days following Council approval, the approval shall be deemed withdrawn, and the Council shall not finally adopt such ordinance, nor shall the City Manager execute the agreement.
- C. Such 60-day time period may be extended upon approval of the Council.

17.xx.150 – Recordation of Executed Agreement

Following the execution of a Development Agreement, the City Clerk shall cause the executed agreement to be recorded with the County Recorder.

17.xx.160 – Ordinance, Regulations, and Requirements Applicable to Development

Development projects covered by a Development Agreement shall comply with the General Plan, Zoning Code, subdivision ordinance, and other applicable codes, ordinances, rules, regulations, and official policies in effect on the date of execution of the Development Agreement, provided, however, that a Development Agreement shall not:

- A. Be construed to prevent the application of later adopted or amended ordinances, rules, regulations, and policies which do not conflict with such existing ordinances, rules, regulations and policies under the development agreement;
- B. Prevent the approval, conditional approval, or denial of subsequent development applications pursuant to such existing or later adopted or amended ordinances, rules, regulations, and policies; or
- C. Preclude the City from adopting and implementing emergency measures regarding water or sewer deficiencies when the Council determines that such action is necessary to protect public health and safety. If such action becomes necessary, the Council reserves the right to suspend water or sewer service on an equitable basis until such deficiencies are corrected.

17.xx.170 – Subsequently Enacted State and Federal Laws

In the event that State or Federal laws or regulations enacted after execution of a Development Agreement prevent or preclude compliance with one or more provisions of such agreement, the provisions of such agreement shall be deemed modified or suspended to the extent necessary to comply with such laws or regulations.

17.xx.180 – Enforcement – Continuing Validity

- A. Unless and until amended or canceled in whole or in part as provided in Sections 17.xx.190 or 17.xx.210, a Development Agreement shall be enforceable by any party to the agreement, regardless of any change in regulations which alters or amends the regulations applicable to the project covered by a Development Agreement, except as specified in Sections 17.xx.160 and 17.xx.170.
- B. The Development Agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

17.xx.190 – Amendment – Time Extension – Cancellation

A Development Agreement may be amended, extended, or cancelled, in whole or in part, by mutual consent of all parties to the agreement or their successors in interest. Procedures for amendment, time extensions, or cancellation of the Development Agreement by mutual consent shall be the same as provided for initiation and consideration of such agreement.

17.xx.200 – Review for Compliance – Director’s Authority

- A. Every Development Agreement entered into by the Council shall provide for Director review of compliance with the Development Agreement at time intervals as specified in the agreement, but not less than once every 12 months.
- B. The Director shall determine whether the applicant or his or her successor in interest has or has not complied with the agreement. If the Director determines that the terms or conditions of the agreement are not being met, all parties to the agreement shall be notified by registered or certified mail or other method guaranteeing proof of

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delivery, also indicating that failure to comply within a period specified may result in legal action to enforce compliance, termination, or modification of the agreement.

- C. It is the duty of the applicant or his or her successor in interest to provide evidence of good faith compliance with the agreement to the Director's satisfaction at the time of the Director's review. Refusal by the applicant or his or her successor in interest to provide the required information shall be prima facie evidence of violation of such agreement.
- D. If, at the end of the time period established by the Director, the applicant or his or her successor in interest has failed to comply with the terms of the agreement or has not submitted evidence substantiating such compliance, the Director shall notify the Council of his or her findings, recommending such action as he or she deems appropriate, including legal action to enforce compliance or to terminate or modify the agreement.

17.xx.210 – Violation of Agreement – Council Review and Action

- A. When the Director notifies the Council that a Development Agreement is being violated, a public hearing shall be scheduled before the Council to consider the matter. Procedures for conduct of such hearing shall be the same as provided for initiation and consideration of a Development Agreement.
- B. If the Council determines that the applicant or his or her successor in interest is in violation of a Development Agreement, it may take one of the following actions:
 - 1. Schedule the matter for Council hearing for modification or possible termination of the agreement. Procedures for hearing notice shall be the same as provided in Section 17.xx.080; or
 - 2. Continue the matter for further consideration.

17.xx.220 – Modification or Termination for Violations

- A. After the hearing required by Section 17.xx.210 (A), the Council may terminate or modify the agreement upon finding that:
 - 1. Terms, conditions, and obligations of any party to the Development Agreement have not been met; or
 - 2. The scope, design, intensity, or environmental effects of a project were represented inaccurately; or
 - 3. The project has been or is being built, operated, or used in a manner that differs significantly from approved plans, permits, or other entitlements; or
 - 4. Parties to the agreement have engaged in unlawful activity or have used bad faith in the performance of or the failure to perform their obligations under the agreement.
- B. Such remedial action may include, but is not limited to, changes to project design or uses, operating characteristics, or necessary onsite or off-site improvements which are determined to be reasonably necessary to protect public health, safety, or welfare, and to correct problems caused by or related to noncompliance with the terms of the agreement.

17.xx.230 – Consequences of Termination

Upon termination of the Development Agreement, the owner shall otherwise comply with City codes, regulations, development standards, and other applicable laws in effect at the time of termination of the agreement.

17.xx.240 – Irregularity of Proceedings

No action, inaction, or recommendation regarding the proposed Development Agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect, or omission as to any matter pertaining to the application, notice, finding, record, hearing, report, recommendation, or any other matters of procedure whatsoever unless, after an examination of the entire record, the court is of the opinion that the error was prejudicial and that a different result would have been probable if the error had not occurred or existed.

17.xx.250 – Coordination of Approvals

- A. **Public Hearings.** Where an application for a Development Agreement is concurrently filed with an application for a zone change, use permit, variance, minor subdivision or tract map, or annexation and the applications may be feasibly processed together, public hearings may be concurrently held.
- B. **Zoning or Subdivision Exceptions.** Yards, permit height, coverage, parking requirements, density, and other design standards may be modified or relaxed during consideration of a Development Agreement. The Council may modify or relax development or subdivision standards when: (1) such modification or relaxation is otherwise allowed by this Municipal Code, (2) the Council makes findings as required by zoning and subdivision regulations, and (3) the Council determines that such modification or relaxation of standards is consistent with the General Plan and reasonably necessary to allow the safe, efficient, and/or attractive development of the subject property.

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Chapter 17.xx: General Plan Amendments

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Authority to Initiate an Amendment
- 17.xx.030 – Schedule for and Coordination of Amendments
- 17.xx.040 – Processing, Notice, and Hearings

17.xx.010 – Purpose

The purpose of this Chapter is to provide for the orderly processing of General Plan amendments in a manner consistent with the overall goals of the community's planning program and the requirements of the California law. In particular, this Chapter is intended to:

- A. Assure that the General Plan is amended for good reason and with due consideration of community-wide interests;
- B. Help achieve and maintain internal consistency of General Plan elements and conformance between the Plan and implementing techniques, such as zoning; and
- C. Establish rights and assign responsibilities for the persons and agencies involved in General Plan administration so each can perform fairly and effectively.

17.xx.020 – Authority to Initiate an Amendment

- A. **Initiation of Amendment by the City Council.** The Council may initiate General Plan amendments at any time by directing staff to prepare the necessary analysis and scheduling the proposed amendment for consideration at a hearing, as provided in Section 17.xx.030 (Schedule for and Coordination of Amendments).
- B. **Applications to Initiate Amendments.** Any person may request an amendment of the General Plan by filing an application with the ~~Community~~ Development ~~Services~~ Department. Such application shall include:
 - 1. A description of the proposed amendment, including, as may be necessary, additions or modifications to the text and graphics of adopted General Plan elements or reports.
 - 2. A statement explaining how the proposed change will better reflect community desires as expressed in General Plan goals and policies.
 - 3. If the amendment involves change of a basic goal or policy, why the change is warranted by new information or reevaluation of community needs.
 - 4. An analysis of how the proposed change will beneficially and detrimentally affect adjacent areas or shared resources. This analysis may take the form of a draft environmental impact report.
 - 5. A description of how the amendment of one policy may reinforce or conflict with related policies, including those in other elements.
 - 6. Such other supporting data as the Director may require to ~~enable help with~~ evaluation of the proposal.

Commented [LJ20]: PC cannot initiate an amendment? If not, why not?

Commented [LS21R20]: PC is not prohibited from doing so. In my experience, Councils like to make that decision. The PC can forward a request to the Council to initiate an amendment, and the Council can decide whether or not they want to start the process or not even entertain the idea any further (thus saving time and money). It's your call.

Commented [LJ22]: Minute motion? No resolution, correct?

Commented [LS23R22]: Correct.

7. A fee sufficient to cover the expected costs incurred in processing the application, to be established by resolution of the Council.

C. **Early Council Consideration of an Application.** The Director shall have the authority, prior to processing a General Plan Amendment application in conformance with the provisions of this Chapter, to forward any such application to the Council for early policy consideration to allow the Council to determine whether the proposed amendment is consistent with overall policy direction in the General Plan. The Council, upon making specific findings in reference to specific General Plan provisions, may direct the Director to reject the application as inconsistent with overall General Plan policy direction.

Commented [LJ24]: Only CC consideration? This really should be a PC early consideration versus CC.

Commented [LS25R24]: This is an interesting quirk in the law. Similar to what I described above for the PC referral, you can include a provision that allows the Council to review an application to see if they even want to consider the amendment. They can say no, and the application dies. Again, your call.

~~17.xx.030 – Schedule for and Coordination of Amendments~~

~~A. **Limited to Four Times Annually.** Any element of the General Plan may be amended not more than four times each year. Each amendment may include more than one change to the General Plan. Such amendments may be scheduled at any time deemed necessary or convenient. The Planning Commission may review individual amendments as often as necessary, but the Council must consider them in no more than four batches per year so that cumulative effects of such amendments can be considered.~~

~~B. **Coordination of Amendments.** Changes in policy or land use designations which involve more than one element shall be made as concurrent amendments to the related elements in order to maintain internal plan consistency.~~

17.xx.0340 – ~~Processing, Consultation, Notice, and Hearings~~

A. Planning Commission Actions.

1. ~~Consultation.~~ Pursuant to Government Code Section 65352.3, the City shall consult with California Native American tribes prior to scheduling the General Plan amendment for public hearing.

2. ~~Public Hearings—Notice.~~ The Planning Commission shall hold at least one public hearing before taking action on any General Plan amendment.

3. ~~Resolution.~~ The recommendation for approval of the Planning Commission of any amendment to the General Plan shall be by resolution of the Planning Commission adopted by the affirmative vote of not less than a majority of its total voting members.

4. ~~Transmittal to Council.~~ The Planning Commission's recommendation shall be transmitted to the Council in the form of a resolution with findings.

5. ~~Other Situations.~~ When neither a majority of the Planning Commission recommends approval nor a majority of a quorum recommends denial, the Planning Commission may transmit the amendment to the Council with a report explaining the situation and stating the recommendations of the individual commissioners.

Commented [LJ26]: Why are some sections very detailed in process and others are not? This section needs more detail with regard to processing procedures, even if its referring to another general processing procedures section. Shouldn't there also be reference made to the AB52 requirement.

Commented [LS27R26]: Because of the specific requirements of state law, we included the detail here. And added AB 52.

Commented [TO28]: Should Reso of Intention of intention come first?

Commented [LS29R28]: Is that the same?

B. City Council Actions

1. ~~Public Hearings—Notice.~~ Upon transmittal of the resolution from the Planning Commission, the Council shall hold at least one public hearing on proposed General Plan amendments.

2. ~~Resolution.~~ Any amendment of the General Plan shall be adopted by resolution of the Council, adopted by the affirmative vote of not less than a majority of the total membership of the Council.

ARTICLE 5: LAND USE AND DEVELOPMENT REVIEW PROCEDURES

3. **Referral of Council Changes.** In adopting any General Plan amendment which has been approved by the Planning Commission, the Council shall not make any substantive changes or additions involving issues not considered by the Planning Commission in their review until the proposed change or addition has been referred to the Planning Commission for a report and the report has been filed with the Council. Failure of the Planning Commission to report within 40 calendar days after the referral, or such longer period as may be designated by the Council, shall be deemed to be approval of the change or addition.

Chapter 17.xx: Nonconformities

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Applicability
- 17.xx.030 – Nonconforming Uses
- 17.xx.040 – Nonconforming Structures
- 17.xx.050 – Nonconforming Lots
- 17.xx.060 – Continuation of Nonconformity
- 17.xx.070 – Abandonment
- 17.xx.080 – Exceptions: Public Facilities and Uses

17.xx.010 – Purpose

- A. This Chapter is established to permit the continuation of nonconformities on real properties relative to parcel size, use, occupancy, and building types that were legally established but no longer comply with all of the standards and requirements of this Title 17. To this end, this Chapter establishes the circumstances under which nonconformities may be continued or changed, and provides for the removal of nonconformities when their continuation conflicts with the public health, safety, and general welfare.
- B. This Chapter is not intended to limit the City's ability to eliminate a public nuisance.
- C. Nothing in this Chapter shall prevent the City from declaring a nonconformity to constitute a danger to the public health, safety, or general welfare and to take lawful action to remedy that danger.

17.xx.020 – Applicability

- A. The provisions of this Chapter apply to structures, land, and uses that have become nonconforming due to changes in this Title or reclassification of zones under this Zoning Code. The provisions shall also apply when standards or regulations are adopted or changed which cause previously conforming structures, land, or uses to become nonconforming.
- B. For purposes of this Chapter, the terms "nonconformity" or "nonconformities" shall refer to legal nonconforming uses, legal nonconforming structures, and legal nonconforming lots, all as more specifically defined in Chapter 17.XX (Definitions) of this Title.

17.xx.030 – Nonconforming Uses

- A. Nonconforming uses shall be allowed to remain, provided such use is not abandoned or intensified, or the space that the nonconforming use is located in is not reconstructed.
- B. If no structural alterations are made, a nonconforming use of a structure may be changed to a different type of nonconforming use upon approval of a Conditional Use Permit. Once a nonconforming use is changed to a less intense use, i.e., one that requires less parking, it may not revert to the original nonconforming use. As part of the Conditional Use Permit findings, the Planning Commission must determine that the new use will be no less compatible with the purposes of the zone and surrounding uses than the nonconforming use it replaces.

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C. A nonconforming use may not expand the area of its use beyond that for which it was legally approved.

~~D. In a building which is nonconforming due to parking, a change of use or intensification of the existing use shall only be allowed if the full amount of the required parking is provided.~~

~~ED.~~ Once a nonconforming use is terminated, discontinued, or abandoned, the occupancy afterwards may not revert to ~~the same or another~~ nonconforming use.

Commented [LJ30]: Shouldn't there be a time allowance identified here? Also, sections below address continuation and abandonment.

Commented [LS31R30]: This section means that a new nonconforming use cannot replace one that has vacated. Do you want that to be the case?

17.xx.040 – Nonconforming Structures

A. Nonconforming structures may only be continued and maintained provided there is no alteration, enlargement, or addition to any building or structure.

~~B. A use of a nonconforming structure shall not be allowed to change to any use which would increase the nonconformity of the structure, such as changing an office building to a medical office building if sufficient parking is not available or cannot be made available.~~

~~BC.~~ Maintenance, repairs, nonstructural modifications, and nonstructural interior alterations to a nonconforming structure are permitted if the changes and improvements do not enlarge or extend the structure, or otherwise increase the degree of the nonconformity. Exterior improvements, such as a façade improvement, which are intended to better the appearance of the property, are included in these types of allowed changes. Nothing herein supersedes the requirement to obtain site plan review approval if otherwise required.

~~D. In a building which is nonconforming due to parking, a change of use or intensification of the existing use shall only be allowed if the full amount of the required parking is provided.~~

~~CE.~~ A structure shall not be considered nonconforming if the nonconformity is caused due to a condemnation of a portion of the property by the City.

~~DF.~~ A structure shall not be considered nonconforming with regard to parking because of a loss of required parking spaces due to conformance with the Americans with Disabilities Act.

~~EG.~~ If any nonconforming structure is destroyed by fire, explosion, act of God, or the public enemy such that the cost of restoration or replacement exceeds 50 percent of the replacement cost of the entire structure, the replacement shall conform to current regulations, or a Conditional Use Permit shall be obtained to allow a deviation from current standards. The City Building Official shall determine the extent of destruction and costs of replacement.

17.xx.050 – Nonconforming Lots

A. Any lot that is smaller than the minimum lot size required by this Title 17, or does not meet any of the applicable dimensional requirements, shall be considered a legal nonconforming lot if it is described in the official records on file in the office of the Orange County recorder as a lot of record. The lot shall not be further reduced below the area or dimension identified on the recorded map or other documents that establish the date on which the parcel was officially created.

B. A lot of record may be used as a building site subject to compliance with all other applicable requirements, unless a Variance or other modification or exception is approved as provided for in this Title 17.

17.xx.060 – Continuation of Nonconformity

- A. Legal nonconformities may be continued and maintained in compliance with the requirements of this Chapter unless the Building Official deems the nonconformity to be a public nuisance because of health or safety concerns. The Building Official is authorized to impose conditions on the nonconformity to eliminate or reduce the health or safety concerns.
- B. The right to continue a legal nonconformity attaches to the land and shall not be affected by a change in ownership.

17.xx.070 – Abandonment

- A. A nonconforming use of land or a structure shall be considered to be abandoned after 180 days of nonuse, unless the interruption in use is involuntary due to casualty or other events outside the control of the owner or operator of the land or structure, as determined by the Director. Once abandoned, all subsequent uses of such land and structure shall conform to the regulations specified for the zone in which the land or structure is located.
- B. Upon determination that a use has been abandoned, the Director shall send a notice to the owner. If the owner disagrees with the Director's determination, an appeal may be filed with the Planning Commission in accordance with Chapter 17.XX (Appeals). The burden of proof shall be on the owner to show that the use has not been abandoned. A determination that a use has been abandoned requires both: (1) evidence of an intention to abandon; and (2) an act or failure to act which shows or implies that the owner does not continue to claim or retain an interest in the nonconforming use. Evidence may include, but is not limited to, removal of equipment, furniture, machinery, structures, or other components of the nonconforming use; disconnected or discontinued utilities; or lack of business records to document continued operation. Maintenance of a valid business license shall of itself not be considered a continuation of the use. However, lack of a business license may be considered as a factor in determining noncontinuation of the use. A broker agreement to solicit tenants or purchasers to continue a nonconforming use shall be sufficient evidence that the nonconforming use has not been abandoned.

17.xx.080 – Exception: Public Facilities and Uses

- A. **Facilities Directly Rendering Service.** The provisions of this Chapter shall not apply to public utility structures when the public utility structures pertain directly to the rendering of service or distribution, including generating plants, distribution, substations, water wells and pumps, gas storage, metering, and valve control stations, but shall apply to structures or uses that do not immediately relate to direct service to consumers (e.g., warehouses, corporation yards, storage, etc.).
- B. **Changes to Facilities.** Nothing in this Chapter shall prevent the expansion, increase in capacity, modernization or replacement of public utility structures, provided that there shall be no change of a use unless approved by the Planning Commission, and further provided that all setback requirements of the zone which the use is located shall be maintained. There shall be no enlargement of the site unless approved by the Planning Commission.

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Chapter 17.xx: Revocations and City-initiated Modifications

Sections:

- 17.xx.010 – Purpose and Authority
- 17.xx.020 – Procedures

17.xx.010 – Purpose and Authority

- A. This Chapter provides procedures for the City to secure revocation or modification of previously approved applications and entitlements.
- B. The City's action to revoke an entitlement shall have the effect of terminating the entitlement and denying the privileges granted by the original approval.
- C. The City's action to modify an entitlement, rather than revoke it, shall have the effect of changing the operational aspects of the entitlement. The changes may include the operational aspects related to buffers, duration of the entitlement, hours of operation, landscaping and maintenance, lighting, parking, property maintenance, signs, surfacing, traffic circulation, etc.

17.xx.030 – Procedures

A. Notice

- 1. An application, permit, or entitlement may be revoked or modified utilizing the same procedure used to approve an application, permit, or entitlement granted in compliance with the provisions of this Zoning Code.
- 2. Ten days before the revocation/modification process begins (except for Temporary Use Permits that require only 24-hour notice), notice shall be delivered in writing via certified mail, return receipt requested, or any other method providing proof of delivery, to the owner of the property for which the permit or entitlement was granted, as shown on the County's latest equalized assessment roll, and/or the project applicant if not the owner of the subject property.

B. Review Authority Action. A land use permit or entitlement may be revoked or modified by the Review Authority (i.e., Director, Planning Commission, Council) that originally approved the permit or entitlement, with public notice and hearings conducted as required for the originally approved permit or entitlement, if any one of the following findings of fact can be made in a positive manner:

- 1. Circumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit can no longer be made in a positive manner;
- 2. The permit or entitlement was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the permit or entitlement;
- 3. One or more of the conditions of the permit have not been substantially fulfilled or have been violated;

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4. The improvement authorized in compliance with the permit is in violation of any code, law, ordinance, regulation, or statute;
 5. The improvement/use allowed by the permit or entitlement has become detrimental to the public health, safety, or general welfare or the manner of operation constitutes or is creating a nuisance; or
 6. There is a compelling public necessity.
- C. **Appeals.** The decision of a Review Authority to revoke or modify a land use permit or entitlement may be appealed as authorized by Chapter 17. **XX** (Appeals).

ARTICLE 5: LAND USE AND DEVELOPMENT REVIEW PROCEDURES

Chapter 17.xx: Enforcement

Sections:

- 17.xx.010 – Purpose
- 17.xx.020 – Duty to Comply
- 17.xx.030 – Types of Violations and Penalties
- 17.xx.040 – Arrest or Notice to Appear
- 17.xx.050 – Violations and Remedies: Abatement, Removal, Injunction

17.xx.010 – Purpose

This Chapter provides procedures that are intended to ensure compliance with the requirements of this Zoning Code and the conditions of land use permit and other entitlement approval.

17.xx.020 – Duty to Comply

Departments, officials, and public employees of the City vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Zoning Code and shall not issue permits or licenses for uses, structures, or purposes in conflict with the provisions of this Zoning Code. A permit or license issued in conflict with the provisions of this Zoning Code shall be null and void.

17.xx.030 – Types of Violations and Penalties

- A. **Violations or Failure to Comply.** It is unlawful for a person to violate a provision or to fail to comply with a requirement of this Zoning Code.
- B. **Misdemeanor.** A violation of any of the provisions or a failure to comply with a mandatory requirement of this Zoning Code shall constitute a misdemeanor. Any violation constituting a misdemeanor or under this Zoning Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. A person convicted of a misdemeanor under the provisions of this Zoning Code shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment.
- C. **Infraction.** A person convicted of an infraction under the provisions of this Zoning Code shall be punished by fine only as follows: upon a first conviction, by a fine not exceeding \$100.00 and for a second conviction within a period of 12 months, by a fine not exceeding \$250.00 and for a third conviction within a period of 12 months, by a fine not exceeding \$500.00.
- D. **Separate Offenses.** Each person shall be charged with a separate offense for each and every day during a portion of which a violation of a provision of this Zoning Code is committed, continued, or allowed by a person and shall upon conviction be punished accordingly.

17.xx.040 – Arrest or Notice to Appear

The City Manager shall designate in writing those City employees to be vested with the power and authority to arrest a person who violates a provision of this Zoning Code whenever an employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor or infraction in his/her presence that is a violation of this

Commented [LS32]: Let's check with City Atty on this one to see if we really want to codify the dollar amounts.

Commented [LJ33R32]: We will do this next round as we prepare to present to Planning Commission.

Zoning Code. If the person arrested does not demand to be taken before a magistrate, the person making the arrest shall prepare a written notice to appear and release the person on their promise to appear.

17.xx.050 – Violations and Remedies: Abatement, Removal, Injunction

- A. **Public Nuisance.** A structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Zoning Code, and any use of land, structures, or premises established, conducted, operated, or maintained contrary to the provisions of this Zoning Code shall be, and is declared to be, unlawful and a public nuisance.
- B. **Remedies.** The City Attorney shall, upon order of the Council:
 - 1. Immediately commence action or proceedings for and removal and enjoinder of the unlawful structure or use in the manner prescribed by law;
 - 2. Take other steps; and
 - 3. Apply to the courts that have jurisdiction to grant relief that will abate and remove the structure and that will restrain and enjoin a person, firm, or corporation from setting up, erecting, building, maintaining, or using a structure contrary to the provisions of this Zoning Code.
- C. **Cumulative.** The remedies provided in this Zoning Code shall be cumulative and not exclusive.