

Title 17

ENVIRONMENTAL QUALITY

Chapters:

- 17.02 Environmental Review**
- 17.04 *Repealed***
- 17.06 Regulation of Offshore Oil and Gas Facilities**
- 17.07 Open Space Districts**
- 17.08 Open Space District Encroachments**
- 17.10 Parklands and Public Facilities**
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- 17.30 Otay Ranch Grazing**
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Chapter 17.02**ENVIRONMENTAL REVIEW**

Sections:

17.02.010 State and local environmental review process – Fees.

17.02.010 State and local environmental review process – Fees.

The city council, from time to time, shall adopt by resolution procedural guidelines to be followed to insure compliance with CEQA and local environmental processes. The council has also by resolution established the required fee(s) for the environmental review of projects. (Ord. 2506 § 1, 1992; Ord. 1961 § 2, 1982).

Chapter 17.04**OUTDOOR ADVERTISING***

(Repealed by Ord. 2296, 1989)

* For statutory regulation of outdoor advertising in unincorporated areas of the state, see Bus. and Prof. Code § 5200, et seq.; for authority of cities to regulate outdoor advertising within corporate limits, see Bus. and Prof. Code § 5230.

CROSS REFERENCES: Sign Code, see CVMC Title 15. Signs, Design and Display, see CVMC Title 19.

Chapter 17.06**REGULATION OF OFFSHORE
OIL AND GAS FACILITIES**

Sections:

- 17.06.010 Pipeline prohibition.
17.06.020 Commercial or industrial facility prohibited.

17.06.010 Pipeline prohibition.

It is unlawful for the city council or any officer or employee of the city to take any action, or permit any action to be taken, which directly or indirectly authorizes or permits the construction, operation, or maintenance of any pipeline within the city for the transmission of any crude oil or natural gas taken or removed from any offshore crude oil or natural gas drilling or pumping operations within 100 nautical miles of the coastline of the county of San Diego. (Ord. 2210 § 1, 1987).

17.06.020 Commercial or industrial facility prohibited.

It is unlawful for the city council or any officer or employee of the city to take any action, or permit any action to be taken, which directly or indirectly authorizes or permits the construction, operation, or maintenance of any commercial or industrial facility within the city, including but not necessarily limited to crude oil or natural gas storage facilities, which operates directly or indirectly in support of any offshore crude oil or natural gas drilling or pumping operations within 100 nautical miles of the coastline of the county of San Diego. (Ord. 2210 § 1, 1987).

Chapter 17.07**OPEN SPACE DISTRICTS**

Sections:

- 17.07.010 Title for citation.
17.07.020 Incorporation of the Landscaping and Lighting Act of 1972.
17.07.030 Reserve operating fund.
17.07.035 Landscaping Act providers.
17.07.040 Change to Streets and Highways Code Section 22525.

17.07.010 Title for citation.

The ordinance codified herein, consisting of CVMC 17.07.010 through 17.07.040, may be cited as the "Chula Vista Open Space District Procedural Ordinance." (Ord. 2468 § 1, 1991; Ord. 2331 § 3, 1989; Ord. 1400 § 1, 1972; prior code § 35.201).

17.07.020 Incorporation of the Landscaping and Lighting Act of 1972.

The Landscaping and Lighting Act of 1972, Part 2 of Division 15 (commencing with Section 22500) of the Streets and Highways Code, is incorporated in and made a part of this chapter. Except as otherwise provided in this chapter, all annual assessment procedures for all existing open space districts in the city pursuant to the Chula Vista Open Space District Procedural Ordinance of 1972, as well as all other procedures for the organization, levying and collection of assessments, and financing of new and existing open space districts, shall be in accordance with the provisions of the Landscaping and Lighting Act of 1972, as same may be amended from time to time. (Ord. 2331 § 5, 1989).

17.07.030 Reserve operating fund.

Each open space district shall, upon creation, have added to the assessment an amount equivalent to 100 percent of the estimated first year expenses. Each existing open space district shall annually have added to the assessment an amount equivalent to 10 percent of the next year's estimated operating budget, so that after five years of generation there shall be accumulated a reserve of at least 50 percent of the next year's estimated operating budget. The amount of the accumulated reserve shall in no event exceed 100 percent of the next year's estimated operating budget. The engineer's report and the council's action shall not include in the annual levy an amount, for a reserve, in excess of the maximum 100 percent reserve. After the reserve reaches at least 50 percent, but not more than 100

percent, it shall be maintained to provide necessary cash flow for operations for the first six months of each fiscal year and a reasonable buffer against large variations in annual assessments. (Ord. 2468 § 2, 1991; Ord. 2331 § 6, 1989).

17.07.035 Landscaping Act providers.

A. Distinguish Assessment from Collection Against Assessment. There is, under this assessment district procedure applicable in the city of Chula Vista, a difference between the amount of the assessment imposed against any parcel of property, and the amount which may be collected against that assessment. The purpose of setting the assessment is to give the property owner notice of the maximum costs which may be collected, and for the purpose of permitting a majority protest proceeding on the assessment, but not on the collection. "Assessment," as used in these proceedings, shall mean the maximum amount collectable in a given year under the procedures allowed by this chapter.

B. Amount of Assessment.

1. Notwithstanding the costs which may be included in an assessment and Sections 22569 through 22570 of the Streets and Highways Code, the assessment may, but is not required to, be set in the initial year of the district's existence at an amount which is expected to be equal to the estimated costs of operating the district, plus a reserve for unanticipated expenses in accordance with CVMC 17.07.030. After the initial year of the district's existence, the assessment shall be the prior year's assessment increased or decreased by an inflation factor which is the lesser of (1) the January to January San Diego Metropolitan Area All Urban Consumer Price Index (CPI) or (2) the change in estimated California Fourth Quarter Per Capita Personal Income as contained in the Governor's budget published in January.

2. For existing districts the base year upon which the assessment is set is the 1995/96 fiscal year. For districts created after July 1, 1995, the base year assessment shall be the first full year's assessment. The inflation factor shall be applied first to either the 1996/97 assessments or the second full year for new districts.

C. Collection on Assessment. Notwithstanding Section 22572 of the Streets and Highways Code, the amount which the city may collect on each assessment, by charge on the tax roll, shall be that needed to meet the annual expenses and expenditures of the district, including delinquent collections and the permitted reserve allowed under CVMC 17.07.030, but in no event in an amount greater than the amount of the assessment.

D. Amount Due at Given Dates during Fiscal Year. Until a property owner receives a tax bill properly demonstrating a lower amount due on the assessment than the amount of the assessment, the amount due on the assessment shall be assumed to be the amount set forth in the assessment. After receipt of a tax bill that includes a lower amount due on the assessment for a given fiscal year, the lower amount due on the assessment shall when paid satisfy the assessment obligation for that fiscal year. (Ord. 2631 § 1, 1995).

17.07.040 Change to Streets and Highways Code Section 22525.

"Improvement" means one or any combination of the following:

A. The installation or planting of landscaping.

B. The installation or construction of statuary, fountains, and other ornamental structures and facilities.

C. The installation or construction of supplemental public lighting facilities, but not limited to traffic signals.

D. Native plantings and open space areas, including natural drainage facilities.

E. The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading; clearing; removal of debris; the installation or construction of curbs, gutters, walls, sidewalks, or paving; or water, irrigation, drainage, or electrical facilities.

F. The installation of park, recreational, or open space improvements, including, but not limited to, all of the following:

1. Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.

2. Lights, playground equipment, play courts, and public restrooms.

G. Pavement associated with parking for mixed-use projects within a redevelopment area where private ownership and operation is impractical or infeasible.

H. The maintenance, servicing, or insurance costs of any of the foregoing.

I. The acquisition of land for park, recreational, or open space purposes.

J. The acquisition of any existing improvement otherwise authorized pursuant to this section. (Ord. 2653 § 1, 1995; Ord. 2468 § 3, 1991; Ord. 2331 § 7, 1989).

Chapter 17.08

OPEN SPACE DISTRICT ENCROACHMENTS*

Sections:

- 17.08.010 Purpose and intent.
- 17.08.020 Council authorization required when.
- 17.08.030 Improvements not requiring council authorization – Temporary encroachments.
- 17.08.040 Maintenance and removal agreement – Required when – Contents.
- 17.08.050 Fees – Payment required when.
- 17.08.060 Plat requirements.
- 17.08.070 Insurance requirements – Exemptions – Liability agreements.

* For provisions of the Open Space Maintenance Act authorizing cities to preserve undeveloped areas, see Gov. Code § 50575, et seq.

CROSS REFERENCES: Improvement District Administration, see Ch. 2.22 CVMC. Residential Construction Tax, see Ch. 3.32 CVMC.

17.08.010 Purpose and intent.

A. It is the intent of the city council to authorize the use of or encroachment into open space maintenance districts for certain private purposes by property owners of parcels adjacent to and contiguous with said open space maintenance districts under such circumstances where said use or encroachment does not interfere with or obstruct the purpose of the open space district or the continued maintenance of said district.

B. It is the purpose of the council, in adopting the ordinance set forth in this chapter, to provide procedures and regulations so that such property owners may make appropriate use of said open space under circumstances where the grading of property does not create usable pads conforming to lot lines established on subdivision maps, or where property owners wish to undertake the landscaping and maintenance of a portion of the maintenance district adjacent to and contiguous with their property in a manner consistent with the overall purpose and development design of the particular maintenance district. (Ord. 2331 § 1, 1989; Ord. 1836 § 1, 1978).

17.08.020 Council authorization required when.

A. All encroachments into open space maintenance districts shall be authorized by resolution of

the city council, except those specifically delegated to the director of parks and recreation.

B. Applications for permits for which the provisions of this chapter or schedule of fees do not properly apply shall require authorization by city council resolution.

C. In all cases requiring authorization by resolution of the city council, the director of parks and recreation shall submit the application with his recommendations to the city manager for presentation to the city council. Upon approval of the city council, the director of parks and recreation shall collect the prescribed fees and issue the required permit. (Ord. 2385 § 1, 1990; Ord. 2331 § 1, 1989; Ord. 1836 § 1, 1978).

17.08.030 Improvements not requiring council authorization – Temporary encroachments.

The director of parks and recreation is authorized to issue encroachment permits without prior authorization from the city council for the installation of the following improvements:

A. Landscaping, as approved by the city's landscape architect, or a maximum 20-foot firebreak as approved by the director of parks and recreation. The encroachment shall be exempt from the permit fee authorized by CVMC 17.08.050;

B. Fences, in accordance with zoning and building codes, which encroach less than a total of 500 square feet into the open space;

C. Retaining walls, in accordance with zoning and building codes, not to exceed 18 inches in height and which encroach less than a total of 500 square feet into the open space;

D. Private utility service, including telephone, gas and electric, cable television and private lighting systems. (Ord. 2385 § 2, 1990; Ord. 2331 § 1, 1989; Ord. 2006 § 1, 1982; Ord. 1836 § 1, 1978).

17.08.040 Maintenance and removal agreement – Required when – Contents.

Applications for encroachment permits for any buildings or structures of any nature shall be accompanied by an encroachment application fee in the sum of \$100.00, and an encroachment maintenance and removal agreement, which shall authorize the construction and use of the building or structure, and which shall be signed by the property owner and properly acknowledged. Said agreement shall be prepared by the director of parks and recreation and shall contain the following covenants with the city:

A. The encroachment shall be installed and maintained in safe and sanitary condition at the sole cost, risk and responsibility of the owner and successor in interest, who shall hold the city harmless with respect thereto.

B. The agreement is made for the direct benefit of the property owner's land, described in the agreement, and the covenants therein shall run with the property and shall be binding upon the assigns and successors of the owners.

C. The encroachment shall be abandoned, removed or relocated by the property owner upon demand in writing by the director of public works. The property owner must remove or relocate said encroachment within 30 days after such notice, or within such longer period as may be provided specifically within said agreement in the instance of buildings or structures which would require a longer period to effectuate such removal or relocation. If the owner fails to remove or relocate the encroachment within the period allotted, the director of parks and recreation may cause such work to be done and the cost thereof shall be imposed as a lien upon the property.

D. Encroachments authorized by the director of parks and recreation need not be recorded. (Ord. 2385 § 3, 1990; Ord. 2331 § 1, 1989; Ord. 1836 § 1, 1978).

17.08.050 Fees – Payment required when.

The property owner/applicant desiring to encroach into the open space maintenance district shall pay the required fee(s) to cover the cost of investigation and processing of such request. (Ord. 2506 § 1, 1992; Ord. 2331 § 1, 1989; Ord. 1836 § 1, 1978).

17.08.060 Plat requirements.

The applicant shall submit a plat showing generally the area in which he wishes to encroach into the open space. Such plat need not be prepared by a registered civil engineer and need only show a general metes-and-bounds description of the encroachment area. (Ord. 2331 § 1, 1989; Ord. 1836 § 1, 1978).

17.08.070 Insurance requirements – Exemptions – Liability agreements.

A. The director of parks and recreation may require submission of insurance which has been approved by the city attorney, executed and delivered by a reliable insurance company authorized to carry on an insurance business in the state, by the terms of which said insurance company assumes

responsibility for injuries to persons and property as a result of constructing the work as set forth in the permit. The insurance, when required, shall be in the following amounts:

1. One hundred thousand dollars (\$100,000) for property damage;

2. Two hundred thousand dollars (\$200,000) for death or injuries to any person in any one occurrence;

3. Five hundred thousand dollars (\$500,000) for death or injuries to two or more persons in any one occurrence.

B. Governmental agencies, including the state of California and its political subdivisions, shall not be required to provide the insurance required by this section, but shall be required to hold the city harmless.

C. Any permittee for whom insurance requirements have been waived shall be required to hold harmless and defend the city, its elective and appointive boards, officers, agents and employees, from any liability for damage or claims for damage for personal injury, including death, as well as from claims which may arise from the permittee, or any subcontractors or agents or employees thereof, in performing under the permit. (Ord. 2385 § 4, 1990; Ord. 1836 § 1, 1978).

Chapter 17.10

PARKLANDS AND PUBLIC FACILITIES*

Sections:

- 17.10.010 Dedication of land and development of improvements for park and recreational purposes.
- 17.10.020 Determination of park and recreational requirements benefiting regulated subdivisions.
- 17.10.030 Application.
- 17.10.040 Area to be dedicated – Required when – Amounts for certain uses.
- 17.10.050 Park development improvements – Specifications.
- 17.10.060 Criteria for area to be dedicated.
- 17.10.070 In-lieu fees for land dedication and/or park development improvements.
- 17.10.080 Limitation on use of land and/or fees.
- 17.10.090 Commencement of park development.
- 17.10.100 Collection and distribution of fees.
- 17.10.110 Periodic review and amendment authorized.
- 17.10.120 Geographical distribution of in-lieu fees for land dedication.

* Prior legislation: Ords. 1668, 1806, 1858, 1961, 2243, 2506, 2592 and 2616.

17.10.010 Dedication of land and development of improvements for park and recreational purposes.

Pursuant to the authority granted by Section 66477 of the Government Code of the state, every subdivider, or developer of new residential developments, shall, for the purpose of providing neighborhood and community park and recreational facilities directly benefiting and serving the residents of the regulated subdivision, or in the case of a development not requiring a subdivision of land, benefiting and serving the residents of those new developments, dedicate a portion of the land and develop improvements thereon or in lieu thereof pay fees for each dwelling unit in the subdivision or residential development, or do a combination thereof, as required by the city in accordance with this chapter. The dedication, improvement, or payment of fees in lieu thereof or combination thereof shall be applicable to all residential subdivisions and new residential developments not required to file a subdivision plan of any type allowed under the various and several residential zones of the city and shall be in addition to any residential construction tax required to be paid pursuant to Chapter

3.32 CVMC. (Ord. 2945 § 1, 2004; Ord. 2886 § 1, 2002).

17.10.020 Determination of park and recreational requirements benefiting regulated subdivisions.

The park and recreational facilities for which dedication of land and improvements thereon and/or payment of a fee is required by this chapter shall be those facilities as herein set forth in CVMC 17.10.050 and as generally set forth in the park and recreation master plan and in the park and recreational element of the general plan of the city adopted by Resolution No. 3519 on September 22, 1964, and as thereafter amended. (Ord. 2886 § 1, 2002).

17.10.030 Application.

The provisions of this chapter shall apply to all subdivisions and divisions created by parcel maps and residential developments not requiring final subdivision or parcel maps, excepting therefrom industrial and completely commercial subdivisions and those subdivisions or divisions of land for which tentative subdivision or parcel maps have been filed within 30 days after the effective date of this chapter. (Ord. 2945 § 2, 2004; Ord. 2886 § 1, 2002).

17.10.040 Area to be dedicated – Required when – Amounts for certain uses.

The amount of parkland dedication required, in accordance with CVMC 17.10.010 through 17.10.110, is based on a standard of three acres per 1,000 people and shall be offered at the time of filing of the final map, or in the case of a residential development that is not required to submit a final map, at the time of the first building permit application. The area to be dedicated shall be as follows:

A. Single-family dwelling units, including single-family detached homes and detached condominiums, 3.52 persons per dwelling unit, 460 square feet per unit, or one acre per 95 units;

B. Multiple-family dwelling units, including attached condominiums, townhouses, duplexes, triplexes and apartments, 2.61 persons per dwelling unit, 341 square feet per unit, or one acre per 128 units;

C. Mobilehomes, 1.64 persons per dwelling unit, 214 square feet per unit, or one acre per 203 units;

D. Residential and transient motels/hotels, 1.50 persons per dwelling unit, 196 square feet per unit, or one acre per 222 units.

Development projects which have received tentative map approval as of November 12, 2002, shall not be required to contribute additional acreage based on the revised persons per dwelling factors as set forth above. (Ord. 2945 § 3, 2004; Ord. 2886 § 1, 2002).

17.10.050 Park development improvements – Specifications.

In addition to the dedication of land as required in CVMC 17.10.040, it shall be the responsibility of the subdivider or building permit applicant to develop all or a portion of such land for neighborhood or community park purposes to the satisfaction of the director of recreation and the director of general services. All parks shall include, to the satisfaction of the city, the following elements; meet the following minimum standards; and will be designed, developed, and maintained in accordance with the requirements of the city landscape manual and the Chula Vista parks and recreation master plan:

A. Grading shall be in accordance with the grading ordinance, street design manual, the Chula Vista parks and recreation master plan, and the city landscape manual.

B. Improvements that may be required by the city may include:

1. Drainage system.
2. Street improvements.
3. Parking lot with lighting.
4. Concrete circulation system.
5. Security lighting system.
6. Park fixtures, including, but not limited to, identification and informational signage, picnic tables, benches, trash receptacles, hot ash containers, drinking fountains and bike racks, shall be provided and installed.
7. Landscaping, including trees, shrubs, ground cover, and turf.
8. Automatic irrigation system.
9. Restroom/maintenance facility.
10. Play areas, with equipment for preschoolers and primary school-age children, shall be installed. Disabled individual accessible surfacing shall be installed.

11. One picnic table shall be provided for every 600 people. Half of required number of picnic tables shall be provided under a shelter.

12. The following sports facilities (night lighting may be required for all of the following):

a. One tennis court shall be provided for every 3,200 people.

b. One baseball (organized adult) field shall be provided for every 12,200 people.

c. One baseball field (organized youth) shall be provided for every 4,400 people.

d. One baseball (practice/informal) field shall be provided for every 3,300 people.

e. One softball (organized adult) field shall be provided for every 7,900 people.

f. One softball (organized youth) field shall be provided for every 12,700 people.

g. One softball (practice/informal) field shall be provided for every 2,850 people.

h. One basketball court shall be provided for every 2,150 people.

i. One soccer field (organized games) shall be provided for every 5,400 people.

j. One soccer field (practice/informal) shall be provided for every 2,450 people.

C. All utilities shall be extended to the property line. (Ord. 2945 § 4, 2004; Ord. 2886 § 1, 2002).

17.10.060 Criteria for area to be dedicated.

Acceptance of land for parkland is at the city council's discretion, and in exercising its discretion, the council may consider the following criteria, in addition to any other the council considers relevant:

A. Topography, soils, soil stability, and drainage location of land in subdivision available for dedication.

B. Size and shape of the subdivision and land available for dedication.

C. Physical relationship of the site to the surrounding neighborhood.

D. Location of the site with regard to accessibility to the residents of the neighborhood and its contribution to neighborhood security.

E. The amount, usability, and location of publicly owned property available for combination with dedicated lands in the formation of public park and recreation facilities.

F. Recommendation of the parks and recreation commission. An offer of dedication may be accepted or rejected by the city council.

G. Consistency with the goals and policies contained in the Chula Vista parks and recreation master plan. (Ord. 2886 § 1, 2002).

17.10.070 In-lieu fees for land dedication and/or park development improvements.

A. In-Lieu Fees for Land Dedication. If, in the judgment of the city, suitable land does not exist within the subdivision or within the development if

it is not part of a subdivision, or for subdivisions containing 50 lots or less, the payment of fees in lieu of land shall be required. In such cases, the required fee(s) shall be based on the area to be dedicated as set forth in CVMC 17.10.040. However, when a condominium project, stock cooperative or community apartment project exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

Where the city deems that a combination of dedication and payment, as provided in this chapter, would better serve the public and the park and recreation needs of the future residents of a particular subdivision or residential development, it may require such combination; provided, however, the city council may, by resolution, waive all or any portion of said dedication or in-lieu fee requirements in the interests of stimulating the construction of housing for low- and moderate-income families.

Residential motels and hotels and transient motels and hotels shall be required to deposit the required fee(s) in lieu of dedication of land.

B. In-Lieu Fees for Park Development Improvements. If, in the judgment of the city, suitable land does not exist within the subdivision or within the development if it is not part of a subdivision, or for subdivisions containing 50 lots or less, the payment of fees in lieu of developing improvements shall be required. In such cases, the amount of the required fee(s) shall be based on the improvements required in CVMC 17.10.050. However, when a condominium project, stock cooperative or community apartment project exceeds 50 dwelling units, improvements may be required notwithstanding that the number of parcels may be less than 50.

Where the city deems that a combination of improvements and payment, as provided in this chapter, would better serve the public and the park and recreation needs of the future residents of a particular subdivision or residential development, it may require such combination; provided, however, the city council may, by resolution, waive all or any portion of said improvements or in-lieu fee requirements in the interests of stimulating the construction of housing for low- and moderate-income families.

In the event the city determines that the improvement of the parkland shall be delayed for a substantial period of time after the parkland has been dedicated, the subdivider or building permit applicant shall not be required to install such improvements, but instead shall pay the required

fee(s) for the value of improvements required in CVMC 17.10.050.

Residential motels and hotels and transient motels and hotels shall be required to deposit the required fee(s) in lieu of park development improvements. (Ord. 2945 § 5, 2004; Ord. 2886 § 1, 2002).

17.10.080 Limitation on use of land and/or fees.

The amount of land, improvements or in-lieu fees, or combination thereof, received under this chapter shall be used for the purpose of providing neighborhood and community park and recreational facilities to serve the subdivision or residential development for which received. The amount and location of the land or in-lieu fees, or combination thereof, shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision or residential development. (Ord. 2945 § 6, 2004; Ord. 2886 § 1, 2002).

17.10.090 Commencement of park development.

The city will acquire land for park purposes within a subdivision as soon as sufficient funds are available. Any fees collected under this chapter shall be committed within five years after the payment of such fees or the issuance of building permits on one-half of the lots created by this subdivision, whichever occurs later. (Ord. 2886 § 1, 2002).

17.10.100 Collection and distribution of fees.

A. Prior to the recordation by the city of a final subdivision map or recordation by the city of a parcel map or release of either a final subdivision map or parcel map to a developer for recordation or, prior to the issuance of the first building permit for a development that is not required to submit either a final subdivision map or a parcel map, any required fees shall have been paid to the city unless an agreement has been entered into between the city, approved by the city council, and the map applicant or building permit applicant providing for the subsequent payment of the fee, but in no event later than 60 days after map approval or at the time of the first building permit issuance if no final subdivision map, parcel map or separate agreement exists. Said agreement shall provide that such payment shall be, to the satisfaction of the city manager and city attorney, adequately secured by sufficient surety or letter of credit, and shall further provide for interest from date of final map approval or the

first building permit issuance at city’s average earnings rates, computed and compounded quarterly, experienced by the city on its average investments (as determined by the city) (“base interest rate”), for the first 60 days after map approval or the first building permit issuance, and thereafter at the base interest rate plus two percentage points until paid, together with any attorney fees and costs incurred in enforcing the agreement. Notwithstanding any other provision of law, the city may withhold final or interim inspection of units for which building permits may have been issued and may withhold issuance of additional building permits, certificates of occupancy if applicable, or any other processing of entitlements on any property or improvements included within the territory of the map or approved development plan so approved or otherwise owned by applicant, until the required fees are received by the city. Any land to be contributed for the purposes outlined in this chapter shall be dedicated to the city and shown on the final subdivision or parcel map or approved development plan at the time of approval. The director of finance shall be responsible for the collection and distribution of fees as set forth in this chapter.

B. Planned developments shall be eligible to receive a credit as determined by the city council, against the amount of land required to be dedicated, or the amount of the fee imposed, for the value of private open space within the development which is usable for active recreational uses. Such credit, if given, shall be determined on a case-by-case basis. (Ord. 2945 § 7, 2004; Ord. 2886 § 1, 2002).

17.10.110 Periodic review and amendment authorized.

Costs of constructing park facilities, population density, and local conditions change over the years, and, as such, the specified formulas for the calculation and payment of fees for acquisition and development of park sites as stated in this chapter is subject to and shall be periodically reviewed and amended by the city council. The development portion of the fee shall be adjusted, starting on October 1, 2004, and on each October 1st thereafter, based on the one-year change (from July to July) in the 20-City Construction Cost Index, as published monthly in the Engineering News Record. Adjustments to the fees based upon the Construction Cost Index shall be automatic and shall not require further action by the city council. The park development component of the fee, as well as the land acquisition component of the fee, may also be reviewed and amended by city council as necessary to reflect current market conditions, as well as sound engineering, financing, and planning information. Adjustments to the fees resulting from these discretionary reviews may be made by resolution amending the master fee schedule. (Ord. 2971 § 1, 2004; Ord. 2886 § 1, 2002).

17.10.120 Geographical distribution of in-lieu fees for land dedication.

A. The collection of in-lieu fees for land dedication will be separated into two geographical categories, areas east of the I-805 and areas west of the I-805 and the fee for these areas will be as follows:

1. Areas east of I-805.

Parkland Acquisition	Single-Family	Multifamily	Mobile Home	Hotel/Motel Room
DUs per Park Acre	95	128	203	222
Acquisition Cost Per Acre	\$1,204,200	\$1,204,200	\$1,204,200	\$1,204,200
Proposed In-Lieu Fee Per Unit	\$12,676	\$9,408	\$5,932	\$5,424

2. Areas west of I-805.

Parkland Acquisition	Single-Family	Multifamily	Mobile Home	Hotel/Motel Room
DUs per Park Acre	95	128	203	222
Acquisition Cost/Acre	\$474,443	\$474,443	\$474,443	\$474,443
Current In-Lieu Fee Per Unit	\$4,994	\$3,707	\$2,337	\$2,137

(Ord. 3026 § 1, 2005).

Chapter 17.11

SCHOOL FACILITIES LAND DEDICATION AND FEES

Sections:

- 17.11.010 Purpose and intent.
- 17.11.020 Dedication of land and payment of fees for school facilities.
- 17.11.030 Findings and declarations.
- 17.11.040 Definitions.
- 17.11.050 General plan.
- 17.11.060 Notification to school districts.
- 17.11.070 Overcrowded attendance areas – School district findings.
- 17.11.080 Requirements of notice of findings.
- 17.11.090 Approval of residential developments – City council findings.
- 17.11.100 Requirement of fees and/or dedications.
- 17.11.110 Standards for land and fees.
- 17.11.120 Payment of fees in smaller subdivisions.
- 17.11.130 School district schedule.
- 17.11.140 Application filing.
- 17.11.150 Decision factors.
- 17.11.160 Land dedication.
- 17.11.170 Fee payment.
- 17.11.180 Use of land and fees.
- 17.11.190 Trust land and fees and refunds thereof.
- 17.11.200 Agreement for fee distribution.
- 17.11.210 Fee fund records and reports.
- 17.11.220 Termination of dedication requirements.

17.11.010 Purpose and intent.

It is the intent of the city council to implement the provisions of Section 65974 of the Government Code of the state of California to provide interim school facilities through the dedication of land or payment of fees in lieu thereof, as may be required by the Chula Vista City School District or the Sweetwater Union High School District. It is the purpose of the council to provide procedures and authority whereby the city, the affected school districts and applicants for land development approvals may undertake such reasonable steps as would alleviate the overcrowding of school facilities. Said procedures shall be established and administered so as to provide both an equitable and flexible approach recognizing the fact that students will often be assigned to school facilities outside of the attendance areas, and any additional students intro-

duced into the district may impact the district's ability to satisfy educational needs, thus requiring, upon appropriate showing, assistance to provide interim school facilities. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.020 Dedication of land and payment of fees for school facilities.

Pursuant to the authority granted by Section 65970, et seq., of the Government Code of the state of California, every subdivider, developer or person seeking rezonings, precise plan approvals, conditional use permits, planned unit developments or building permits for any residential development shall, for the purpose of providing interim school facilities reasonably benefiting and serving the residents of the regulated subdivision or property to be developed, dedicate a portion of the land or, in lieu thereof, pay a fee for each dwelling unit in the subdivision or development, or do both as required by this chapter. The dedication or payment of fees in lieu thereof shall be applicable to all residential developments of any type allowed under the various and several residential zones of the city. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.030 Findings and declarations.

The city council finds and declares as follows:

A. Adequate school facilities should be available for children residing in new residential developments.

B. Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

C. In many areas of the city, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

D. New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

E. For these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in the city. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.040 Definitions.

A. "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the district.

B. "Dwelling unit" means a building or a portion thereof, or a mobilehome, designed for residential occupation by one person or a group of two or more persons living together as a domestic unit.

C. "Reasonable methods for mitigating conditions of overcrowding" may include, but are not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district, or temporary-use buildings owned by the school district will be used.

D. "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units, or a subdivision of land for the purpose of constructing one or more residential dwelling units. "Residential development" includes, but is not limited to, a preliminary or final development plan, a subdivision tentative or final map, a parcel map, conditional use permit, a building permit, and any other discretionary permit for residential use. It also includes a privately proposed amendment to the general plan which would allow an increase in authorized residential density and where no further discretionary action for residential development need be taken by a decision-making body prior to application for a building permit or any privately proposed specific plan or amendment to a specific plan which would allow an increase in authorized residential density. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.050 General plan.

The general plan 1990 of the city has heretofore been amended by Resolution Nos. 6671 and 6762 to require, under Part III thereof, indicating the goals of the plan, the provision of adequate school facilities in order to satisfy the educational needs for newly developed areas in accordance with the level of educational services as established by standards and criteria adopted by the school districts operating within the city. Further, the general plan, in Part IV thereof carrying out the general plan, establishes requirements for the regulation of rezoning, subdivision approval and the granting of building permits to insure the adequacy of public facilities, including public schools. The general plan map, as adopted by Resolution No. 5878, indicates proposed locations for elementary, junior high and high schools. Those interim school facilities to be constructed from fees paid or those lands required to be dedicated for the location of school facilities, as required pursuant to the procedures established by this chapter, shall be consistent with

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the general plan of the city. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.060 Notification to school districts.

The city shall notify each of the school districts of a request for approval of any residential developments, at the time any tentative map is submitted, rezoning or discretionary permit requested. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.070 Overcrowded attendance areas – School district findings.

A. Findings of Conditions of Overcrowding. If the governing body of a school district which operates an elementary, junior high or high school in the city makes a finding supported by clear and convincing evidence that:

1. Conditions of overcrowding exist in one or more attendance areas within the district which will be impacted by the proposed residential development because of the additional student enrollment in one or more attendance areas to which such students may be assigned, which will impair the normal functioning of educational programs, including the reason for such conditions existing; and

2. All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist, the governing body of the school district shall notify the city council. The notice of findings sent to the city shall specify the mitigation measures considered by the school district. After the receipt of any notice of findings complying with this section, the council shall determine whether it concurs in such school district findings. The council may schedule and hold a public hearing on the matter of its proposed concurrence prior to making its determination. If the city council concurs in such findings, the provisions of CVMC 17.11.090 shall be applicable to actions taken on residential development by such council.

B. Statement of Resolution on Conditions of Overcrowding. In lieu of submittal of school district findings as provided in subsection (A) of this section, the school district may submit to the city council a letter or statement indicating that conditions of overcrowding or interim school needs generated by a residential development have been satisfied. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.080 Requirements of notice of findings.

Any notice of findings sent by a school district to the city shall specify:

A. The findings listed in CVMC 17.11.070;

B. The reasonable mitigation measures and methods that have been considered, including, but not limited to, those as defined in this chapter, considered by the school district, and any determination made concerning them by the district;

C. The precise geographic boundaries of the overcrowded attendance area or areas which will be impacted by proposed student assignments from the residential development;

D. Such other information as may be required by city regulation. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.090 Approval of residential developments – City council findings.

The city council shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, which includes a building permit in accordance with the general plan of the city, or approve a tentative subdivision map for residential purposes for any residential developments which have been determined pursuant to CVMC 17.11.070 to create conditions of overcrowding impacting one or more attendance areas within the district, unless the city council makes one of the following findings:

A. That action will be taken pursuant to this chapter to provide dedications of land and/or fees to mitigate conditions of overcrowding; or

B. That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council would benefit the city, thereby justifying the approval of a residential development otherwise subject to the provisions of this chapter for dedications of land or fees; provided, however, the city council or the appropriate administrative or decision-making body shall perform the requested discretionary act in regard to any residential development if the school districts have notified the city by statement or letter as required in CVMC 17.11.070(B). (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.100 Requirement of fees and/or dedications.

For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to CVMC 17.11.070, the city may require the dedication of land, the payment of fees in lieu thereof, or a combination of both, as determined by the planning commission or the city council during the hearings for specific residential

development projects as a condition to the approval of a residential development. Prior to imposition of the fees or dedications of land, it shall be necessary for the city council or the planning commission to make the following findings:

A. The general plan provides for the location of public schools.

B. The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary, junior high or high school classrooms and related facilities.

C. The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship, and will be limited, to the needs of the community for interim elementary, junior high or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

D. The facilities to be constructed from such fees or the land to be dedicated, or both, are consistent with the general plan. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.110 Standards for land and fees.

A. General Standards. The standards for the amount of dedicated land or fees to be required shall be established by the governing board of each school district where a determination has been made pursuant to CVMC 17.11.070 that conditions of overcrowding exist. Such standards and facts supporting them shall be transmitted to the city council. If the city council concurs in such standards, they shall, until revised, be used by decision-making bodies in situations where dedications of land and/or fees are required as a condition to the approval of a residential development.

B. Specific Dedication or Fee Requirements. Nothing in this chapter shall prevent the city council from establishing and using standards other than those established by the school district in the event the city council is unable to concur in those transmitted by the district. In each case where necessary findings have been made and concurred in by the city council, the amount of land or fees to be required may be modified from that general standard approved by resolution of the city council upon a showing that the overcrowded conditions are either more or less severe than those conditions upon which the general standard has been formulated. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.120 Payment of fees in smaller subdivisions.

Only the payment of fees shall be required in subdivisions containing 50 parcels or less. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.130 School district schedule.

Following the decision by the city to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council and the reasons for the modifications. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.140 Application filing.

At the time of filing an application for the approval of a proposed residential development (re-zoning, tentative subdivision map or discretionary permit) located in an attendance area where the findings required by CVMC 17.11.070 have been made, the applicant shall, as part of such filing, indicate whether he prefers to dedicate land for interim school facilities, or to pay a fee in lieu thereof, or do a combination of these. If the applicant prefers to dedicate land, he shall suggest the specific land. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.150 Decision factors.

At the time of initial residential development approval, the planning commission shall determine whether to require a dedication of land within the development, payment of a fee in lieu thereof, or a combination of both. In making this determination, the commission shall consider the following factors:

A. Whether lands offered for dedication will be consistent with the general plan;

B. The topography, soils, soil stability, drainage, access, location and general utility of land in the development available for dedication;

C. Whether the location and amount of lands proposed to be dedicated or the amount of fees to be paid, or both, will bear a reasonable relationship, and will be limited, to the needs of the community for interim elementary, junior high or high school facilities and will be reasonably related and limited to the need for schools caused by the development;

D. If only a subdivision is proposed, whether it will contain 50 parcels or less. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.160 Land dedication.

When land is dedicated, it shall be offered to the school districts to be held in fee for school purposes, subject to reversion in accordance with the trust provisions of CVMC 17.11.190 in substantially the same manner as prescribed in the subdivision ordinance for streets and public easements; provided, however, such dedicated land which subsequently is determined by the school district to be unsuitable for school purposes may be sold at the option of the school district. The funds derived therefrom must be used in accordance with the requirements of this chapter. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.170 Fee payment.

If the payment of a fee is required, such payment shall be made to the school districts at the time the building permit is approved and issued; provided, however, the school districts may notify the city that appropriate agreements or surety arrangements have been made which defer said payment until such time as the city issues a certificate of completion for the residential development. (Ord. 1848 § 2, 1978; Ord. 1783 § 2, 1978).

17.11.180 Use of land and fees.

All land or fees, or both, collected pursuant to this chapter shall be used only for the purpose of providing interim elementary, junior high or high school classrooms and related facilities. Following the action by the city council to require the dedication of land or payment of fees, or both, the city clerk shall notify each school district affected thereby. The governing body of the school district shall then submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council and the reasons for the modifications. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.190 Trust land and fees and refunds thereof.

Land and fees shall be held in trust by the respective school districts until utilized for the pur-

poses set forth in this chapter and as provided in CVMC 17.11.180 for the resolution of conditions of overcrowding in one or more attendance areas within the school district. If the final subdivision map, a parcel map, conditional use permit or development plan is vacated or voided, and if the applicant so requests and the respective school districts have not made use of the land or fees as provided in this chapter, the board of trustees of the respective school district shall order the return of the land or fees. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.200 Agreement for fee distribution.

Where two separate school districts operate schools in an attendance area where the city council concurs that overcrowding conditions exist for both school districts, the city council will enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.210 Fee fund records and reports.

Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1st of each year and shall be filed more frequently at the request of the city council. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

17.11.220 Termination of dedication requirements.

When it is determined that conditions of overcrowding no longer exist in an attendance area, the city shall cease levying any fee or requiring the dedication of any land pursuant to this chapter for the area. (Ord. 1848 § 1, 1978; Ord. 1783 § 2, 1978).

Chapter 17.11A**MITIGATION OF THE IMPACT
OF LEGISLATIVE ACTIONS ON
SCHOOL DISTRICTS**

Sections:

- 17.11A.010 Purpose.
- 17.11A.020 Definitions.
- 17.11A.030 Procedure.
- 17.11A.040 Responsibilities.

17.11A.010 Purpose.

The purpose of this chapter is to ensure that adequate educational facilities are available concurrently with new development resulting from legislative action by the city council.

The city council of the city of Chula Vista finds and declares as follows:

A. Sufficient, adequate school facilities should be available to serve new development.

B. City review of proposed legislative action provides the opportunity to ensure that adequate school facilities are available when needed.

C. Sufficient funds for the expansion or construction of school facilities and the purchase of educational equipment necessitated by increased enrollment are not available in the Chula Vista Elementary School District and Sweetwater Union High School District. Any city legislative actions that increase the impact on schools would further exacerbate funding problems.

D. The public health and safety and the general welfare of the community and all its citizens are negatively affected by a lack of facilities sufficient to provide for the education of the children of the city of Chula Vista.

E. City involvement is needed to alleviate the impacts on existing educational facilities and equipment of development from legislative actions by the city council.

F. For these reasons, enhanced methods of mitigating the impact on school facilities caused by legislative actions are needed in the city of Chula Vista. (Ord. 2534 § 1, 1992).

17.11A.020 Definitions.

Whenever the following words are used in this chapter, they shall have the meaning ascribed to them in this section:

A. "Facilities and equipment" means any capital facilities and equipment used by a school district for the expansion, construction or reconstruction of school facilities, including land acquisition.

B. "Legislative action" for the purpose of this chapter means the adoption or amendment of any of the following: (1) general plan; (2) specific plan; (3) general development plan; (4) sectional planning area plan ("SPA plan"); (5) pre-annexation pre-zone or adoption of a rezone changing the allowable use of property.

C. "School district" means the Chula Vista Elementary School District or Sweetwater Union High School District. (Ord. 2534 § 1, 1992).

17.11A.030 Procedure.

The beneficiary or beneficiaries of a legislative action have the right to the timely processing of the request by the affected school districts. Consequently, the following procedure is established:

A. At the time a private request for a legislative action is initiated, the beneficiary or beneficiaries of the action shall notify the school district serving the area in which their property is located.

B. The city shall notify the school district when a proposed legislative action is initiated and provide details of the potential development allowed by the proposed legislative action.

C. The school district shall document the impact of the project resulting from the proposed legislative action on its facilities and equipment, and work with the beneficiary or beneficiaries of the action to devise an equitable and timely method of providing the educational facilities and equipment required to serve the development to be permitted by the legislative action.

D. The beneficiary or beneficiaries of the legislative action shall follow the process of the school district to obtain an irrevocable and binding agreement with the school district in which the beneficiary or beneficiaries shall agree to pay supplemental school facilities fees in a mutually agreeable amount or such other agreement as the district and the beneficiary of the legislative action shall deem mutually acceptable.

E. The city shall give the school district notice of the city hearings on the legislative action. The city may consider the legislative action, notwithstanding a lack of the binding agreement. The details of the agreement, or lack thereof, shall be included in the report of the planning department to the planning commission and city council on the legislative action. This chapter shall not apply to publicly initiated legislative acts nor to legislative acts relating exclusively to nonresidential development.

F. If the city council approves the legislative action, it shall be conditioned upon mitigation of

school impacts to the satisfaction of the school district(s). (Ord. 2534 § 1, 1992).

17.11A.040 Responsibilities.

A. The school districts have responsibility for exploring all alternate funding mechanisms for new school construction, including state funds. When obtained, the districts should attempt to apply such funds to reduce the need for assessment districts or development fees imposed on new development.

B. The responsibility for negotiating the binding agreement between the school district and the beneficiaries of the legislative action shall be borne by those parties. (Ord. 2534 § 1, 1992).

Chapter 17.12

SOLID WASTE DISPOSAL*

Sections:

- 17.12.010 Definitions.
- 17.12.020 Purpose and intent of provisions.
- 17.12.030 Regulation of sales of nonalcoholic beverages in reusable containers – Display of messages required.
- 17.12.040 Regulation of sales of alcoholic beverages in reusable containers – Display of messages required.

* For statutory regulation of garbage in public places, see Health and Saf. Code § 4475, et seq.

17.12.010 Definitions.

“Returnable, nondisposable container” is defined for the purposes of this chapter to mean a glass container which can be reused or refilled with beverages without any reprocessing other than cleaning, and shall further be a container for which a deposit is paid and returned to the consumer by the owner of any store carrying such products. (Ord. 1424 § 1, 1972; prior code § 35.501(B)).

17.12.020 Purpose and intent of provisions.

A. It is the intent of the city council to pursue a variety of avenues to meet the growing problem of solid waste disposal through regulatory methods which may be enforced upon the local level in accordance with the appropriate exercise of police power of the city.

B. It is further the purpose of the council, by encouraging programs of recycling and reusability of solid waste products, especially containers of all kinds, to contribute to the preservation and conservation of natural resources and energy.

C. It is the purpose of the council in adopting this chapter to improve the environment and to enhance the aesthetics of the Chula Vista community by establishing the reasonable regulation of disposal materials, which shall also reduce the demand for utilization of lands for dumping grounds of all kinds, thus improving the ability to provide for better land use. (Ord. 1424 § 1, 1972; prior code § 35.501(A)).

17.12.030 Regulation of sales of nonalcoholic beverages in reusable containers – Display of messages required.

A. In order to carry out the purpose and intent of this chapter insofar as nonalcoholic carbonated

beverages sold in glass containers are concerned, the city council desires to provide consumers of said products with a fair choice between purchases of said products in disposable or nondisposable containers and to clearly demonstrate the economic advantages to the consumer as well as the community in making said purchases in the nondisposable, returnable containers.

B. All retail stores dealing in and selling nonalcoholic carbonated beverages dispensed in disposable glass containers or cans shall, from and after November 1, 1972, insofar as reasonably possible, maintain in stock and on display in the merchandising area where said beverages are displayed for sales purposes a quantity of each brand of said beverages for sale in nondisposable, returnable glass containers, if in fact the manufacturer of said beverages does produce or bottle said beverage in glass nondisposable, returnable containers.

C. In addition, the retail store owner shall maintain and prominently display a sign in sizes not smaller than eight and one-half by 11 inches. Said sign shall carry substantially the following messages relative to environmental problems: "Improve your environment. Buy beverages in returnable bottles and return them."; "Keep your city clean. Buy returnables and return them."; plus a message relative to economic advantage: "Returnable bottled beverages have greater economic value – if you return the bottles."; "Beverages bought in returnable containers are a better buy than those bought in nonreturnable containers." Other messages of substantially the same import may be substituted therefor from time to time; provided, that the message content shall have been approved by the environmental control commission of the city. (Ord. 1424 § 1, 1972; prior code § 35.502).

17.12.040 Regulation of sales of alcoholic beverages in reusable containers – Display of messages required.

A. In order to carry out the purpose and intent of this chapter insofar as alcoholic carbonated beverages sold in glass containers are concerned, the city council desires to provide consumers of said products with a fair choice between purchases of said products in disposable or nondisposable containers and to clearly demonstrate the economic advantage to the consumer as well as the community in making said purchases in the nondisposable, returnable containers.

B. All retail stores dealing in and selling alcoholic carbonated beverages dispensed in dispos-

able glass containers or cans shall from and after November 1, 1972, insofar as reasonably possible, maintain in stock and on display in the merchandising area where said beverages are displayed for sales purposes a quantity of each brand of said beverages for sale in nondisposable, returnable glass containers, if in fact the manufacturer of said beverage does produce or bottle said beverage in glass nondisposable, returnable containers for purposes of retail package sale.

C. In addition, the retail store owner shall maintain and prominently display a sign in sizes not smaller than eight and one-half inches by 11 inches. Said sign shall carry substantially the following messages relative to environmental problems: "Improve your environment. Buy beverages in returnable bottles and return them."; "Keep your city clean. Buy returnables and return them."; plus a message relative to economic advantage: "Returnable bottled beverages have greater economic value – if you return the bottles."; "Beverages bought in returnable containers are a better buy than those bought in nonreturnable containers." Other messages of substantially the same import may be substituted therefor from time to time; provided, that the message content has been approved by the environmental control commission of the city. (Ord. 1424 § 1, 1972; prior code § 35.503).

Chapter 17.16**WELLS**

Sections:

- 17.16.010 Purpose and intent of provisions.
- 17.16.020 Definitions.
- 17.16.030 Compliance required – With certain state regulations.
- 17.16.040 Compliance required – With adopted standards.
- 17.16.050 Standards – Water wells – Modifications of state regulations.
- 17.16.060 Standards – Cathodic protection wells – Modifications of state regulations.
- 17.16.070 Investigation and nuisance determination authority.
- 17.16.080 Nuisance wells – Notice required to abate.
- 17.16.090 Nuisance wells – Appeal from abatement order – Fee – Hearing.
- 17.16.100 Nuisance wells – Abatement by health officer authorized when.
- 17.16.110 Nuisance wells – Abatement costs – Determination – Hearing – Assessments or actions for payment when.
- 17.16.120 Permit – Required for construction, repair, reconstruction or destruction.
- 17.16.130 Permit – Application – Contents required.
- 17.16.140 Permit – Fee.
- 17.16.150 Permit – Conditions for granting.
- 17.16.160 Permit – Grounds for refusal.
- 17.16.170 Permit – Terms of issuance – Completion of work – Inspection required.
- 17.16.180 Permit – Bond or deposit required as guarantee of performance – Waiver authorized when.
- 17.16.190 Permit – Continuous bond or deposit for contractors.
- 17.16.200 Permit – Review and appeal procedure – Fee – Hearing.
- 17.16.210 Contractor to perform work – Licensing required.
- 17.16.220 Inspections required – Location – Work in progress – Completion.
- 17.16.230 Permit – Expiration after certain term – Effect.
- 17.16.240 Permit – Extension of period of validity – Application – Fee.

- 17.16.250 Permit – Revocation or suspension – Grounds – Hearing – Notice required – Appeal.
- 17.16.260 Log of well required – Contents.
- 17.16.270 Violation – Penalty.

17.16.010 Purpose and intent of provisions.

It is the purpose of this chapter to further protect the environmental quality in this city by providing for the construction, repair and reconstruction of wells, to the end that the ground water of this city will not be polluted or contaminated and that water obtained from such wells will be suitable for the purpose for which used and will not jeopardize the health, safety or welfare of the people of this city, and for the destruction of abandoned wells or wells found to be public nuisances to the end that such wells will not cause pollution or contamination of groundwater or otherwise jeopardize the health, safety or welfare of the people of this city. (Ord. 1547 § 1, 1974; prior code § 35.701).

17.16.020 Definitions.

The following words shall have the meanings provided in this section:

A. “Abandoned” and “abandonment” apply to a well which has not been used for a period of one year, unless the owner declares in writing, to the health officer, his intention to use the well again for supplying water or other associated purposes, such as an observation well or injection well, and receives approval of such declaration from the health officer. All such declarations shall be renewed annually and at such time be resubmitted to the health officer for approval. Test holes and exploratory holes shall be considered abandoned 24 hours after construction work has been completed, unless otherwise approved by the health officer of San Diego County.

B. “Abatement” means the construction, reconstruction, repair or destruction of a well so as to eliminate a nuisance caused by a well polluting or contaminating groundwater.

C. “Agricultural well” means a water well used to supply water for irrigation or other agricultural purposes, including so-called stock wells.

D. “Cathodic protection well” means artificial excavation in excess of 20 feet constructed by any method for the purpose of installing equipment or facilities for the protection, electrically, of metallic equipment in contact with the ground. (See definitions of “deep anode bed” and “shallow anode bed.”)

E. "Commercial well" means a water well used to supply a single commercial establishment.

F. "Community water supply well" means a water well used to supply water for domestic purposes in systems subject to Chapter 7 of Part I of Division 5 of the California Health and Safety Code.

G. "Construct, reconstruct (construction, reconstruction)" means to dig, drive, bore, drill or deepen a well, or to re-perforate, remove, replace, or extend a well casing.

H. "Contamination" means an impairment of the quality of water to a degree which creates a hazard to the public health through poisoning or through spread of disease.

I. "Deep anode bed" means any cathodic protection well more than 50 feet deep.

J. "Destruction" means the proper filling and sealing of a well that is no longer useful so as to assure that the groundwater is protected and to eliminate a potential physical hazard.

K. "Electrical grounding well" means any artificial excavation in excess of 20 feet constructed by any method for the purpose of establishing an electrical ground.

L. "Health officer" means the health officer of San Diego County or his designee.

M. "Individual domestic well" means a water well used to supply water for domestic needs of an individual residence.

N. "Industrial well" means a water well used to supply an industry on an individual basis.

O. "Modification, repair or reconstruction" means the deepening of a well or the re-perforation or replacement of a well casing and all well repairs and modifications that can affect the groundwater quality.

P. "Observation well" means a well used for monitoring or sampling the conditions of water-bearing aquifer, such as water pressure, depth, movement or quality.

Q. "Order of abatement" means both mandatory and prohibitory orders requiring or prohibiting one or more acts; said term shall also include those orders effective for a limited as well as an indefinite period of time, and shall include modifications or restatements of any order.

R. "Permit" means a written permit issued by the health officer permitting the construction, reconstruction, destruction, or abandonment of a well.

S. "Person" means any person, firm, corporation or governmental agency.

T. "Pollution" means an alteration of the quality of water to a degree which unreasonably affects:

1. Such waters for beneficial uses; or
2. Facilities which serve such beneficial uses.

"Pollution" may include "contamination."

U. Public Nuisance. The term "public nuisance," when applied to a well, means any well which threatens to impair the quality of groundwater or otherwise jeopardize the health or safety of the public.

V. "Salt water (hydraulic) barrier well" means a well used for extracting water from or injecting water into the underground as a means of preventing the intrusion of salt water into a fresh-water-bearing aquifer.

W. "Shallow anode bed" means any cathodic protection well more than 20 feet deep but less than 50 feet deep.

X. "Test or exploratory hole" means any excavation used for determining the nature of underground geological or hydrological conditions, whether by seismic investigation, direct observation or any other means.

Y. "Well" means any artificial excavation constructed by any method for the purpose of extracting water from or injecting water into the underground, for providing cathodic protection or electrical grounding of equipment, for making tests or observations of underground conditions, or for any other similar purpose. "Wells" shall include, but shall not be limited to, community water and supply wells, individual domestic wells, commercial wells, industrial wells, agricultural wells, cathodic protection wells, electrical grounding wells, test and exploratory holes, observation wells and salt water (hydraulic) barrier wells, as defined herein, and other wells whose regulation is necessary to accomplish the purposes of this chapter.

"Wells" shall not include:

1. Oil and gas wells, geothermal wells or other wells constructed under the jurisdiction of the State Department of Conservation, except those wells converted to use as water wells;
2. Wells used for the purpose of dewatering excavations during construction, or stabilizing hill-sides or earth embankments; or
3. Other wells whose regulation is not necessary to fulfill the purpose of this chapter as determined by the health officer. (Ord. 1624 § 2, 1975; Ord. 1547 § 1, 1974; prior code § 35.702).

17.16.030 Compliance required – With certain state regulations.

Nothing contained in this chapter shall be deemed to release any person from compliance with the provisions of Article 3 of Chapter 10 of Division 7 of the Water Code of the state of California or any successor thereto. (Ord. 1547 § 1, 1974; prior code § 35.703).

17.16.040 Compliance required – With adopted standards.

No person shall construct, repair, reconstruct or destroy any well subject to this chapter which does not conform to the standards established herein. (Ord. 1547 § 1, 1974; prior code § 35.704).

17.16.050 Standards – Water wells – Modifications of state regulations.

Standards for the construction, repair, reconstruction or destruction of water wells shall be as set forth in Chapter II of State Department of Water Resources Bulletin No. 74, three copies of which have been filed with the city clerk, with the following modifications:

A. Add to footnote 1/:

Shallow dug, or bored wells used for community water supply shall be located at least 250 feet from any sewage disposal facility.

B. Part II, Section 9(A). Substitute “20 ft.1/” for “none 3/” (this automatically deletes the 3/ footnote).

C. Part II, Section 9(E). Add following the footnote following section title:

**Exception – where the air-rotary method is used for individual domestic wells 8" in diameter or smaller, the thickness of seal may be reduced to 1".

D. Part II, Section 10B. Delete entire section with exception of that portion of the first sentence which states: “Because of their susceptibility to contamination and pollution, the use of well pits should be avoided.”

E. Part II, Section 15(A), Item 3. Delete the phrase: “Where the water is to be used for domestic purposes.”

F. Part II, Section 16. Delete from Section 16 title the words: “Large” and “diameter” and substitute the words: “Bored or dug.”

G. Part II, Section 16(A). Delete the word “underground” from last sentence so sentence reads:

When used for this purpose, these wells shall be located at least 250 feet from any sewage disposal facility.

(Ord. 1624 § 3, 1975; Ord. 1547 § 1, 1974; prior code § 35.705).

17.16.060 Standards – Cathodic protection wells – Modifications of state regulations.

Standards for the construction, repair, reconstruction or destruction of cathodic protection wells shall be as set forth in Bulletin No. 74-1 of the State Department of Water Resources, three copies of which are filed with the city clerk, with the following modifications:

A. Chapter II, Part I, Section 1-A. Delete the definition of “cathodic protection well” as printed and add:

A. Cathodic Protection Well. A cathodic protection well means an artificial excavation in excess of 20 feet constructed by any method for the purpose of installing equipment or facilities for the protection electrically of metallic equipment in contact with the ground, commonly referred to as cathodic protection.

B. Chapter II, Part II, Section 8. Delete the word: “location” in title and add the word: “construction” so title reads: “Well Construction with Respect to Pollutants.”

C. Chapter II, Part II, Section 10. Delete Subsection A-4 and the asterisked footnotes in their entirety.

D. Chapter II, Part III, Section 13B. Delete the phrase: “If the casing is 8 inches or larger in diameter” thereby leaving the phrase: “The well is covered with an appropriate locked cap.” (Ord. 1547 § 1, 1974; prior code § 35.706).

17.16.070 Investigation and nuisance determination authority.

The county health officer may, upon reasonable cause to believe that an abandoned well or other well is causing a nuisance by polluting or contaminating groundwater, or constitutes a safety hazard, investigate the situation to determine whether such a nuisance does in fact exist. He shall have the

power, when in the performance of his duty and upon first presenting his credentials and identifying himself as an employee of the county health department to the person apparently in control of the premises, if available, to enter upon any such premises between the hours of 8:00 a.m. and 6:00 p.m. to discover or inspect any thing or condition which appears to indicate such a nuisance in accord with right-of-entry provisions set forth in CVMC 1.16.010. He may examine such premises, things or conditions, take such samples and make such tests as needed, and take any other steps reasonably necessary for the proper investigation and determination of whether such a nuisance exists. (Ord. 1547 § 1, 1974; prior code § 35.707).

17.16.080 Nuisance wells – Notice required to abate.

Whenever the health officer determines that an abandoned or other well is causing a nuisance by polluting or contaminating groundwater, or constitutes a safety hazard, he may issue a written order requiring that the conditions productive of the nuisance be abated within a period of 10 days thereafter and shall forthwith serve the order upon the person occupying the premises, if any, and if no person occupies the premises, the order shall be posted upon said premises in a conspicuous place. In addition, a copy shall be mailed to the owners of the premises as their names and addresses appear upon the last equalized assessment roll. The health officer may for good cause extend the time specified in the order or otherwise modify or rescind the order.

The order of abatement shall advise the possessors and owners of the property of their right to appeal to the city council and to stay the order of abatement pending such appeal. (Ord. 1547 § 1, 1974; prior code § 35.708).

17.16.090 Nuisance wells – Appeal from abatement order – Fee – Hearing.

Any person who has been given an order of abatement may, within 10 days following the receipt of the order of abatement, file an appeal in writing to the city council. Said appeal shall be accompanied by a filing fee of \$25.00 and shall specify the grounds upon which the appeal is taken. The city clerk shall then proceed to set the matter for hearing, not later than 20 days thereafter, and such appeal shall stay the effect of any order issued pursuant to CVMC 17.16.080 until the city council hears the appeal and issues its order either to affirm, overrule or modify the action of the health

officer. Notice of the hearing shall be mailed to the appealing party at least five days prior to the hearing. (Ord. 1547 § 1, 1974; prior code § 35.709).

17.16.100 Nuisance wells – Abatement by health officer authorized when.

In the event that a nuisance is not abated in accordance with an order of abatement, the health officer may, upon securing the approval of the city council, proceed to abate the nuisance by force account, contract or any other method deemed most expedient by the city council. (Ord. 1547 § 1, 1974; prior code § 35.710).

17.16.110 Nuisance wells – Abatement costs – Determination – Hearing – Assessments or actions for payment when.

A. The health officer shall prepare and file with the city clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the well is or was located, and the names and addresses of the record owner, the holder of any mortgage or deed of trust or of record, and any other person known to have a legal interest in the property.

B. A hearing shall be held on said report and any protests or objections thereto, and notice of the hearing shall be mailed to the persons with a legal interest in the property at least 10 days prior to the date set for the hearing. The city council shall determine at the hearing the correct charge to be made for the work.

C. All costs of abatement carried out under the terms of this section shall constitute a charge and special assessment against the parcel of land involved. If such costs are not paid within 60 days, they shall then be declared a special assessment against that property as provided in Government Code Section 25845. The assessment shall be collected at the same time and in the same manner as ordinary city taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy, collection and enforcement of city taxes shall be applicable to such special assessment. In addition to its rights to impose said special assessment, the city shall retain the alternative right to recover its costs by way of civil action against the owner and person in possession or control, jointly and severally. (Ord. 1547 § 1, 1974; prior code § 35.711).

17.16.120 Permit – Required for construction, repair, reconstruction or destruction.

No person shall construct, repair, reconstruct or destroy any well unless a written permit has first been obtained from the health officer as provided in this chapter, and unless the work done shall conform to the standards specified in this chapter and all the conditions of the said permit. (Ord. 1547 § 1, 1974; prior code § 35.713).

17.16.130 Permit – Application – Contents required.

Applications for permits shall be made to the health officer and shall include the following:

A. A plot plan showing the location of the well with respect to the following items within a radius of 250 feet from the well:

1. Property lines,
 2. Waste disposal systems or works carrying or containing sewage, industrial wastes, or solid wastes,
 3. All intermittent or perennial, natural or artificial bodies of water or watercourses,
 4. The approximate drainage pattern of the property,
 5. Other wells,
 6. Structures, surface or subsurface;
- B. Location of the property, and the assessor's parcel number;
- C. The name of the person who will construct the well;
- D. The proposed minimum and the proposed maximum depth of the well;
- E. The proposed minimum depths and types of casings and minimum depths of perforations to be used;
- F. The proposed use of the well;

G. Other information as may be necessary to determine if the underground waters will be adequately protected. (Ord. 1547 § 1, 1974; prior code § 35.714(A)).

17.16.140 Permit – Fee.

Each application shall be accompanied by a fee of \$60.00, and shall be paid directly to the county department of public health. (Ord. 2001 § 2, 1982; Ord. 1547 § 1, 1974; prior code § 35.714(B)).

17.16.150 Permit – Conditions for granting.

Permits shall be issued in compliance with the standards provided in this chapter, except that such standards shall be inapplicable or modified as expressly provided by the health officer in such per-

mit upon his finding that such modifications or inapplicability will accomplish the purposes of this chapter. Permits may also include any other condition or requirement found by the health officer to be necessary to accomplish the purposes of this chapter. (Ord. 1547 § 1, 1974; prior code § 35.714(C)).

17.16.160 Permit – Grounds for refusal.

The health officer may refuse to issue a permit for any of the following reasons:

- A. The applicant is not a person authorized to perform the work as provided in this chapter;
- B. The applicant fails to post the required surety bond or cash deposit as provided in this chapter;
- C. The permit application is not in proper form;
- D. The proposed well would create a water pollution problem or would aggravate a pre-existing water pollution problem or would violate any of the standards established in this chapter. (Ord. 1547 § 1, 1974; prior code § 35.714(D)).

17.16.170 Permit – Terms of issuance – Completion of work – Inspection required.

The permittee shall complete the work authorized by the permit within the time and before the date set out in the permit. The permittee shall notify the health officer in writing upon completion of the work and submit a copy of the well drilling log, and no work shall be deemed to have been completed until such written notification and a copy of the well drilling log have been received. A final inspection of the work shall be made by the health officer unless such inspection is waived by him, and no permittee shall be deemed to have complied with this chapter or his permit until such inspection has been performed or waived. (Ord. 1547 § 1, 1974; prior code § 35.714(E)).

17.16.180 Permit – Bond or deposit required as guarantee of performance – Waiver authorized when.

Prior to the issuance of a permit, the applicant shall post with the health officer a cash deposit or bond guaranteeing compliance with the terms of this chapter and the applicable permit, such bond to be in an amount deemed necessary by the health officer to remedy improper work, but not in excess of \$2,500. Such deposit or bond may be waived by the health officer where other assurances of compliance are deemed adequate by him. (Ord. 1547 § 1, 1974; prior code § 35.714(F)).

17.16.190 Permit – Continuous bond or deposit for contractors.

In lieu of furnishing a separate bond for each permit as provided above, a properly licensed contractor may deposit with the health officer a surety bond or cash deposit in the amount of \$2,500, which bond or cash deposit shall be available to remedy any improper work done by the contractor pursuant to any permit issued under this chapter. (Ord. 1547 § 1, 1974; prior code § 35.714(G)).

17.16.200 Permit – Review and appeal procedure – Fee – Hearing.

Any person aggrieved by the refusal of a permit or the terms of a permit required by this chapter may appeal in writing to the city council. The appeal shall be accompanied by a filing fee of \$15.00. The city council shall, within 40 days after the filing of an appeal, hold a hearing on said appeal and shall mail notice in writing of the date thereof to the appellant and applicant at least five days before the hearing date. The decision of the city council shall be rendered within 10 days after the initial hearing date and shall be binding upon the parties, except that the determinations made by the health officer relating directly to the public health may not be overruled or modified by the city council. (Ord. 1547 § 1, 1974; prior code § 35.714(H)).

17.16.210 Contractor to perform work – Licensing required.

Construction, reconstruction, repair, and destruction of wells shall be performed by a contractor licensed in accordance with the provisions of the contractors' license law (Business and Professional Code, Chapter 9, Division 3) unless exempted by that law. (Ord. 1547 § 1, 1974; prior code § 35.715).

17.16.220 Inspections required – Location – Work in progress – Completion.

A. Upon receipt of an application, an inspection of the well location may be required by the health officer, to be made by the health officer prior to issuance of a well permit.

B. The health officer or any person designated by the health officer may inspect the work in progress and may enter the premises at any reasonable time for the purpose of performing such inspection, in accord with the right-of-entry provisions set forth in CVMC 1.16.010.

C. After work has been completed pursuant to any permit, the health officer shall be notified by the person performing the work, and the health of-

ficer shall make a final inspection of the completed work to determine compliance with the well standards. (Ord. 1547 § 1, 1974; prior code § 35.716).

17.16.230 Permit – Expiration after certain term – Effect.

Each permit issued pursuant to this chapter shall expire and become null and void if the work authorized thereby has not been completed within 120 days following the issuance of the permit.

Upon expiration of any permit issued pursuant hereto, no further work may be done in connection with construction, repair, reconstruction, or abandonment of a well unless and until a new permit for such purpose is secured in accordance with the provisions of this chapter. (Ord. 1547 § 1, 1974; prior code § 35.717).

17.16.240 Permit – Extension of period of validity – Application – Fee.

Any permit issued pursuant to this chapter may be extended at the option of the health officer. Each individual extension granted by the health officer shall be for not longer than 120 days. In no event shall the health officer grant an extension which would make the total term of the permit exceed one year. Application for extension shall be made on a form provided by the health officer. The fee for submitting such application shall be \$25.00, which amount shall be paid directly to the San Diego County department of public health. (Ord. 1547 § 1, 1974; prior code § 35.718).

17.16.250 Permit – Revocation or suspension – Grounds – Hearing – Notice required – Appeal.

A. A permit issued hereunder may be revoked or suspended by the health officer as hereinafter provided if he determines that a violation of this chapter exists, that written notice has been directed to the permittee specifying the violation, and that the permittee has failed or neglected to make the necessary adjustments within 30 days after receiving such notice.

B. A permit may be so revoked or suspended by the health officer if he determines at a hearing for such purpose that the person to whom any permit was issued pursuant to this chapter has obtained the same by fraud or misrepresentation; provided, that notice of the time and place of such hearing is given to the permittee at least five days prior thereto.

C. The suspension or revocation of any permit shall not be effective until notice thereof in writing is mailed to the permittee, and the time for filing an

appeal to the City Council has expired. The notice shall advise the permittee of his right to appeal to the City Council and to stay the suspension or revocation pending such appeal. (Ord. 1547 § 1, 1974; prior code § 35.719).

17.16.260 Log of well required – Contents.

Any person who has drilled, dug, excavated or bored a well shall, upon completion of the well, submit to the Health Officer an accurate and complete log, to include:

A. A detailed record of the boundaries, character, size distribution and color of all lithologic units penetrated;

B. Type of well casing;

C. Location of perforations and sealing zones; and

D. Any other data deemed necessary by the health officer. In areas where insufficient subsurface information is available, the Health Officer may require inspection of the well log prior to any operation. (Ord. 1547 § 1, 1974; prior code § 35.720).

17.16.270 Violation – Penalty.

It is unlawful to intentionally fail to comply with the terms of this chapter or any permit issued hereunder. (Ord. 2506 § 1, 1992; Ord. 1547 § 1, 1974; prior code § 35.712).

Chapter 17.24

NOISY AND DISORDERLY CONDUCT

Sections:

- 17.24.010 Disorderly conduct – Unlawful acts designated – Trespass defined.
- 17.24.020 Insulting or obscene language prohibited.
- 17.24.030 Interference with radio or television reception prohibited.
- 17.24.040 Disturbing, excessive, offensive or unreasonable noises – Prohibited – Exceptions.
- 17.24.050 Enforcement of prima facie violations.
- 17.24.060 Repeated violations – Public nuisance – Responsible person – Cost recovery.

17.24.010 Disorderly conduct – Unlawful acts designated – Trespass defined.

It is unlawful for any person to be guilty of offensive or disorderly conduct in the City. A person shall be guilty of disorderly conduct if, with a purpose to cause public danger, alarm, disorder or nuisance, or if, with the knowledge that he is likely to create such public danger, alarm, disorder or nuisance, he willfully:

A. Creates a disturbance of the public order by an act of violence or by any act likely to produce violence; or

B. Engages in fighting, or in violent, threatening or tumultuous behavior; or

C. Makes any unreasonably loud noise, or uses any loud, noisy, boisterous, vulgar, or indecent language, on any of the streets, alleys, sidewalks, squares, parks, or in any store or other public place in the City; or

D. Addresses abusive language or threats to any person present which creates a clear and present danger of violence; or

E. Causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, where three or more persons are committing acts of disorderly conduct in the immediate vicinity; or

F. Damages, befouls or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition; or

G. Commits a trespass on residential property or on public property. “Trespass,” for the purpose of this subsection, means:

1. Entering upon, or refusing to leave, any residential property of another, either where such property has been posted with “NO TRESPASS-

ING” signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry or continued presence is prohibited;

2. Entering upon, or refusing to leave, any public property, in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning the property, where such regulations have been conspicuously posted, or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official charged with the security, care or maintenance of the property, his agent or a police officer.

This section shall not apply to peaceful picketing, public speaking or other lawful expressions of opinion not in contravention of other laws; or

H. Commits a trespass upon any vacant property in any zone within the City with a motorcycle, motor bike or other motor vehicle. “Trespass,” for the purpose of this subsection, means:

1. Entering upon any vacant property in the City for the purpose of riding any motorcycle, motor bike or motor vehicle, whether or not said property has been posted by the owner or the Police Department as provided herein, without first having received authorization of the property owner, which authorization must be in writing, specifically naming the operator of the motorcycle, motor bike or other motor vehicle as an invitee and designating the time period for which the permission or invitation is extended in terms of both date and hours;

2. It is further provided that the Police Department be and they are authorized and directed to post notice of this section, upon those vacant lands being used for the purpose set forth hereinabove; provided, however, that failure of unauthorized operators to observe such posting or failure to so post shall not excuse the trespass as defined herein.

This section shall not apply to peaceful picketing, public speaking or other lawful expressions of opinion not in contravention of other laws. (Ord. 1354 § 1, 1971; Ord. 1187 § 1, 1969; prior code § 20.10).

17.24.020 Insulting or obscene language prohibited.

It is unlawful for any person to use toward any other person any abusive, insulting or obscene language, or any language naturally tending to create a breach of the peace, or to be guilty of conduct tending to provoke a breach of the peace, or to

make any loud and offensive noises tending to disturb the peace. (Prior code § 20.25).

17.24.030 Interference with radio or television reception prohibited.

It is unlawful for any person to operate in the City any device, appliance, equipment or apparatus generating or causing high frequency oscillations or radiations which interfere with radio broadcast receiving apparatus or wireless receiving apparatus or television receiving apparatus; provided, however, that X-ray pictures, examinations, or treatments may be made at any time if the machines or apparatus used therefor are properly equipped to avoid all unnecessary or reasonably preventable interference with radio reception and are not negligently operated; provided further, complete screening of the room in which offending X-ray apparatus is operated may be required when such screening is necessary in order to avoid such interference; and provided further, that neon signs shall be deemed to comply with the provisions of this section when such signs are properly equipped to avoid all unnecessary or reasonably preventable interference with radio reception, or wireless reception or television reception, and are not negligently operated. (Prior code § 20.44).

17.24.040 Disturbing, excessive, offensive or unreasonable noises – Prohibited – Exceptions.

A. It is unlawful for any person in any commercial or residential zone in the City to make, continue or cause to be made or continued any disturbing, excessive, offensive, or unreasonable noise which disturbs the health, safety, general welfare or quiet enjoyment of property of others in any commercial or residential zone within the limits of the City. This section shall not in any way affect, restrict, or prohibit any activities incidental to scientific or industrial activities carried out in a reasonable manner according to the usual customs of scientific or industrial activities, conducted in areas zoned for such purposes, or upon lands which are under the jurisdiction of the board of commissioners of the San Diego Unified Port District.

B. The characteristics and conditions to consider in determining whether a noise is disturbing, excessive, offensive, or unreasonable in violation of this section shall include, but not be limited to, the following:

1. The degree of intensity of the noise;
2. Whether the nature of the noise is usual or unusual;

3. Whether the origin of the noise is natural or unnatural;

4. The level of the noise;

5. The proximity of the noise to sleeping facilities;

6. The nature and zoning of the area from which the noise emanates and the area where it is received;

7. The time of day or night the noise occurs;

8. The duration of the noise; and

9. Whether the noise is recurrent, intermittent or constant.

C. The following activities, among others, are declared to cause disturbing, excessive, offensive, or unreasonable noises in violation of this section and to constitute a public nuisance:

1. Radios, Phonographs, Amplifiers and Other Devices. The using, operating, or permitting to be played, used, or operated of any radio receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifier, or other machine or device for the producing or reproducing of sound in a manner that disturbs the peace, comfort or quiet enjoyment of any reasonable person of normal sensitivity in the vicinity;

2. Animals and Birds. The keeping of any animal or bird which by frequent or long continued noise disturbs the peace, comfort or quiet enjoyment of property of any person in the vicinity;

3. Drums and Musical Instruments. The use of any drum or other musical instrument or device for the purpose of attracting attention by creation of noise, to any performance, show, or sale;

4. Loudspeakers, Amplifiers for Advertising. The using, operating or permitting to be played, used, or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the production or reproduction of sound which is heard upon a public street for the purpose of commercial advertising or attracting the attention of the public to any building or structure, so as to annoy or disturb the peace, comfort, or quiet enjoyment of property of persons in any office, dwelling, hotel, or other type of residence;

5. Yelling or Shouting. Loud or raucous yelling or shouting on public streets, particularly between the hours of 11:00 p.m. and 8:00 a.m. or at any time or place in a manner that creates a disturbance of the public order where the yelling or shouting is inherently likely to provoke an immediate violent reaction;

6. Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary

internal combustion engine, compressor, motor boat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

7. Blowers. The operation of any noise-creating blower, power fan, or any internal combustion engine unless the noise from such blower or fan is muffled and the engine is equipped with a muffler device sufficient to deaden the noise;

8. Power Machinery, Tools, and Equipment. The use of any tools, power machinery, or equipment or the conduct of construction and building work in residential zones so as to cause noises disturbing to the peace, comfort, and quiet enjoyment of property of any person residing or working in the vicinity between the hours of 10:00 p.m. and 7:00 a.m., Monday through Friday, and between the hours of 10:00 p.m. and 8:00 a.m., Saturday and Sunday, except when the work is necessary for emergency repairs required for the health and safety of any member of the community;

9. Motorcycle or Motor Vehicle Noises. No person operating a motorcycle or motor-driven cycle shall increase the engine's revolutions per minute while the transmission is in neutral or the clutch is engaged so as to cause more noise to be emitted than is necessary for the normal operation of the vehicle. Further, any disturbing, excessive, offensive, or unreasonable noise made by any motorcycle or other motor vehicle not reasonably necessary in the operation of the cycle or vehicle under the circumstances is prohibited and includes but is not limited to noise caused by screeching of tires, racing or accelerating the engine, backfiring the engine, or other noise from the engine tailpipe or muffler;

10. Horns or Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any device for an unnecessary and unreasonable period of time; and the use of any signaling device when traffic is for any reason held up;

11. Swimming Pool Mechanical Equipment. Swimming pool mechanical equipment including, but not limited to, mechanical filters, pumps, chlorinators, and pool heaters shall be located or sound-proofed so that such equipment will not create disturbing, excessive, offensive, or unreasonable noise that disturbs the peace and quiet enjoyment

of property of persons residing in the neighborhood.

D. Prima Facie Violations. Any of the following shall constitute evidence of a prima facie violation of this section:

1. The operation of sound production or reproduction device, radio receiving set, musical instrument, drum, phonograph, television set, machine, loud speaker and sound amplifier or similar machine or device in a residential zone between the hours of 11:00 p.m. and 8:00 a.m. in a manner as to be plainly audible at a distance of 50 feet from the building, structure, vehicle, or premises in which it is located;

2. The operation of any sound amplifier which is part of or connected to any radio receiving set, stereo, compact disc player, cassette tape player, or other similar device when operated at any time in a manner as to be plainly audible at a distance of 50 feet and when operated in a manner as to cause a person to be aware of vibration accompanying the sound at a distance of 50 feet from the source. (Ord. 3068 § 1, 2007; Ord. 1579 § 1, 1974; Ord. 1073 § 1, 1967; Ord. 755 § 1, 1961; prior code § 20.35.1).

17.24.050 Enforcement of prima facie violations.

A. Any person who is authorized to enforce the provisions of this chapter and who encounters evidence of a prima facie violation of CVMC 17.24.040 is empowered to confiscate and impound as evidence any or all of the components amplifying or transmitting the sound.

B. Any peace officer, as defined in the California Penal Code, who encounters evidence of a prima facie violation of CVMC 17.24.040 whereby the components amplifying or transmitting the sound are attached to a vehicle may, in accordance with the provisions of California Vehicle Code Section 22655.5, impound the vehicle as containing evidence of a criminal offense, when the amplifying and/or transmitting component(s) cannot be readily removed from the vehicle without damaging the component(s) or the vehicle. (Ord. 3068 § 1, 2007; Ord. 2276 § 1, 1988; Ord. 1678 § 1, 1976; Ord. 1579 §§ 1, 2, 1974; Ord. 1219 § 1, 1969; Ord. 1073 § 1, 1967; Ord. 755 § 2, 1961; prior code § 20.35.2).

17.24.060 Repeated violations – Public nuisance – Responsible person – Cost recovery.

A. Any person who is responsible for a second violation of CVMC 17.24.040 within one year (365 days) of the first violation at a place or premises, including residential or commercial property, under his or her control shall be liable for maintaining a public nuisance, as defined by State and/or local law. To be deemed a person responsible for repeated violations of CVMC 17.24.040, it is not necessary for the person to be found criminally liable for a violation of the section. In addition to other penalties allowed by State law or this municipal code, a person responsible for repeated violations of CVMC 17.24.040 may be subject to an administrative fine of \$1,000 per incident. The administrative fine shall constitute a debt of the responsible person to the City and shall be payable to the City in the manner provided in Chapters 1.40 and 1.41 CVMC and other applicable law. If the responsible person is a minor, the parent or guardian of the minor shall be jointly and severally liable under this section.

B. Under the provisions of this section, a responsible person shall include a property owner of a residential or commercial property who has actual knowledge or who receives actual notice of a first violation of CVMC 17.24.040 committed by a tenant. A property owner who has actual knowledge or who receives actual notice of a first violation of CVMC 17.24.040 by a tenant shall take any and all reasonable steps to ensure that the property is not being maintained in a manner to constitute a public nuisance as defined by State and/or local law.

C. Where there occurs a repeated violation of CVMC 17.24.040 within one year (365 days) of a previous violation and the responsible party has been provided written notice of the previous violation, the responsible person shall be held liable for the cost of providing police services needed as a result of the second violation to control the threat to the public peace, health, safety, general welfare or quiet enjoyment of the property. The imposition of this liability for cost recovery shall be governed by the provisions of Government Code Section 38773, CVMC 1.41.140 and other applicable law. A repeated violation of CVMC 17.24.040 may also result in the arrest and/or citation of violators of the California Penal Code, this municipal code, or other applicable State or local law.

D. Nothing in this section shall be construed as affecting the ability to initiate or continue concur-

rent or subsequent criminal prosecution for any violation of the provisions of this municipal code or any State law arising out of the same circumstances necessitating the application of this section. (Ord. 3068 § 1, 2007).

Chapter 17.28

UNNECESSARY LIGHTS*

Sections:

- 17.28.010 Purpose and intent of provisions.
- 17.28.020 Industrial or commercial operations – Lights to be shielded when.
- 17.28.030 Residential districts – Certain lights prohibited when – Exceptions.
- 17.28.040 Lighting plans – Approval required when.
- 17.28.050 Complaints – Investigation – Notice – Hearing.
- 17.28.060 Unshielded lighting deemed misdemeanor when.

* For statutory authority for city councils to declare what constitutes a nuisance, see Gov. Code § 38771; for statutory provisions regarding abatement of nuisances, see Gov. Code §§ 38773 and 38773.5.

17.28.010 Purpose and intent of provisions.

A. It is the purpose and intent of this chapter to provide reasonable restrictions and limitations upon the use of lighting in or near the residential zones of the City so as to prevent lighting from creating a nuisance to residents within said residential zones. It is recognized that lighting is widely used in commercial or industrial zones for the purpose of advertising and security and that such lighting is essential to the conduct of many commercial or industrial enterprises.

B. The City Council acknowledges that protective security lighting in residential zones constitutes a deterrent to crime and an aid in law enforcement and contributes generally to the safety of those persons residing in such residential zones. It is further accepted that properly controlled lighting in residential areas used for landscaping and highlighting of architectural features of buildings and structures enhances and promotes the aesthetic condition of the property and the general welfare of the area.

C. However, it is equally recognized that lighting, by virtue of its intensity, brightness, direction, duration and hours of operation, can constitute a nuisance to adjacent residential dwellers.

D. It is the intent of the City Council in adopting this chapter to encourage the continued and appropriate use of lighting for the purposes set forth in this section, but to require that said lighting be regulated and controlled in a manner so as to avoid the

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creation of a public nuisance in residential areas. (Ord. 1324 § 1, 1971; prior code § 20.35.3).

17.28.020 Industrial or commercial operations – Lights to be shielded when.

It is unlawful for any commercial or industrial operation to display lights in such a manner so that the beams or the rays from the light source shall be directed to and unshielded from adjacent residential properties. All light sources used for advertising, security or safety purposes shall be arranged or shielded in such a manner so that they will not constitute a public nuisance for residential property owners. (Ord. 1324 § 1, 1971; prior code § 20.35.4 (A)).

17.28.030 Residential districts – Certain lights prohibited when – Exceptions.

It is unlawful for any person in a residential zone to maintain lighting upon premises under his ownership or control for any purpose between the hours of 11:00 p.m. and 6:00 a.m. in a manner so that the beams, rays, reflections or diffusions from the lighting spill out, over or onto adjoining or neighboring residential properties, as defined in the zoning ordinance of the city, so that said lighting, by its degree of intensity or duration of operation, interferes with the peaceful enjoyment of the property of such adjoining or neighboring landholders and unnecessarily or unreasonably disturbs the comfort and repose of the adjoining or neighboring landowners so as to constitute a nuisance. Protective security lighting, landscape lighting or architectural highlighting, properly directed and shielded, may be operated at all hours of the night. (Ord. 1324 § 1, 1971; prior code § 20.35.4(B)).

17.28.040 Lighting plans – Approval required when.

All lighting plans in multiple-family, commercial and industrial zones shall be submitted to the director of planning for approval prior to installation thereof. Should the city disapprove of the plans, appeal may be taken to the planning commission. The determination of the commission shall be final. (Ord. 1324 § 1, 1971; prior code § 20.35.4 (C)).

17.28.050 Complaints – Investigation – Notice – Hearing.

Upon the written complaint setting forth the particulars concerning any offending lighting situation by the adjoining or neighboring residential property dwellers, it shall be the responsibility of

the city to investigate the basis of the complaint, and if there is found to be sufficient cause for said complaint which constitutes a nuisance to the adjoining or neighboring property owners, a written notice shall be sent to the owner or person controlling such lighting, directing that the lighting be modified, discontinued or abated within 15 days of receipt of the notice. If the lighting situation has not been discontinued or abated as required in this section, the city manager shall issue a notice to the property owner pursuant to Chapter 1.40 CVMC to appear and show cause as to why the lighting should not be declared a public nuisance and abated pursuant to Chapter 1.30 CVMC. (Ord. 2718 § 1, 1998; Ord. 1324 § 1, 1971; prior code § 20.35.4(D)).

17.28.060 Unshielded lighting deemed misdemeanor when.

Lighting which is unshielded or so directed as to focus the beams directly upon adjacent residential property is prohibited at all times, and such use of lighting shall constitute a misdemeanor subject to the penalties set forth in this code. (Ord. 1324 § 1, 1971; prior code § 20.35.4(E)).

Chapter 17.30

OTAY RANCH GRAZING

Sections:

- 17.30.010 Purpose and intent.
- 17.30.020 General authorization.
- 17.30.030 Definitions.
- 17.30.040 General application of chapter.
- 17.30.050 General regulations.
- 17.30.060 Violations.

17.30.010 Purpose and intent.

The purpose of these regulations is to implement the Otay Ranch general development plan and resource management plan within the city of Chula Vista. Specifically, these regulations implement the preserve management goals and recommendations for the Otay River Valley management area of the range management plan (Appendix F7 of the Otay Ranch phase 2 resource management plan). (Ord. 3003 § 1, 2005).

17.30.020 General authorization.

As a participating jurisdiction in the MSCP sub-regional planning effort, the city of Chula Vista is promulgating these regulations to implement the Chula Vista MSCP subarea plan as a condition of receiving an incidental take permit to be issued to the city pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act and take authorization to be issued to the city pursuant to Section 2835 of the California Fish and Game Code. (Ord. 3003 § 1, 2005).

17.30.030 Definitions.

“One hundred (100) percent conservation area” means lands within the city of Chula Vista for which hardline preserve boundaries have been established and where the conserved portion will be managed for its biological resources. These areas are shown on Figure 1-2 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Otay Ranch preserve” means the land mapped as “resource preserve” in the Otay Ranch general development plan and the 11,375-acre habitat conservation area established by the Otay Ranch phase 1 resource management plan.

“Pasture” means defined areas used for grazing, demarcated by fences and gates that allow for control of grazing patterns.

“Preserve” means areas within the city of Chula Vista incorporated limits which have been dedi-

cated and accepted by the city for permanent MSCP conservation and which will be managed for their biological resources. (Ord. 3003 § 1, 2005).

17.30.040 General application of chapter.

It is unlawful to conduct grazing activities in the city of Chula Vista on land designated by the Otay Ranch general development plan as Otay Ranch preserve, except as provided for by this chapter. (Ord. 3003 § 1, 2005).

17.30.050 General regulations.

The following general regulations shall apply to all land designated by the Otay Ranch general development plan as Otay Ranch preserve and as 100 percent conservation area in the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time:

A. Existing grazing uses shall be permitted to continue in compliance with all applicable regulations, only where the uses have occurred continuously within previous years; and

B. No increase in irrigation shall be allowed, except for temporary irrigation that may be installed as part of the restoration plans; and

C. Grazing by sheep and goats shall not be allowed; and

D. Any existing or future fencing and gating installed for range management purposes shall be maintained and kept in good repair; and

E. Grazing of cattle in pastures 6 (Horse), 10a, 10b, 10c (River Valley West), 11a, 11b, 11c (River Valley East), 12a, 12b, and 12c (O’Neal), as set forth in Exhibit 4 of the Otay Ranch range management plan, shall be prohibited from January 1st through August 31st, annually; and

F. Grazing of cattle in pastures 12 (O’Neal) and 15 (Salt Creek), as set forth in Exhibit 4 of the Otay Ranch range management plan, shall be prohibited during the breeding season of the California gnat-catcher from February 15th through August 15th, annually; and

G. In areas designated for restoration, grazing shall be removed for a period of time prior to initiation of restoration activities to facilitate soil preparation and exotic plant control. (Ord. 3003 § 1, 2005).

17.30.060 Violations.

The provisions of this chapter shall be enforced pursuant to the provisions of Chapters 1.20 through 1.41 CVMC. (Ord. 3003 § 1, 2005).

Chapter 17.35

HABITAT LOSS AND INCIDENTAL TAKE

Sections:

- 17.35.010 Purpose and intent.
- 17.35.020 General authorization.
- 17.35.030 Definitions.
- 17.35.040 General application of chapter.
- 17.35.050 Exemptions.
- 17.35.060 Application for HLIT permit.
- 17.35.070 Permit process.
- 17.35.080 Required findings for issuance of an HLIT permit.
- 17.35.090 General MSCP development regulations.
- 17.35.100 Specific MSCP land use and development regulations.
- 17.35.110 Mitigation.
- 17.35.120 Biological and open space easement.
- 17.35.130 Deviation from habitat loss and incidental take regulations.
- 17.35.140 Emergencies.
- 17.35.150 City responsibility to publish guidelines.
- 17.35.160 Violations and remedies.
- 17.35.170 Conflicts.
- 17.35.180 Local coastal program.

17.35.010 Purpose and intent.

The purpose of the habitat loss and incidental take (HLIT) regulations is to protect and conserve native habitat within the city of Chula Vista and the viability of the species supported by those habitats. These regulations are intended to implement the city of Chula Vista multiple species conservation program (MSCP) subarea plan by placing priority on the preservation of biological resources within the planned and protected preserve. These regulations are intended to assure that development occurs in a manner that protects the overall quality of the habitat resources, encourages a sensitive form of development, and retains biodiversity and interconnected habitats. The habitat-based level of protection achieved through implementation of the MSCP is intended to meet the conservation obligations of the covered species identified therein. These regulations are also intended to protect the public health, safety, and welfare while being consistent with sound resource conservation principles and the rights of private property owners. (Ord. 3004 § 1, 2005).

17.35.020 General authorization.

As a participating jurisdiction in the MSCP sub-regional planning effort, the city of Chula Vista is promulgating these regulations to implement the Chula Vista MSCP subarea plan as a condition of receiving an incidental take permit to be issued to the city pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act and take authorization to be issued to the city pursuant to Section 2835 of the California Fish and Game Code. (Ord. 3004 § 1, 2005).

17.35.030 Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section:

“Seventy-five (75) to 100 percent conservation area” means lands for which hardline preserve boundaries have not yet been established, but where development or impact is limited to 25 percent or less of the mapped area and preserve will total between 75 percent and 100 percent of the mapped area and where the conserved portion will be managed for its biological resources. These mapped areas are shown on Figure 1-2 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“One hundred (100) percent conservation area” means lands within the city of Chula Vista for which hardline preserve boundaries have been established and where the conserved portion will be managed for its biological resources. These areas are shown on Figure 1-2 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Agricultural operations” means soil disturbance activity for the preparation or maintenance of a site for the cultivation of crops or other agricultural purposes where the activity has occurred continuously within previous years, in compliance with all applicable regulations, and involves no intensification of the use.

“Appropriate managing facility” means the entity that manages any portion of the preserve, including, but not limited to, the city, a third-party under the direct control of the city, or the Otay Ranch preserve owner/manager.

“Biological and open space easement” means a permanent legal encumbrance to protect biological resources and dedicate land to the preserve. The biological and open space easement is also referred to as a conservation easement.

“Biological functional equivalency” means a modification to a preserve boundary, which results

in a preserve configuration with a biological value, that is equal to or higher than the original preserve configuration. The comparison of biological value is based on the “like or equivalent” exchange concept for biological factors identified in Section 5.4.2 of the MSCP subregional plan.

“Biologist” means a person meeting the qualifications as established by the director of planning and building and approved by the same. At a minimum, the person shall have at least a four-year college degree in biology, zoology, botany, wildlife management, or other closely related field, with at least two years’ experience conducting field investigations in San Diego County.

“Candidate species” means those native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant that the California Fish and Game Commission has formally noticed as being under review by CDFG for addition to either the list of endangered species or the list of threatened species, or a species for which the Fish and Game Commission has published a notice of proposed regulation to add the species to either list, pursuant to Section 2068 of the California Fish and Game Code.

“CDFG” means California Department of Fish and Game, a subdivision of the state of California charged with administering the California Endangered Species Act and the Natural Community Conservation Planning Act.

“CEQA” means the California Environmental Quality Act (California Public Resources Code Section 2100 et seq.), including all regulations promulgated pursuant to that act.

“Chula Vista covered species” means those covered species which are adequately conserved by the Chula Vista MSCP subarea plan, together with other subarea plans within the MSCP subregional plan area in effect during the duration of the city’s Section 10(a)(1)(B) permit issued by the United States Fish and Wildlife Service (USFWS) and take authorization issued by CDFG, and including species adequately conserved. Adequate conservation for certain Chula Vista covered species shall include the measures contained in the findings for those species in Table 3-5 of the MSCP subregional plan.

“Clearing” means the cutting of natural vegetation by any means, without disturbance to the soil and root system.

“Clearing and grubbing permit” means a permit issued pursuant to this chapter that allows clearing and grubbing that is not in association with other land development work.

“Covered project” means those projects within the city of Chula Vista or annexed into the city in which hardline preserve boundaries have been established pursuant to the approved Chula Vista MSCP subarea plan and where conservation in those designated areas shall be consistent with the MSCP subregional plan and Chula Vista MSCP subarea plan and have or will be specified as binding conditions of approval in such projects’ plans and approvals. Covered projects are identified on Table 5-1 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Covered species” means those species within the MSCP subregional plan which will be adequately conserved by the MSCP when the MSCP is implemented through the subarea plans, and includes species adequately conserved and Chula Vista covered species.

“Development” means the uses to which land shall be put, including construction of buildings and structures and all alterations of the land incidental thereto, excluding agricultural operations.

“Development areas” means mapped areas planned for development pursuant to the Chula Vista MSCP subarea plan and within which the take of Chula Vista covered species is authorized by the Section 10(a)(1)(B) incidental take permit and Section 2835 permit. These mapped areas are shown on Figure 1-2 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Endangered species” means a species listed as “endangered” under the Federal Endangered Species Act or the California Endangered Species Act.

“Future facilities” means facilities that are necessary to support city services or planned development in the future and are not specifically listed in the Chula Vista MSCP subarea plan as a planned facility.

“Grading” means any excavating or filling or combination thereof and shall include the land in its excavated or filled condition.

“Grubbing” means the removal of natural vegetation by any means, including removal of the root system.

“Land development permit” means a permit issued pursuant to Chapter 15.04 CVMC.

“Listed noncovered species” means a species listed as “threatened” or “endangered” under the Federal ESA or California Endangered Species Act, but for which a Section 10(a)(1)(B) incidental take permit or a Section 2835 take authorization

has not been granted pursuant to the Chula Vista MSCP subarea plan.

“MSCP implementation guidelines” means guidelines formulated by the city of Chula Vista to aid in the interpretation and facilitate implementation of the Chula Vista MSCP subarea plan and HLIT ordinance. These guidelines are complementary to the Chula Vista MSCP subarea plan and HLIT ordinance and do not include new substantive information or requirements.

“MSCP subregional plan” means the multiple species conservation program plan, dated August 1998, which addresses multiple species’ habitat needs and the preservation of native vegetation for a 900-square-mile area in southwestern San Diego County, California.

“MSCP subregional plan area” consists of approximately 900 square miles in southwestern San Diego County, California, referred to in the MSCP subregional plan as the “MSCP subregional plan study area.”

“Narrow endemic species” means species that are highly restricted by their habitat affinities or other ecological factors. These species are listed in Table 5-4 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Natural vegetation” means vegetation identified as Tier I, II or III on Table 5-3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“NCCP Act” means the California Natural Community Conservation Planning Act of 1991, as amended (California Fish and Game Code Section 2800 et seq.), including all regulations promulgated pursuant to the act. Amendments to the NCCP Act enacted effective January 1, 2003 (Chapter 4, Sections 1 and 2 of California Statutes 2002 (S.B. 107)) expressly provide that the Chula Vista subarea plan will be solely governed in accordance with the NCCP Act as it read on December 31, 2001, and not by the substantive provisions of S.B. 107.

“Participating local jurisdiction” means any of the 12 local governments within the MSCP study area that may prepare a MSCP subarea plan and receive a Section 10(a)(1)(B) permit from the USFWS and Section 2835 permit from the CDFG.

“Planned facilities” means facilities that have been specifically identified by the city of Chula Vista to serve development approved by the city and specified in Table 6-1 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Preserve” means areas within the city of Chula Vista incorporated limits which have been dedicated and accepted by the city for permanent MSCP conservation and which will be managed for their biological resources.

“Project area” means an area considered for development and shall include the entire contiguous land under the same ownership or like property interest, or in the case of development proposed by a public agency, the area required for development as determined by the director of planning and building.

“Section 10(a)(1)(B) permit” means the permit issued by the USFWS to the city of Chula Vista under Section 10(a)(1)(B) of the Federal Endangered Species Act (16 U.S.C 1539 (a)(1)(B)) to allow the incidental take of species adequately conserved and/or Chula Vista covered species, as identified in the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time, to the extent take of such species is otherwise prohibited under Section 9 of the Act. The take of listed plant species is not prohibited under the ESA or authorized under the Section 10(a)(1)(B) permit. However, plant species adequately conserved by the Chula Vista subarea plan, or by the Chula Vista subarea plan in conjunction with other approved MSCP subarea plans, are listed in the Section 10(a)(1)(B) permit in recognition of the conservation measures and benefits provided for them under the approved subarea plans. Such plant species receive assurances pursuant to the USFWS “no surprises” rule.

“Section 2835 permit” means a permit issued by the CDFG to the city of Chula Vista under Section 2835 of the California NCCP Act to authorize the take of species adequately conserved and/or Chula Vista covered species, as identified in the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

“Sensitive biological resources” means lands that contain natural vegetation and/or wetlands, and/or habitat occupied by covered species, other listed noncovered species, and/or narrow endemic species.

“Species adequately conserved” means those species for which the Chula Vista MSCP subarea plan provides substantial conservation and for which the city of Chula Vista shall receive take authorization regardless of the participation or continued participation of any other participating local jurisdiction.

“Take authorization” means permit authority granted through a Section 10(a)(1)(B) permit pur-

suant to the ESA and/or the Section 2835 permit pursuant to the NCCP Act.

“Temporary impacts” means anticipated impacts that result during the course of construction but are not part of the permanent developed condition of a project area.

“Threatened species” means a species listed as “threatened” under the ESA or CESA.

“USFWS” means United States Fish and Wildlife Service, an agency of the United States Department of Interior, charged with administering the Federal Endangered Species Act.

Wetlands. “Wetlands” are generally defined as those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of the Chula Vista MSCP subarea plan, wetlands are those lands which contain naturally occurring wetland communities listed on Table 5-6 of the Chula Vista MSCP subarea plan and further described in Appendix B of the Chula Vista MSCP subarea plan. Wetlands also include areas lacking wetland communities due to nonpermitted filling of previously existing wetlands.

“Wildlife agencies” means the USFWS and the CDFG. (Ord. 3004 § 1, 2005).

17.35.040 General application of chapter.

A. In conjunction with the earliest decision on any entitlement related to a project area after June 9, 2005 (the effective date of the ordinance codified in this chapter), such as sectional planning area (SPA) plan approval, design review approval, conditional use permit, variance, parcel map approval, tentative map approval, land development permit, or clearing or grubbing permit the applicant shall obtain a HLIT permit in the following mapped areas identified in the Chula Vista MSCP subarea plan, unless exempt pursuant to CVMC 17.35.050:

1. One hundred (100) percent conservation areas;
2. Seventy-five (75) to 100 percent conservation areas; and
3. Development areas outside of covered projects.

B. It is unlawful to begin development on lands in mapped 100 percent conservation areas, 75 to 100 percent conservation areas, and development areas outside of covered projects without submitting required documentation and obtaining a HLIT permit (including CEQA compliance), or obtaining an exemption as required pursuant to this chapter. If unlawful development occurs on such lands and

an enforcement action has been commenced by the city, no development permit application may be processed until the enforcement action has been concluded. Enforcement action may include penalties assessed for unpermitted clearing and grubbing and could include increased replacement mitigation ratios. (Ord. 3004 § 1, 2005).

17.35.050 Exemptions.

The following are exempt from the requirements of this chapter:

A. Development of a project area that is one acre or less in size and located entirely in a mapped development area outside of covered projects.

B. Development of a project area which is located entirely within the mapped development area outside covered projects, and where it has been demonstrated to the satisfaction of the director of planning and building, or his/her designee, that no sensitive biological resources exist on the project area.

C. Development that is limited to interior modifications or repairs and any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or accessory structure, that will not encroach into identified sensitive biological resources during or after construction.

D. Any project within the development area of a covered project.

E. Any project that has an effective incidental take permit from the wildlife agencies.

F. Continuance of agricultural operations. (Ord. 3004 § 1, 2005).

17.35.060 Application for HLIT permit.

The following are submittal requirements for projects that are not exempt from this chapter:

A. General Submittal Requirements. The following are general submittal requirements for all HLIT permits:

1. Submit a completed application form to the city of Chula Vista planning and building department – planning division.

2. Provide copies of a biological survey for the entire project area that is consistent with the MSCP implementation guidelines and prepared by a biologist. If the biological surveys are conducted outside the acceptable time of year for identifying covered narrow endemic species, but the biologist identifies indicators that narrow endemic species could be present in the project area, then surveys for narrow endemic species must be conducted during the acceptable time of year in accordance with the MSCP implementation guidelines and

must be conducted prior to consideration of issuance of an HLIT permit by the city. The HLIT permit application will be held in abeyance until the applicant submits subsequent surveys for narrow endemic species conducted during the acceptable time of year.

3. For project areas located in 100 percent conservation areas, 75 to 100 percent conservation areas, development areas outside of covered projects with indicators or the presence of narrow endemic species or wetlands, or as otherwise deemed necessary by the biological survey as determined by the director of planning and building, or his/her designee, the applicant shall prepare and submit an opportunities and constraints analysis to evaluate the proposed development and its relationship to the sensitive biological resources. The opportunities and constraints identified shall be used to determine the portions of the project area that are most suitable for development and those that should be conserved for biological purposes. The opportunities and constraints analysis shall include:

a. Written evaluation of such factors as biological resources, sensitive biological resources, historical resources, visual resources, public facilities needs, public safety issues, conserved sensitive biological resources on adjacent lands, and adjacent land uses;

b. For project areas in 75 to 100 percent conservation areas, written description of how the proposed project has been limited to the least environmentally sensitive portions of the mapped 75 to 100 percent conservation area within the project area in accordance with the MSCP implementation guidelines;

c. For project areas containing the siting of proposed planned or future facilities in 100 percent conservation areas and 75 to 100 percent conservation areas, a written analysis that demonstrates to the satisfaction of the decision-maker that the facilities siting criteria in CVMC 17.35.100(A)(4)(c) have been met;

d. Map of the project area at a suitable scale, which includes and clearly delineates, to the satisfaction of the director of planning and building, the following information:

i. Identification of sensitive biological resources;

ii. Limits of proposed development, including areas to be impacted on a temporary basis, if sensitive biological resources are avoided;

iii. Limits of the proposed development, including areas to be impacted on a tempo-

rary basis, if sensitive biological resources are impacted; and

iv. Limits of any mitigation area(s) proposed within the project area;

e. Written description of proposed mitigation, including:

i. How biological values of the mitigation area are equal to or greater than the impacted area;

ii. Biological and open space easement or other legal method proposed to ensure permanent conservation of the land for biological purposes;

iii. Long-term methods to ensure protection and management of the habitats and covered species, which may include but not be limited to funding; and

iv. Long-term biological viability of the proposed mitigation if it is not within or immediately adjacent to a 100 percent conservation area.

4. Any other requirements deemed necessary by the director of planning and building for consideration of the proposed HLIT permit application.

5. Payment of applicable fees and/or deposits in accordance with the city's master fee schedule.

B. Additional Submittal Requirements for Project Areas That Contain Any Covered Narrow Endemic Species.

1. In addition to the submittal requirements listed in subsection (A) of this section, the following written information shall be provided by the applicant when the biological survey identifies any narrow endemic species within the project area:

a. A graphic depiction of all covered narrow endemic species located in the project area;

b. A written biological description of the status of the covered narrow endemic species;

c. Quantification of both preservation of narrow endemic species and impacts to narrow endemic species associated with the project including direct and indirect effects on an area and individual plant basis;

d. Written report of the feasibility or infeasibility of total avoidance of narrow endemic species' population(s);

e. Written description of project design features that reduce indirect effects such as edge treatments, landscaping, elevation differences, minimization and/or compensation through restoration or enhancement;

f. Any other requirements deemed necessary by the director of planning and building for

consideration of the proposed HLIT permit application.

2. When the applicant proposes to impact any narrow endemic species population within the project area in excess of the five percent threshold in 100 percent conservation areas, as identified in Section 5.2.3.4 of the Chula Vista MSCP subarea plan, and the 20 percent threshold in 75 to 100 percent conservation areas and development areas outside of covered projects, as identified in Sections 5.2.3.5 and 5.2.3.3, respectively, of the Chula Vista MSCP subarea plan, the applicant shall submit a written analysis that demonstrates the project would result in an overall preserve design and configuration biologically superior to that which would occur under a project alternative within the five percent or 20 percent threshold. The applicant shall submit to the city a written analysis addressing the following factors that demonstrates to the satisfaction of the city the proposed project is the biologically superior alternative:

- a. Effects on conserved habitats;
- b. Effects on covered species;
- c. Effects on habitat linkages and function of preserve areas;
- d. Effects on preserve configuration and management;
- e. Effects on ecotones or other conditions affecting species diversity; and
- f. Effects on listed noncovered species or other species of concern not covered by the Chula Vista MSCP subarea plan.

C. Additional Submittal Requirements for Project Areas That Contain Wetlands.

1. In addition to the submittal requirements listed in subsections (A) and (B) of this section, as applicable, the following written information shall be provided by the applicant when the biological survey identifies wetlands within the project area:

- a. A graphic depiction of all wetlands located in the project area;
- b. A written biological description of the status of the wetlands;
- c. Quantification of proposed impacts to wetlands associated with the project;
- d. Written analysis of the inability to avoid impacts to wetlands;
- e. Written description of project design features that minimize impacts to wetlands;
- f. Any other requirements deemed necessary by the director of planning and building for consideration of the proposed HLIT permit application. (Ord. 3004 § 1, 2005).

17.35.070 Permit process.

The HLIT permit shall be acted upon in one of the following manners:

A. When an applicant applies for more than one permit, map, or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decisionmaker. The decisionmaker shall act on the consolidated application at the highest level of authority for that development. The findings required for approval of each permit shall be considered individually, consistent with CVMC 17.35.080.

B. The HLIT permit may be approved, approved with conditions, or denied by the director of planning and building, or his/her designee, without a public hearing in accordance with CVMC 19.14.030, in the following circumstances:

1. Any planned facility project listed in Table 6-1 of the Chula Vista MSCP subarea plan that only impacts natural vegetation and does not impact habitat occupied by covered species, listed noncovered species, narrow endemic species, or wetlands.

2. Any future facility project listed in Table 6-2 of the Chula Vista MSCP subarea plan associated with a covered project that only impacts natural vegetation and does not impact habitat occupied by covered species, listed noncovered species, narrow endemic species or wetlands.

C. For all other HLIT permit applications, the director of planning and building, and or his/her designee, may approve, conditionally approve, or deny such permit at a public hearing noticed in accordance with CVMC 19.14.180. The director of planning and building decision may be appealed to the city council in accordance with CVMC 19.14.110 and 19.14.130. (Ord. 3004 § 1, 2005).

17.35.080 Required findings for issuance of an HLIT permit.

A. In order to approve or conditionally approve a HLIT permit, all of the following written findings shall be made by the decisionmaker:

1. The proposed development in the project area and associated mitigation is consistent with the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time, the MSCP implementation guidelines, and the development standards set forth in CVMC 17.35.100.

2. The project area is physically suitable for the design and siting of the proposed development and the development results in minimum distur-

bance to sensitive biological resources, except impacts to natural vegetation in mapped development areas.

3. The nature and extent of mitigation required as a condition of the permit is reasonably related to and calculated to alleviate negative impacts created in the project area.

B. In order to approve or conditionally approve an HLIT permit where the project area contains narrow endemic species, all of the following additional written findings shall be made by the decisionmaker:

1. Narrow endemic species' populations within the project area have been avoided or total avoidance is infeasible.

2. If impacts to narrow endemic species have not been avoided, one of the following findings shall be made:

a. In cases where impacts to covered narrow endemic species' populations within the project area have been limited to five percent in 100 percent conservation areas, and 20 percent in 75 to 100 percent conservation areas and development areas outside of covered projects, the proposed project design, including mitigation, will result in conservation of the species that is functionally equivalent to its status without the project, including species numbers and area, and must ensure adequate preserve design to protect the species in the long-term; or

b. In cases where the five percent or 20 percent narrow endemic species impact threshold has been exceeded, the proposed project design, including mitigation, results in a preserve design for the narrow endemic species population within the project area that is biologically superior to the preserve design that would occur if the impact had been limited to five percent in 100 percent conservation areas or 20 percent in 75 to 100 percent conservation areas and development areas outside of covered projects.

C. In order to approve or conditionally approve an HLIT permit where the project area contains wetlands, all of the following additional written findings shall be made by the decisionmaker:

1. Prior to issuance of a land development permit or clearing and grubbing permit, the project proponent will be required to obtain any applicable state and federal permits, with copies provided to the director of planning and building, or his/her designee.

2. Where impacts are proposed to wetlands the following findings shall be made:

a. Impacts to wetlands have been avoided and/or minimized to the maximum extent practicable, consistent with the city of Chula Vista MSCP subarea plan Section 5.2.4; and

b. Unavoidable impacts to wetlands have been mitigated pursuant to CVMC 17.35.110. (Ord. 3004 § 1, 2005).

17.35.090 General MSCP development regulations.

The following development regulations apply to all development proposals in a project area that do not qualify for an exemption from this chapter and are proposed in 100 percent conservation areas, 75 to 100 percent conservation areas, or development areas outside of covered projects:

A. All development proposals regulated by this chapter shall be consistent with the Chula Vista MSCP subarea plan and MSCP implementation guidelines.

1. Overall development within the project area, including public facilities and circulation, shall be located to minimize impacts to sensitive biological resources, in accordance with this chapter, the Chula Vista MSCP subarea plan and the MSCP implementation guidelines.

2. Pursuant to Chapter 15.04 CVMC, no land development or clearing and grubbing permit which allows clearing, grubbing, or grading of natural vegetation shall be issued for any portion of a project area where impacts are proposed to wetlands or listed noncovered species until all applicable federal and state permits have been issued.

3. Impacts to wetlands shall be avoided to the maximum extent practicable. Where impacts to wetlands are not avoided, impacts shall be minimized and mitigated pursuant to CVMC 17.35.110.

4. No temporary disturbance or storage of material or equipment is permitted in sensitive biological resources, unless the disturbance or storage occurs within an area approved by the city for development or unless it can be demonstrated that the disturbance or storage will not cause permanent habitat loss and the land will be revegetated and restored in accordance with the MSCP implementation guidelines.

5. Grading during wildlife breeding seasons shall be avoided or modified consistent with the requirements of the Chula Vista MSCP subarea plan and in accordance with the MSCP implementation guidelines.

6. All fuel modification (brush management) zones required as a result of new development, and

as required by the city of Chula Vista fire marshal, shall be located outside the preserve. (Ord. 3004 § 1, 2005).

17.35.100 Specific MSCP land use and development regulations.

In addition to the general MSCP development regulations listed in CVMC 17.35.090, the following specific land use and development regulations shall apply to all land uses and to development proposals in a project area that do not qualify for an exemption from this chapter:

A. Land uses and development are permitted within the 100 percent conservation areas consistent with the Chula Vista MSCP subarea plan and this section. If any portion of the project area is located within a 100 percent conservation area, the following regulations shall apply to that portion of the project area located within the 100 percent conservation area:

1. Uses Permitted. The following uses are permitted in 100 percent conservation areas:

- a. Access for litter and trash removal, maintenance, repair, and refurbishment;
- b. Replacement of structures in existing locations;
- c. Passive recreation such as hiking and bird watching;
- d. Other recreation such as mountain biking, horseback riding, boating, sun bathing, fishing, and swimming as in accordance with an approved project, an approved area-specific management directive or as determined by the appropriate managing entity;
- e. Fencing that does not significantly, adversely affect the full functioning of the preserve, including wildlife movement as approved by the appropriate managing entity;
- f. Scientific research related to habitat conservation, monitoring and habitat restoration and enhancement activities, subject to approval by the appropriate managing entity;
- g. Access for law enforcement agencies, fire control agencies, the National Guard, the Immigration and Naturalization Service (INS), and Border Patrol; and
- h. Existing uses operating legally at the time take authorization is granted to the city by the wildlife agencies until the land has been provided to the city or other entity by an irrevocable offer of dedication or conveyed by easement or fee title to the preserve, whichever comes first, including:
 - i. Existing, permitted uses allowed by right in CVMC Title 19 (zoning);

- ii. Uses deemed to be legal, nonconforming uses pursuant to CVMC Title 19 (zoning);
- iii. Accessory and conditionally permitted uses pursuant to CVMC Title 19 (zoning);
- iv. Existing agricultural and grazing uses outside of Otay Ranch;
- v. Existing agricultural and grazing uses within Otay Ranch in accordance with Chapter 17.30 CVMC (Otay Ranch grazing); and
- vi. Existing mining, extraction and processing facilities consistent with the Chula Vista MSCP subarea plan.

2. Conditionally Compatible Uses. The following uses are conditionally permitted in 100 percent conservation areas, consistent with the Chula Vista subarea plan:

- a. New mining extraction and processing facilities; and
- b. Flood control; and
- c. Roads and infrastructure; and
- d. Other planned facilities not covered under subsection (A)(2)(c) of this section; and
- e. Other future facilities not covered under subsection (A)(2)(c) of this section; and
- f. Otay Valley Regional Park plan uses.

3. The following uses are not permitted:

- a. The following uses shall not be permitted without prior issuance of the appropriate permit from the city:
 - i. Clearing and/or grubbing of natural vegetation, for purposes unrelated to biological enhancement, prior to issuance of a clearing and grubbing permit;
 - ii. Clearing and/or grubbing of natural vegetation, for purposes unrelated to biological enhancement, grading, excavation, or placement of soil, rock, sand, gravel or other material prior to issuance of a land development permit;
 - iii. Construction or placement of any building or structure prior to the issuance of a building permit;
 - b. Recreational off-highway vehicle use;
 - c. Storage of materials such as chemicals and equipment; and
 - d. Dispersal of biosolids.

4. Development Standards.

- a. Development shall be limited to the maximum extent practicable to achieve project objectives and shall be located on the least environmentally sensitive portions of the project area in accordance with the MSCP implementation guidelines. Such development shall be designed to avoid impacts to covered species to the maximum extent practicable. Encroachment into more environmen-

tally sensitive areas shall only be authorized to achieve project objectives.

b. Development must avoid impacts to covered narrow endemic species to the maximum extent practicable. A list of the covered narrow endemic species is included in the Chula Vista MSCP subarea plan and MSCP implementation guidelines. Measures for protection of narrow endemic species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP implementation guidelines.

i. Where impacts to a covered narrow endemic species population are demonstrated to be unavoidable, impacts shall be limited to five percent of the total narrow endemic species population within the project area, except as provided by subsection (A)(4)(b)(ii) of this section. Written findings of equivalency must be made by the city in accordance with CVMC 17.35.080(B). The city will forward its written findings of equivalency to the wildlife agencies. The wildlife agencies may submit to the city, within 30 days of a receipt of mailed notice of written findings from the city, a written finding of nonconcurrency on the facts of the city's findings. If such written finding of nonconcurrency is made within 30 days of receipt of mailed notice of findings from the city, the city must confer with the wildlife agencies to resolve narrow endemic species issues with the proposed development. If the wildlife agencies do not respond within 30 days after receipt of mailed notice, the city shall deem the written findings accepted.

ii. If, after comprehensive consideration of avoidance and minimization measures, impacts exceed five percent of the covered narrow endemic species population within the project area, a determination of biologically superior preservation, must be made in accordance with CVMC 17.35.080(B). The city will forward its written determination of biologically superior preservation to the wildlife agencies for review. The wildlife agencies may submit to the city, within 30 days of receipt of mailed notice of findings from the city, a written finding of nonconcurrency on the facts of the city's findings. If such written finding of nonconcurrency is made within 30 days of receipt of mailed notice of findings from the city, the city must confer with the wildlife agencies to resolve narrow endemic species issues with the proposed development. If the wildlife agencies do not respond within 30 days after receipt of mailed

notice, the city shall deem the written findings accepted.

c. Development of planned and future facilities shall be in accordance with the following siting criteria:

i. Planned and future facilities shall be located through developed or developing areas where feasible and shall use existing roads, trails, and disturbed areas to the maximum extent practicable.

ii. Planned and future facilities shall avoid, to the maximum extent practicable, impacts to sensitive biological resources and covered species. Where avoidance of sensitive biological resources and covered species has been demonstrated by the applicant to be infeasible, impacts to sensitive biological resources and covered species resulting from planned and future facilities shall be minimized and located in the least environmentally sensitive portion of the project area in accordance with the MSCP implementation guidelines.

iii. Planned and future facilities shall avoid, to the maximum extent practicable, impacts to wetlands. If avoidance of wetlands is not possible, any impacts to wetlands shall require mitigation in accordance with Section 5.2.4 and Table 5-6 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

iv. Where roads traverse the preserve, they shall, to the maximum extent practicable, provide for wildlife movement in areas that are graphically depicted on and listed in the MSCP subregional plan generalized core biological resource areas and linkages map (see Figure 1-4 of the Chula Vista MSCP subarea plan) as a core biological area or a regional linkage between core biological areas.

v. At wildlife crossings, road bridges for vehicular traffic shall be preferred over box culverts and pipe culverts. Box culverts shall only be used when they can achieve the wildlife movement goals for the specific location. To the maximum extent practicable, wildlife crossings shall be designed as follows:

(A) The substrate shall be left in a natural condition and planted with native vegetation if appropriate;

(B) A line-of-sight from one end to the other shall be provided; and

(C) Low-level illumination shall be installed.

vi. To minimize habitat disruption, habitat fragmentation, impediments to wildlife

movement, and impacts to breeding areas, roads and/or right-of-way widths shall be narrowed from existing city design and engineering standards to the maximum extent practicable.

d. No single future facility project shall permanently impact more than two acres of covered habitat without concurrence from the wildlife agencies. Temporary impacts associated with future facilities shall not be included in the limitations for permanent impacts to natural vegetation; however, all areas of temporary impacts shall be revegetated pursuant to the MSCP implementation guidelines. If the two-acre single project threshold is to be exceeded, the city shall notify in writing and provide applicable project information to the wildlife agencies. The wildlife agencies may submit to the city, within 30 days of a receipt of mailed notice and information from the city, a written response of nonconcurrence. If such written finding of nonconcurrence is made within 30 days of receipt of mailed notice from the city, the city shall confer with the wildlife agencies to resolve the future facility issue. If the wildlife agencies do not respond within 30 days after receipt of mailed notice, the city shall deem the written findings accepted.

e. The cumulative permanent impacts to covered habitats from all future facilities for all projects shall not exceed a total of 50 acres without concurrence from the wildlife agencies. If the 50-acre threshold is to be exceeded, the city shall notify in writing and provide applicable project information to the wildlife agencies. The wildlife agencies may submit to the city, within 30 days of a receipt of mailed notice and information from the city, a written response of nonconcurrence. If such written finding of nonconcurrence is made within 30 days of receipt of mailed notice from the city, the city shall confer with the wildlife agencies to resolve the future facility issue. If the wildlife agencies do not respond within 30 days after receipt of mailed notice, the city shall deem the written findings accepted.

f. Mitigation shall be provided pursuant to CVMC 17.35.110.

g. For construction areas adjacent to occupied Quino checkerspot butterfly habitat, dust control measures (e.g., watering) will be applied during grading activities.

B. Land uses and development are permitted within 75 to 100 percent conservation areas consistent with the Chula Vista MSCP subarea plan and this section. If any portion of the project area is located within a 75 to 100 percent conservation

area, the following shall apply to that portion of the project area located within the 75 to 100 percent conservation area:

1. Land Uses Permitted.

a. Permitted land uses include those uses permitted in the underlying zone.

2. Development Standards.

a. Development shall be permitted in 25 percent of the 75 to 100 percent conservation area within the project area. Projects shall be designed to avoid impacts to covered species to the maximum extent practicable and the 25 percent development area shall be located on the least environmentally sensitive portions of the 75 to 100 percent conservation area within the project area. The following list, in order of increasing sensitivity, shall be used to determine the least environmentally sensitive portions of the 75 to 100 percent conservation area within the project area. This list shall be used in combination with site-specific biological information submitted pursuant to CVMC 17.35.060, and with other considerations such as, but not limited to, potential edge-effects from existing and proposed development, preserve configuration, habitat quality, wildlife movement, and topography.

i. Areas devoid of vegetation, including previously graded areas and agricultural fields;

ii. Areas of nonnative vegetation, disturbed habitats and eucalyptus woodlands;

iii. Areas of chamisc or mixed chaparral, and nonnative grasslands;

iv. Areas containing coastal scrub communities;

v. All other upland habitat communities;

vi. Occupied habitat of listed species, narrow endemic species, and all wetlands; and

vii. All areas necessary to maintain the viability of wildlife corridors.

b. Development shall avoid impacts to covered narrow endemic species to the maximum extent practicable. A list of the covered narrow endemic species is included in the Chula Vista MSCP subarea plan and MSCP implementation guidelines. Measures for protection of narrow endemic species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP implementation guidelines.

i. Where impacts to a covered narrow endemic species population are demonstrated to be unavoidable, impacts shall be limited to 20 percent of the total narrow endemic species population

within the project area, except as provided by subsection (B)(2)(b)(ii) of this section. Written findings of equivalency will be made by the city in accordance with CVMC 17.35.080(B).

ii. If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 20 percent of the covered narrow endemic species population within the project area, a written determination of biologically superior preservation, must be made by the city in accordance with CVMC 17.35.080(B). The city will forward its written determination of biologically superior preservation to the wildlife agencies for review. The wildlife agencies may submit to the city, within 30 days of receipt of mailed notice of findings from the city, a written finding of nonconcurrency on the facts of the city's findings. If such written finding of nonconcurrency is made within 30 days of receipt of mailed notice of findings from the city, the city must confer with the wildlife agencies to resolve narrow endemic species issues with the proposed development. If the wildlife agencies do not respond within 30 days after receipt of mailed notice, the city shall deem the written findings accepted.

c. Mitigation shall be provided pursuant to CVMC 17.35.110.

C. Land uses and development are permitted within development areas outside of covered projects consistent with the Chula Vista MSCP subarea plan and this section. If any portion of the project area is located within a development area, the following regulations shall apply to that portion of the project area located within the development area outside of covered projects:

1. Land Uses Permitted.

a. Permitted land uses include those uses permitted in the underlying zone.

2. Development Standards.

a. Encroachment into natural vegetation is not limited except as may be provided by CVMC 17.35.090(A)(2) and/or (A)(3).

b. Development shall avoid impacts to covered narrow endemic species to the maximum extent practicable. A list of the covered narrow endemic species is included in the Chula Vista MSCP subarea plan and the MSCP implementation guidelines. Measures for protection of narrow endemic species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP implementation guidelines.

i. Where impacts to a covered narrow endemic species population are demonstrated to be

unavoidable, impacts shall be limited to 20 percent of the total narrow endemic species population within the project area, except as provided in subsection (C)(2)(b)(ii) of this section. Written findings of equivalency will be made by the city in accordance with CVMC 17.35.080(B).

ii. If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 20 percent of the covered narrow endemic species population within the project area, a written determination of biologically superior preservation, will be made by the city in accordance with CVMC 17.35.080(B). The city will forward its written determination of biologically superior preservation to the wildlife agencies for review. The wildlife agencies may submit to the city, within 30 days of receipt of mailed notice of findings from the city, a written finding of nonconcurrency on the facts of the city's findings. If such written finding of nonconcurrency is made within 30 days of receipt of mailed notice of findings from the city, the city must confer with the wildlife agencies to resolve narrow endemic species issues with the proposed development. If the wildlife agencies do not respond within 30 days after receipt of mailed notice, the city shall deem the written findings accepted.

c. Mitigation shall be provided pursuant to CVMC 17.35.110. (Ord. 3004 § 1, 2005).

17.35.110 Mitigation.

Where mitigation for project impacts is required pursuant to this section, the level and type of mitigation shall be consistent with the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time, and the MSCP implementation guidelines. The following mitigation standards shall be applied to impacts within 100 percent conservation areas, 75 to 100 percent conservation areas and development areas outside of covered projects:

A. The following mitigation standards shall be applied to 100 percent conservation areas:

1. Permanent impacts to Natural vegetation resulting from construction of planned facilities associated with covered projects shall not require mitigation. These impacts have already been considered in the project-specific conditions of coverage and/or mitigation for each covered project.

2. Permanent impacts to natural vegetation resulting from construction of future facilities associated with covered projects where the impact to sensitive biological resources is less than or equal to two acres and the 50-acre threshold iden-

tified in CVMC 17.35.100(A)(4)(d) has not been exceeded shall not require mitigation.

3. Permanent impacts to natural vegetation resulting from construction of future facilities not associated with covered projects shall be mitigated pursuant to the mitigation standards contained in Table 5-3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

4. Mitigation for permanent impacts to narrow endemic species populations shall be determined on a case-by-case basis by the director of planning and building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplantation. Mitigation shall be in-kind and mitigation ratios for such measures shall be required at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time and the MSCP implementation guidelines.

5. Impacts to wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

6. Temporary impacts to sensitive biological resources resulting from construction of planned and future facilities shall be revegetated pursuant to the MSCP implementation guidelines.

B. The following mitigation standards shall be applied to 75 to 100 percent conservation areas:

1. Impacts to natural vegetation shall not require mitigation. As a condition of permit issuance, natural vegetation outside the development area as determined by the HLIT permit shall be left in a natural state and uses shall be consistent with CVMC 17.35.100(A)(1) through (A)(3).

2. Mitigation for impacts to narrow endemic species populations shall be determined on a case-by-case basis by the director of planning and building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplantation. Mitigation shall be in-kind and mitigation ratios for such measures shall be at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time, and the MSCP implementation guidelines.

3. Impacts to wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

C. The following mitigation standards shall be applied to development areas outside of covered projects:

1. Permanent impacts to natural vegetation shall be mitigated pursuant to the mitigation standards contained in Table 5-3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time.

2. Mitigation for permanent impacts to narrow endemic species populations shall be determined on a case-by-case basis by the director of planning and building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplantation. Mitigation shall be in-kind and mitigation ratios for such measures shall be at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time, and the MSCP implementation guidelines.

3. Impacts to wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time. (Ord. 3004 § 1, 2005).

17.35.120 Biological and open space easement.

A. When required, the applicant shall draft and submit a biological and open space easement (conservation easement) that includes the following:

1. A legal description of the premises affected by the permit with a description of the mitigation area and the sensitive biological resources that will be preserved;

2. To impart notice to all persons to the extent afforded by the recording laws of the state regarding the restrictions affecting use of the sensitive biological resources covered by the permit;

3. To ensure that the burdens of the easement shall be binding upon, and the benefits of the easement shall ensure to, all successors in interest to the affected land;

4. To ensure enforceability of the biological and open space easement by the city, or jointly and severally by the city, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game in those instances when the biological and open space easement affects land containing Sensitive

tive biological resources or other lands that have been accepted as mitigation; and

5. Uses consistent with those listed in CVMC 17.35.100(A)(1) and (A)(2).

B. A public hearing shall be held to consider a formal, written request directed to the city by any person requesting the release of a biological and open space easement recorded pursuant to this chapter. The city only shall record a release of any biological and open space easement recorded pursuant to this chapter when it is determined by the city that restriction of the property is no longer necessary to achieve the land use goals of the city. A determination by the city to release said easement may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game. (Ord. 3004 § 1, 2005).

17.35.130 Deviation from habitat loss and incidental take regulations.

A. When a deviation is requested from this chapter because the applicant contends that strict application of this chapter would result in denial of all economically viable use, the HLIT permit shall include a determination of economically viable use. Where a deviation is requested from this chapter, it may be approved or conditionally approved only if the decisionmaker makes all of the following supplemental findings in addition to the applicable findings in CVMC 17.35.080:

1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in this chapter would not provide any economically viable use of the applicant's property;

2. The use proposed by the applicant is consistent with the applicable zoning;

3. The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of the project area; and

4. The development proposal is the least environmentally damaging alternative and is consistent with all provisions of the Chula Vista MSCP subarea plan, as adopted on May 13, 2003, and as may be amended from time to time and this chapter, with the exception of the provisions for which the deviation is requested.

B. The process for a deviation shall be in accordance with CVMC 17.35.070. (Ord. 3004 § 1, 2005).

17.35.140 Emergencies.

Whenever development activity within sensitive biological resources, as identified in the city of Chula Vista MSCP subarea plan, is deemed necessary by order of the city manager to protect the public health or safety, the city manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

A. If the emergency work involves only temporary impacts to sensitive biological resources, a HLIT permit is not required, provided the sensitive biological resources are restored to their natural state in accordance with a revegetation plan approved by the director of planning and building, or his/her designee. The revegetation plan shall be submitted to the city within 60 days of completion of the emergency work.

B. If the emergency work results in permanent impacts to sensitive biological resources, a subsequent HLIT permit is required in accordance with all regulations of this chapter. The application for the HLIT permit shall be submitted within 60 days of completion of the emergency work. (Ord. 3004 § 1, 2005).

17.35.150 City responsibility to publish guidelines.

The city manager is authorized to promulgate and publish MSCP implementation guidelines and other support documents as necessary to implement this chapter. These administrative guidelines shall serve as baseline standards for processing SPA plans, design review applications, conditional use permits, variances, parcel maps, tentative maps, land development permits or clearing and grubbing permits pursuant to this chapter. Any revisions to the MSCP implementation guidelines will require review and approval by the city manager. (Ord. 3004 § 1, 2005).

17.35.160 Violations and remedies.

The provisions of this chapter shall be enforced pursuant to the provisions of Chapters 1.20 through 1.41 CVMC. (Ord. 3004 § 1, 2005).

17.35.170 Conflicts.

Except for exempt projects, if a conflict occurs between this chapter and Chapter 15.04 CVMC, the stricter regulation shall apply. (Ord. 3004 § 1, 2005).

17.35.180 Local coastal program.

Prior to issuance of an HLIT permit for any project located within the Chula Vista local coastal plan (LCP) area, the applicant shall obtain a determination of project consistency with the Chula Vista LCP from the director of planning and building. If the project cannot be deemed consistent with the LCP, an LCP amendment must be completed prior to issuance of the HLIT permit. (Ord. 3004 § 1, 2005).