

Part 9 Permits and Approvals

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Chapter 9.01 Application Processing Procedures

Sections:

9.01.010	Purpose
9.01.020	Authority for Land Use and Zoning Decisions
9.01.030	Multiple Permit Applications
9.01.040	Application Preparation and Filing
9.01.050	Application Fees
9.01.060	Applicant Indemnification
9.01.070	Initial Review of Application
9.01.080	Environmental Assessment
9.01.090	Burden of Proof

9.01.010 Purpose

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

9.01.020 Authority for Land Use and Zoning Decisions

Table 9.2 (Review Authority), below, identifies the review authority responsible for reviewing and making decisions on each type of application required by this Development Code.

9.01.030 Multiple Permit Applications

- A. **Concurrent filing.** An applicant for a development project that requires the filing of more than one application (e.g., Zoning Map amendment and a Conditional Use Permit, etc.), shall file all related applications concurrently, together with all application fees required by Section 9.01.050 (Application Fees), below, unless the concurrent filing requirements are waived by the Director.
- B. **Concurrent processing.** Multiple applications for the same project shall be processed concurrently, and shall be reviewed, and approved or denied by the highest review authority designated by this Development Code for any of the applications (i.e., a project for which applications for Zoning Map amendment and a Conditional Use Permit are filed shall have both applications decided by the Council, instead of the Commission acting upon the Conditional Use Permit as otherwise required by Table 9.2)

Table 9.1 Permits and Approvals

Name of Permit	Code Chapter/ Section	Applicability of Permit
Permits Required by this Development Code		
Conditional Use Permits	9.03	A Conditional Use Permit is required to authorize proposed land uses specified by Part 3 (Specific to Zones) as being allowable in the applicable zone, subject to the approval of a Conditional Use Permit.
Certificates of Appropriateness	9.02	A Certificate of Appropriateness is intended to protect structures, improvements, natural features, and objects, of historic significance including, but not limited to, areas of architectural, cultural, economic, historic, political, and social importance from any alteration, demolition, or removal which would have an adverse effect thereon.
Home Occupation Permits	9.05	A Home Occupation Permit is required to allow for home occupations that are conducted within a dwelling located in a residential zone, and are clearly incidental and secondary to the use of the dwelling for residential purposes and compatible with surrounding residential uses, as specified by Part 6 (Specific to Uses).
Sign Permits	4.06	A Sign Permit is required to allow the installation or remodeling of a sign.
Site Plan and Design Reviews	9.07	A Site Plan and Design Review is required before construction of any structure erected in the Zones within Part 3 (Specific to Zones), and as specified in Table 9.3 (Review Authority for Site Plan and Design Review).
Temporary Use Permits	9.09	A Temporary Use Permit is required to allow short term activities that might not meet the normal development or use standards of the applicable zone, but may otherwise be acceptable because of their temporary nature.
Zoning Clearances	9.11	A Zoning Clearance is required to verify a proposed land use or structure complies with the list of activities allowed in the applicable zone and the development standards applicable to the use or structure.
Zoning Use Permits	9.03	A Zoning Use Permit is required to authorize proposed land uses specified by Part 3 (Specific to Zones) as being allowable in the applicable zone subject to the approval of a Zoning Use Permit.
Additional Permits and Approvals Available to the Applicant		
Minor Variances	9.10	A Minor Variance may be requested to allow an adjustment from any of the development standards specified in Table 9.4 (Types of Minor Variances Allowed).
Reasonable Accommodations	9.06	Reasonable Accommodations provides a procedure to request a necessary adjustment to the development standards specified in this Development Code in order to accommodate persons with disabilities seeking equal access to housing under the California Fair Employment and Housing Act, the Federal Fair Housing Act, and the Americans with Disabilities Act (ADA) (also known as the Acts) in the application of zoning laws and other land use regulations, policies, and procedures. A Reasonable Accommodation is typically an adjustment to physical design standards (e.g., setbacks) to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled resident.
Variances	9.10	A Variance may be requested to allow an adjustment from any of the development standards required by this Development Code.
Subdivision Maps and Other Approvals		
Tentative Maps, Final and Parcel Maps	See TABLE 10.1 (Subdivision Review Authorities)	
Lot Line Adjustments, Mergers, and Approvals	See TABLE 10.1 (Subdivision Review Authorities)	

Table 9.2 Review Authority				
Type of Action	Code Chapter/Section	Role of Review Authority ¹		
		Director ²	Commission	Council
Administrative and Legislative Actions				
Development Agreements	9.04		Recommend	Decision
Development Code Amendments	9.14		Recommend	Decision
General Plan Amendments	9.14		Recommend	Decision
Historic Preservation Designation	4.07		Recommend	Decision
Interpretations	9.19	Decision	Appeal	Appeal
Specific Plans and Amendments	9.08		Recommend	Decision
Zoning Map Amendments	9.14		Recommend	Decision
Planning Permits and Approvals				
Certificates of Appropriateness	9.02	See Section 9.02.030 (Review Authority)		
Conditional Use Permits ³	9.03		Decision	Appeal
Home Occupation Permits	9.05	Decision	Appeal	Appeal
Minor Variances	9.10	Decision	Appeal	Appeal
Reasonable Accommodations	9.06	Decision	Appeal	Appeal
Sign Permits	4.06	Issuance	Appeal	Appeal
Site Plan and Design Reviews	9.07	See TABLE 9.3 for specified review thresholds		
Temporary Use Permits	9.09	Decision	Appeal	Appeal
Variances	9.10		Decision	Appeal
Zoning Clearances	9.11	Decision	Appeal	Appeal
Zoning Use Permits	9.03	Decision	Appeal	Appeal
Subdivision Maps and Other Approvals				
Tentative Maps, Final and Parcel Maps		See TABLE 10.1 (Subdivision Review Authorities)		
Lot Line Adjustments, Mergers, and Approvals		See TABLE 10.1 (Subdivision Review Authorities)		
Notes				

¹ “Recommend” means that the review authority makes a recommendation to a higher decision making body; “Decision” means that the review authority makes the final decision on the matter; “Appeal” means that the review authority may consider and decide upon appeals to the decision of an earlier decision making body, in compliance with Chapter 9.15 (Appeals).

² The Director may defer action and refer the request to the Commission for consideration and final action.

³ May require Historic Preservation Commission review in conformance with section 4.07.030.

9.01.040 Application Preparation and Filing**A. Pre-application conference.**

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

B. Application contents. Each application for a permit, amendment, or other matter pertaining to this Development Code shall be filed with the Department on a City application form, together with all required fees and/or deposits and all other information and materials specified in the Department handout for the specific type of application and/or as specified by the Director.

C. Eligibility for filing.

1. The application shall be signed by the owner of record or by an authorized agent.
2. Authorized agents shall provide written authorization signed by property owner.

D. Without scope.

1. In cases where the Director considers the reasons and conditions specified in the application not within the scope of the requested permit or approval, or that the application is incomplete, the applicant shall be so informed.
2. If the application is filed and the required fees are accepted, the application shall be signed by the applicant and the owner of record if not the owner, to the effect that the applicant was so informed.
3. Acceptance of the application does not constitute an indication of support or approval.

E. Report by Expert Consultants. The City may require of the applicant additional evidence and clarification as may be necessary to establish that the proposed use will conform to the applicable regulations and standards specified in this Development Code.

9.01.050 Application Fees**A. Fee schedule.**

1. The Council shall establish a schedule of fees for the processing of the applications

required by this Development Code, hereafter referred to as the Planning Fee Schedule.

2. The Planning Fee Schedule shall be adopted by resolution of the Council which may be evaluated and/or amended as often as determined to be necessary by the Council.
3. Projects subject to time and materials charges.
 - a. Projects which do not fit any category in the Planning Fee Schedule or which are otherwise extraordinary may be charged on a time and materials basis at the Director's sole discretion.
 - b. Staff time required on a project, post entitlement, and not part of another formal application (e.g., Final Map, Site Plan and Design Review, etc.) will be recovered on a time and materials basis at the Director's sole discretion.
 - c. The fees specified in the Planning Fee Schedule reflect standard processing time. Projects requiring excessive review time will be recovered on a time and materials basis.

B. Timing of payment.

1. Applications shall not be deemed complete, and processing shall not commence, on any application until all required fees or deposits have been paid.
2. Failure to timely pay supplemental requests for payment of required fees and/or deposits shall be a basis for postponement of any permit or other requested entitlement, notwithstanding any other provisions of this Development Code.

C. Refunds and withdrawals.

1. No refund due to denial shall be allowed.
2. In the case of a withdrawal, the Director shall have the discretion to authorize a partial refund based upon the pro-rated costs to-date and the status of the application at the time of withdrawal.

9.01.060 Initial Review of Application

- A. Review for completeness.** The Director shall review each application for completeness and accuracy before it is accepted as being complete and officially filed. The Director's determination of completeness shall be based on the City's list of required application contents and any additional information determined by the Director to be necessary to determine project conformance to all applicable policies (see Section 9.01.040 [Application Preparation and Filing], above).
1. Notification of applicant. As required by Government Code Section 65943, within 30 calendar days of application filing, the applicant shall be informed in writing, either that the application is complete and has been accepted for processing, or that the application is incomplete and that additional information, specified in the Director's letter, shall be provided.
 2. Submittal of additional information. The Director's review of the any information resubmitted by the applicant shall be accomplished in compliance with Subparagraph A. 1., above, along with another 30-day period of review for completeness.
 3. Expiration of application.
 - a. If an applicant fails to provide the additional information specified in the

Director's letter within 180 days following the date of the letter, or shorter time frame as determined by the Director, the application shall expire and be deemed withdrawn without any further action by the City, unless an extension is approved by the Director for good cause shown.

- b. After the expiration of an application, future City consideration shall require the submittal of a new, complete application and associated filing fees.
 4. Environmental information. After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with the California Environmental Quality Act (CEQA), the City's CEQA guidelines, and Section 9.01.080 (Environmental Assessment), below.
- B. **Referral of application.** At the discretion of the Director, or where otherwise required by this Development Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project.

9.01.070 Environmental Assessment

- A. **CEQA review.** After acceptance of a complete application, the project shall be reviewed in compliance with the California Environmental Quality Act (CEQA) and the City's CEQA guidelines in order to determine whether:
 1. The proposed project is exempt from the requirements of CEQA;
 2. The proposed project is not a project as defined by CEQA;
 3. A Negative Declaration may be issued;
 4. A Mitigated Negative Declaration may be issued;
 5. An Environmental Impact Report (EIR) shall be required; or
 6. An addendum and/or supplemental information and materials are required in compliance with the (CEQA).
- B. **Compliance with CEQA.** These determinations and, where required, the preparation of appropriate environmental documents, shall be in compliance with CEQA and the City's CEQA guidelines.
- C. **Compliance with NEPA.** Where applicable, projects shall also comply with the requirements of the National Environmental Policy Act.
- D. **Special studies required.** At the applicant's expense, special study(ies) may be required by the City; and consultant selection may be done at City's sole discretion.

9.01.080 Burden of Proof

The burden of proof to establish the evidence in support of the required finding(s) for any permit or approval in compliance with this Development Code is the responsibility of the applicant.

Chapter 9.02 Certificates Of Appropriateness

Sections:

9.02.010	Purpose
9.02.020	Applicability
9.02.030	Review Authority
9.02.040	Application Requirements
9.02.050	Findings and Decision
9.02.060	Appeals
9.02.070	Conditions of Approval
9.02.080	Post Decision Procedures

9.02.010 Purpose

A Certificate of Appropriateness is intended to protect structures, improvements, natural features, and objects of historic significance including but not limited to areas of architectural, cultural, economic, historic, political, and social importance from any alteration, demolition, or removal which would have an adverse effect thereon.

9.02.020 Applicability

A. When required.

1. A Certificate of Appropriateness is required for the alteration, demolition, or removal of any individual cultural resource or any contributing cultural resource within a historic district, and for any alteration, demolition, or removal of any potential cultural resource, by the City, any agent of the City, or a private party.
2. A property or structure with a Historic Preservation (HP) Overlay designation, or over 50 years of age; or on or potentially eligible for a local, State or national register shall be presumed to be a potential cultural resource subject to a Certificate of Appropriateness.
3. A Certificate of Appropriateness shall be required:
 - a. In addition to any other permits required by this Development Code; and
 - b. Shall accompany any permit or any work otherwise altering the architectural features or appearance of the resource.

B. Alteration defined.

1. An alteration shall mean any act or process, through private or public action, that changes the specified character defining or significant physical features or architectural appearance of a cultural resource, including the reconstruction, new construction, additions, rehabilitation, relocation, removal, repair, replacement, or restoration of any resource.
2. These changes include modification of a structure, architectural detail or visual characteristic (e.g., grading, paint color, surface texture), surface paving, the addition of new structures, the cutting or removal of trees, landscaping and other natural features, the disturbance of archaeological sites or areas, and the placement or removal of any significant objects (e.g., fences, landscaping and accessories, light

fixtures, plaques, signs, steps, street furniture, and walls) affecting the significant visual or historical qualities of the property.

- C. **Waiver of development standards.** When approving a Certificate of Appropriateness, the Historic Preservation Commission may allow a waiver of development standards only as follows, and only if first found to contribute to preserving a cultural resource.
1. Parking.
 - a. Up to one on-street parking space (defined as 24 unobstructed linear feet of property street frontage) may contribute to meeting parking requirements.
 2. Accessory structures.
 - a. A major accessory structure required setback may be reduced by up to two feet, but in no case closer than three feet to the nearest property line.
 - b. The peak of a major accessory structure gable roof may be allowed a height of up to 19 feet for a steep roof (defined as a roof with a rise as great or greater than its run) found necessary to maintain architectural consistency with the design of the site's primary structure.
 3. Floor area. The floor area of a cultural resource may be the amount allowed by the underlying zone district's floor area ratio or coverage limit, multiplied by a factor of 1.10.
 4. New construction projects incorporating a cultural resource.
 - a. Setbacks required by the underlying zone district for a cultural resource incorporated into a new construction development may be reduced by up to 25 percent.
 - b. Up to one dwelling that is a cultural resource incorporated into a new construction project on a development site 15,000 square feet or greater in size, may be excluded from the density calculation of the underlying zone district, and up to 1,000 square feet of its floor area may be excluded from the floor area calculations of the underlying zone district; provided, the site's density and floor area conforms to the General Plan.

9.02.030 Review Authority

Certificates of appropriateness shall be approved, approved with conditions, or denied subject to the following review authorities:

- A. **Administrative review.** Site modifications that are small in magnitude (e.g., minor fencing, hardscape, landscape, lighting, minor accessory structures, signs, and streetscape improvements) and minor structure modifications that do not involve new construction, additions to existing structures, or demolition of existing structures shall be subject to review and approval or denial by the Director.
- B. **Historic Preservation Commission.** Site modifications that do not meet the criteria for administrative review as specified above shall be subject to review and approval or denial by the Historic Preservation Commission.
- C. **Referral of review.** The Director may refer an administrative Certificate of Appropriateness review to the Historic Preservation Commission, and the Historic Preservation Commission may refer a Historic Preservation Commission Certificate of Appropriateness review to the Planning Commission, where unique circumstances or

policy implications deem it necessary to do so.

- D. **Compliance with findings required.** A Certificate of Appropriateness may be approved if the project is determined to be in compliance with the findings specified in Section 9.02.050 (Findings and Decision), below.

9.02.040 Application Requirements

- A. **Filing.** An application for a Certificate of Appropriateness shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
- B. **Required data.** The application shall include the information and materials specified in the Department handout for Certificate of Appropriateness applications, together with the required fee in compliance with the Planning Fee Schedule.
- C. **Responsibility.** It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.02.050 (Findings and Decision), below.

9.02.050 Findings and Decision

- A. **Review authority's action.** An application for a Certificate of Appropriateness may be approved, conditionally approved, or denied by the review authority.
- B. **Required findings.** The applicable review authority may approve a Certificate of Appropriateness only after first making all of the following findings:
1. The proposed work will neither adversely affect the significant architectural features of a historic resource nor adversely affect the character of the aesthetic, architectural, or historic interest or value of a historic resource and its site;
 2. With regard to any property with a Historic Preservation Overlay designation, the proposed work is consistent with the standards of other resources in the district and does not adversely affect the character of the district;
 3. An engineering report and restoration cost estimate has been submitted in compliance with Chapter 15.26 (Preservation of Cultural Heritage), if the Certificate of Appropriateness is for the demolition of any structure that has been designated as a landmark;
 4. The proposed project is consistent with the General Plan, any applicable Specific Plan, and this Development Code;
 5. The proposed project is consistent with the Secretary of the Interior Standards and requirements of the California Environmental Quality Act (CEQA); and
 6. Any additional findings required by Section 9.02.020 C. (Waiver of development standards), above, can be made.
- C. **Certificate of Appropriateness for demolition.**
1. If the demolition is not approved by the Historic Preservation Commission, the issuance of the demolition permit shall be delayed for 60 days. This delay shall provide time for the Historic Preservation Commission to investigate, document and photograph the historic resources, or if desirable, to arrange for the preservation of the resource. After the expiration of the 60-day period, the demolition permit shall be issued.

2. The 60-day delay may be waived by the City if the Chief Building Inspector determines that the demolition is required for the safety of the public. Upon determination that the immediate demolition is required, the Chief Building Inspector shall provide a written notice to the Historic Preservation Commission explaining the justification for the waiver of the time delay.

9.02.060 Appeals

An administrative decision by the Director is appealable to the Historic Preservation Commission; a Historic Preservation Commission decision is appealable to the Planning Commission; and a Planning Commission decision is appealable to the Council in compliance with Chapter 9.15 (Appeals).

9.02.070 Conditions of Approval

In approving a Certificate of Appropriateness, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Section 9.02.050 (Findings and Decision), above, and which may also include conditions requiring maintenance of a cultural resource in good condition, or installation in publicly viewable areas of informative plaques.

9.02.080 Post Decision Procedures

The procedures and requirements in Chapter 9.11 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Certificate of Appropriateness application.

Chapter 9.03 Conditional Use Permits and Zoning Use Permits

Sections:

9.03.010	Purpose
9.03.020	Applicability
9.03.030	Review Authority
9.03.040	Application Requirements
9.03.050	Project Review, Notice, and Hearing
9.03.060	Findings and Decision
9.03.070	Conditions of Approval
9.03.080	Use of Property before Final Action
9.03.090	Modification of Permit
9.03.100	Periodic Review
9.03.110	Permit to Run with the Land
9.03.120	Post Decision Procedures

9.03.010 Purpose

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

9.03.020 Applicability

- A. **Uses listed in Part 3.** A Conditional Use Permit or Zoning Use Permit is required to authorize proposed land uses specified by Part 3 (Specific to Zones) as being allowable in the applicable zone subject to the approval of a Conditional Use Permit or Zoning Use Permit.
- B. **Applicability of CUP procedure.**
 - 1. **Applicable zones.** The Conditional Use Permit procedure shall be utilized within zones where it is specified that other unlisted uses may be allowed subject to the granting of a Conditional Use Permit.
 - 2. **Allowability of unlisted uses.** It shall mean that unlisted uses might be allowed by the applicable review authority approving the Conditional Use Permit, when the uses are necessary to the development of the community and are in no way detrimental to existing uses or to those allowed in the zone

C. Applicability of CUP procedure – private and quasi-public uses.

1. Uses of a regional nature. Uses of a regional nature may be allowed in any zone subject to the granting of a Conditional Use Permit where found to be essential and/or desirable for the public convenience and welfare, and where the uses are in compliance with the objectives and policies of the General Plan.
2. Allowed uses. Uses shall include, but not be limited to the following:
 - a. Airport or aircraft landing field (private or public);
 - b. Cemeteries, columbariums, crematories, and mausoleums;
 - c. Commercial radio and television antennas and/or transmitters;
 - d. Development of natural resources together with the necessary structure apparatus or appurtenances thereto;
 - e. Golf courses, driving ranges, parks and similar commercial, quasi-public, public and private recreation facilities requiring extensive use of land;
 - f. Health facilities and places of assembly (e.g., places of worship);
 - g. Public utilities facilities including electric generating plants, substations, and overhead and underground transmission and distribution lines having a capacity over 50 KV; gas and oil transmission lines; and water wells pumping treatment and storage facilities and major transmission pipes and viaducts; and
 - h. Other uses as the review authority approving the Conditional Use Permit may deem to be similar and equally essential to service the public welfare.

D. Modification of use regulations.

1. Modification of regulations to use. The Conditional Use Permit procedure shall be utilized wherever it is specified in this Development Code that regulations to use may be modified through approval of a Conditional Use Permit.
2. Subject to findings. It shall mean that the modification may be granted provided the findings specified in Section 9.03.060 (Findings and Decision), below, can be made.

9.03.030**Review Authority**

- A. **Conditional Use Permits.** Conditional Use Permits shall be approved or denied by the:
 1. Commission. Commission, when not considered concurrently with another application that requires Council approval; or
 2. Council. Council when considered concurrently with another application that requires Council approval.
- B. **Zoning Use Permits.**
 1. Zoning Use Permits shall be approved or denied by the Director.
 2. The Director may choose to refer any Zoning Use Permit application to the Commission for review and final decision.

9.03.040 Application Requirements

- A. **Filing.** An application for a Conditional Use Permit or Zoning Use Permit shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
- B. **Required data.** The application shall include the information and materials specified in the Department handout for Conditional Use Permit and Zoning Use Permit applications and any additional information for a specific use required by the Development Code, together with the required fee in compliance with the Planning Fee Schedule.
- C. **Responsibility.** It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.03.060 (Findings and Decision). (Ord. 1927 § 3 (Exh. C), 2011)

9.03.050 Project Review, Notice, and Hearing

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

A. Conditional Use Permits.

- 1. **Conditional Use Permits.** The Commission (or Council when considering a concurrently filed application) shall conduct a public hearing on an application for a Conditional Use Permit before a decision on the application.
- 2. **Notice.** Notice of the hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 9.17 (Public Hearings).
- 3. **Appeals.** The Commission's decision is appealable to the Council in compliance with Chapter 9.15 (Appeals).

B. Zoning Use Permits. Before a decision on a Zoning Use Permit, the City shall provide notice in compliance with Chapter 9.17 (Public Hearings), and as follows:

- 1. **Notice.**
 - a. The notice shall state that the Director will decide whether to approve or deny the Zoning Use Permit application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision.
 - b. The written request for a hearing shall be based on issues of significance directly related to the application (e.g., provision of evidence that the request cannot meet one or more of the findings specified in Section 9.03.060 (Findings and Decision)).
 - c. If the Director determines that the evidence has merit and can be properly addressed by a condition(s) added to the Zoning Use Permit approval, the Director may consider the permit in compliance with subsection B.3 of this section (If No Hearing is Requested).
- 2. **If Hearing Is Requested.** If a public hearing is requested and the provisions of subsection B.1.c of this section do not apply the Director shall schedule the hearing

that shall be noticed and conducted in compliance with Chapter 9.17 (Public Hearings).

3. If No Hearing Is Requested. If no public hearing is requested, the Director shall render a decision on the date specified in the notice referred to in subsection B.1.a of this section.
4. Appeals. The Director's decision is appealable to the Commission in compliance with Chapter 9.15 (Appeals).

9.03.060 Findings and Decision

A. Review authority's action.

1. All applications. An application for a Conditional Use Permit or Zoning Use Permit may be approved subject to conditions or denied by the review authority, based on the findings identified in Subsection B. (Required findings), below.
2. Where Council is review authority. After the public hearing where the Council is the review authority in compliance with Section 9.03.030.A., the Commission shall forward a written recommendation, and reasons for the recommendation, to the Council whether to approve, approve in modified form, or deny the application, based on the findings identified in subsection B of this section (Required findings).

B. Required findings. The review authority may approve a Conditional Use Permit or Zoning Use Permit only after first making all of the following findings:

1. The proposed use is consistent with the General Plan and any applicable Specific Plan;
2. The proposed use is allowed within the subject zone and complies with all other applicable provisions of this Development Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the proposed activity will be compatible with the existing and future land uses in the vicinity;
4. The subject site is:
 - a. Physically suitable in terms of design, location, operating characteristics, shape, size, topography, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
 - b. Served by highways and streets adequate in width and improvement to carry the kind and quantity of traffic the proposed use would likely generate.
5. The site's suitability ensures that the type, density, and intensity of use being proposed will not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially detrimental to the improvements, persons, property, or uses in the vicinity and zone in which the property is located; and
6. The applicant agrees in writing to comply with any and all of the conditions imposed by the review authority in the approval of the Conditional Use Permit or Zoning Use Permit.
7. That any other findings prerequisite to approval of a Conditional Use Permit or Zoning Use Permit states elsewhere in the Development Code can be made. (Ord. 1927 § 3 (Exh. C), 2011)

9.03.070 Conditions of Approval

In approving a Conditional Use Permit or Zoning Use Permit, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Section 9.03.060 (Findings and Decision).

9.03.080 Use of Property before Final Action

Permits or approvals shall not be issued for any use involved in an application for a Conditional Use Permit or Zoning Use Permit until and unless the same shall have become final, in compliance with Section 9.17.070 (Effective Date of Decision).

9.03.090 Modification of Permit

An approved Conditional Use Permit or Zoning Use Permit may be modified in compliance with Section 9.12.080 (Changes to an Approved Project).

9.03.100 Periodic Review

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

9.03.110 Permit to Run with the Land

A Conditional Use Permit or Zoning Use Permit approved in compliance with the provisions of this Chapter shall continue to be valid upon a change of ownership of the business, parcel, service, structure, or use that was the subject of the permit application in the same area, configuration, and manner as it was originally approved in compliance with this Chapter and the provisions of Chapter 9.16 (Nonconforming Provisions).

9.03.120 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Conditional Use Permit or Zoning Use Permit application.

Chapter 9.04 Development Agreements

Sections:

9.04.010	Purpose
9.04.020	Application
9.04.030	Contents of Development Agreements
9.04.040	Initial Review
9.04.050	Consideration and Decision
9.04.060	Amendment and Cancellation
9.04.070	Annual Review
9.04.080	Effect of Development Agreement
9.04.090	Agreements for Newly Annexed Areas

9.04.010 Purpose

- A. **Provide procedures.** The purpose of this Chapter is to provide procedures for the processing of Development Agreements in compliance with the Government Code Sections 65864 through 65869.5.
- B. **Compliance required.** All Development Agreements shall be processed in compliance with this Chapter.

[See Government Code Article 2.5 (Development Agreements), Sections 65864 through 65869.5. Bracketed references located throughout this Chapter are to the Government Code.]

9.04.020 Application

- A. **Filing by owner.**
 - 1. An application for a Development Agreement may only be filed by a person having a legal or equitable interest in the subject real property.
 - 2. The Director shall require an applicant to submit a title report or other evidence satisfactory to the Director to verify the applicant's interest in the real property.
 - 3. If the real property is located in unincorporated territory within the City's sphere of influence, the Development Agreement shall not become operative unless annexation proceedings annexing the property to the City are completed within the period of time specified by the Development Agreement.
 - 4. If the annexation is not completed within the time specified, the Development Agreement is void.
- B. **Application fees.** The applicant shall pay fees for the filing and processing of a Development Agreement application as established by the Planning Fee Schedule. [Section 65865.]

9.04.030 Contents of Development Agreements**A. Required provisions.**

1. A Development Agreement shall include all of the following, as applicable:
 - a. The duration of the Development Agreement;
 - b. The allowed uses of the property;
 - c. The density or intensity of the use;
 - d. The maximum height and size of the proposed structures;
 - e. Provisions for the dedication of land for public purposes;
 - f. The public benefit offered by the applicant as consideration for entering into the Development Agreement; and
 - g. The provisions specified in Subsection 9.04.080.B (Limitations), below.
2. Provisions in Subparagraphs 1.b., c., and d., above, may be satisfied by incorporating the terms of a PD zone governing the same property.

B. Optional provisions. A Development Agreement may include the following:

1. Conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided, that the conditions, terms, restrictions, and requirements shall not prevent development of the land for the uses and to the density or intensity of development specified in the Development Agreement;
2. Provisions providing that construction shall begin within a specified time and that the project or any phase be completed with a specified time; and
3. Terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

C. Provisions not allowed. A Development Agreement shall not include the following:

1. Requirements for the City to provide public facilities, improvements, or services;
2. Requirements for the City to exercise its legislative or quasi-judicial powers in a particular way; or
3. Waivers or modifications of any City fees or requirements [Section 65865.2].

9.04.040 Initial Review**A. Completeness.**

1. The Director shall determine whether the application is complete.
2. The Director shall schedule the proposed Development Agreement for the required hearing for initial review in compliance with this Section.

B. Initial review by Council.

1. The Council shall hold a noticed public hearing to initially review an application for a Development Agreement.
2. At the hearing, the Council shall determine whether it wishes to enter into a Development Agreement and, if so, the general subject areas the City staff is authorized to negotiate.

3. Notice of the hearing shall be given as provided in Government Code Sections 65090 and 65091 and Chapter 9.17 (Public Hearings).
- C. Initial review not required.** Initial review under this Section is not required for:
1. A Development Agreement approved in conjunction with the approval or amendment of a residential, commercial, or industrial planned development zone under Section 3.04.030. The Development Agreement for these planned development projects shall be substantially in the standard form prepared by the City Attorney's office;
 2. A Development Agreement approved in conjunction with a PUD permit in the South Livermore Valley Specific Plan area, in compliance with Chapter 3.04.060; and
 3. An amendment to an existing Development Agreement.

9.04.050 Consideration and Decision**A. Director's responsibilities.**

1. The Director shall direct the negotiations with the developer regarding terms of the Development Agreement.
2. The Director shall determine what environmental review is appropriate under the California Environmental Quality Act (CEQA).
3. Once negotiations are completed, the Director shall schedule the proposed Development Agreement for the required hearings in compliance with this Section.

B. Commission hearing and determination.

1. The Commission shall hold a public hearing to consider whether the Development Agreement should be approved.
2. Notice of the hearing shall be given as provided in Government Code Sections 65090 and 65091 and Chapter 9.17 (Public Hearings).
3. The Commission may recommend approval, approval subject to conditions, or denial of the application based on the findings specified in Subsection D., below.

C. Council determination.

1. The Council shall hold a public hearing to consider whether the Development Agreement should be approved.
2. Notice of the hearing shall be given as provided in Government Code Sections 65090 and 65091 and Chapter 9.17 (Public Hearings).
3. Approval, authorizing the City Manager to sign the Development Agreement, shall be by ordinance (which takes effect 30 days after adoption), based on the findings specified in Subsection D, below.

D. Findings. The Commission may recommend approval and the Council may approve the Development Agreement only after first making all of the following findings:

1. The Development Agreement provides benefit to the City;
2. The Development Agreement is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, any applicable Specific Plan, and this Development Code; and

3. The Development Agreement complies with the requirements of Government Code Sections 65864 through 65869.5.
- E. **Recordation.** Within 10 days after the City enters into a Development Agreement, the City Clerk shall record a copy, at the applicant's expense, of the Development Agreement with the County Recorder.

9.04.060 Amendment and Cancellation

- A. **Same procedures.** A Development Agreement may be amended or cancelled using the same procedure for entering into the agreement in compliance with Section 9.04.050 (Consideration and Decision), above.
- B. **No initial review required.** Initial review in compliance with Section 9.04.040 is not required [Section 65868.].

9.04.070 Annual Review

A. **Timing of review.**

1. The City shall review each Development Agreement at least every 12 months from the date it is entered into.
2. The Commission or Council, or both, may hold public hearings to conduct more frequent reviews of a Development Agreement as deemed appropriate.

B. **Notice.**

1. The Director shall give notice of the intention to conduct a review under this Section as provided in Government Code Sections 65090 and 65091 and Chapter 9.17 (Public Hearings).
2. In addition, at least 10 days before the hearing, the Director shall give notice to all persons having a legal or equitable interest in the real property subject to the Development Agreement.
3. The notice shall include all of the following:
 - a. A statement that the applicant, or the successor(s)-in-interest to the Development Agreement, has the burden of demonstrating good faith compliance with the terms of the agreement; and
 - b. A statement that if, as a result of the review, the Commission or Council finds on the basis of substantial evidence that the applicant or successor(s) to the Development Agreement has not complied in good faith with the terms and conditions of the agreement, the City may modify or terminate the agreement.

C. **Determination.**

1. If the Commission finds, on the basis of substantial evidence, that the applicant or successor(s)-in-interest has not complied in good faith with the terms or conditions of the Development Agreement, it may recommend modification or termination to the Council.
2. Based on substantial evidence that the applicant or successor(s) has not complied in good faith with the terms or conditions of the Development Agreement, the Council may modify or terminate the agreement [Section 65866.].

9.04.080 Effect of Development Agreement

- A. **Vested development rights.** The development of the property shall be governed by those rules, regulations, and official policies in effect at the time of execution of the Development Agreement, regarding allowed uses of the land, density, design, improvement and construction standards and specifications, except:
1. As otherwise provided by the Development Agreement; or
 2. As provided in Subsection B (Limitations), below.
- B. **Limitations.** Notwithstanding the vested rights specified in Subsection A (Vested development rights), above, the property owner shall:
1. Pay the processing and development impact fees in effect at the time those fees are paid;
 2. Comply with Building Code requirements in effect on a Citywide basis at the time of construction;
 3. Comply with construction and technical design standards or specifications for public improvements which are applicable Citywide;
 4. Comply with changes in City laws, regulations, plans, or policies applicable Citywide, the terms of which are found by the Council, based on substantial evidence, to be necessary to protect members of the public from a condition dangerous to their health or safety;
 5. Comply with a change in City a law, regulation, plan, or policy which is:
 - a. Specifically mandated by State or Federal law, or by any regional governmental agency that has legal authority over the City under State law or a joint powers agreement;
 - b. A result of or in response to State or Federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes a change; or
 - c. Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement, or other authorization necessary for the development of the property issued or granted to the City, County and/or property owners by any Federal, State or regional agency.
 6. Following any subsequent environmental review, comply with required mitigation measures.
- C. **City's rights.** A Development Agreement does not prevent the City in subsequent actions applicable to the property from:
1. Applying new rules, regulations, and policies which do not conflict with those specified in the Development Agreement; or
 2. Denying or conditionally approving any subsequent development project application on the basis of the existing or new rules, regulations, and policies [Section 65866.].

9.04.090 Agreements for Newly Annexed Areas

If newly annexed area comprises territory that was formerly unincorporated, any Development Agreement entered into by the County before the effective date of annexation shall be governed by Government Code Section 65865.3.

Chapter 9.05 Home Occupation Permits

Sections:

9.05.010	Purpose
9.05.020	Applicability
9.05.030	Permit Required
9.05.040	Application Filing, Processing, and Review
9.05.050	Prohibited Home Occupations
9.05.060	Director's Decision
9.05.070	Compliance with Standards
9.05.080	Findings and Decision
9.05.090	Conditions of Approval
9.05.100	Permit Expiration
9.05.110	Acknowledgment
9.05.120	Permit Not Transferable
9.05.130	Changes in Home Occupation
9.05.140	Post Decision Procedures

9.05.010 Purpose

The purpose of this Chapter is to provide a process to gain City approval to conduct a home occupation which represents a legal commercial enterprise conducted by an occupant(s) of a dwelling.

9.05.020 Applicability

- A. **Incidental and secondary.** The Home Occupation Permit is intended to allow for home occupations that are conducted within a dwelling located in a residential zone, including Transect Zones, and are clearly incidental and secondary to the use of the dwelling for residential purposes and compatible with surrounding residential uses.
- B. **Allowed by Part 3.** A home occupation may only be conducted when allowed by Part 3 (Specific to Zones).

9.05.030 Permit Required

- A. **Home Occupation Permit required.** No person shall conduct a home occupation without first obtaining a Home Occupation Permit in compliance with this Chapter.
- B. **Exemption.**
 - 1. **Live/work.** A legal live/work facility is exempt from the requirement of a Home Occupation Permit.
 - 2. **Small family day care home.** A small family day care home for eight or fewer children operated in compliance with State law and Section 6.02.020 (Child Day Care Facilities) is exempt from the requirement of a Home Occupation Permit.

9.05.040 Application Filing, Processing, and Review**A. Application.**

- I. Filing.
 - a. An application for a Home Occupation Permit shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
 - b. The application shall be signed by the owner of record or by an authorized agent.
 - c. Authorized agents shall provide written authorization signed by the property owner.
 2. Required data. The application shall include the information and materials specified in the Department handout for Home Occupation Permit applications, together with the required fee in compliance with the Planning Fee Schedule.
 3. Responsibility. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.05.080 (Findings and Decision), below.
- B. Public notice not required.** A public notice and hearing shall not be required for the Director's decision on a Home Occupation Permit application.

9.05.050 Prohibited Home Occupations

Please refer to Section 6.02.060 (Home Occupations) for the list of prohibited home occupations.

9.05.060 Director's Decision

- A. **Director's actions.** The Director may approve a Home Occupation Permit application that would be operated in compliance with Section 9.05.070 (Compliance with Standards) below, deny the application, or defer action and refer the application to the Commission for review and final decision.
- B. **Business License Tax required.** In conjunction with the Home Occupation Permit, the applicant shall obtain a Business License in compliance with Municipal Code Chapter 3.08 (Business License Tax).

9.05.070 Compliance with Standards

Home occupations shall comply with the applicable locational, developmental, and operational standards specified in Section 6.02.060 (Home Occupations) as well as any conditions or terms imposed on the Home Occupation Permit.

9.05.080 Findings and Decision

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

making all of the following findings:

A. The proposed home occupation will:

1. Be consistent with the General Plan, any applicable Specific Plan, and the development and design standards of the subject residential zone;
2. Be listed as an allowable use in Part 3 (Specific to Zones);
3. Comply with the applicable locational, developmental, and operational standards specified in Section 6.02.060 (Home Occupations) as well as any conditions or terms imposed on the Home Occupation Permit; and
4. Be clearly incidental and secondary to the use of the dwelling for residential purposes and be compatible with surrounding residential uses.

B. The proposed home occupation will not:

1. Be detrimental to the public convenience, health, interest, safety, or welfare, or materially injurious to the properties or improvements in the immediate vicinity; or
2. Interfere with the use or enjoyment of neighboring existing or future residential developments, and will not create traffic or pedestrian hazards.

9.05.090 Conditions of Approval

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

9.05.100 Permit Expiration

When a home occupation has been discontinued for at least 90 days the Home Occupation Permit shall immediately expire.

9.05.110 Acknowledgment

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

9.05.120 Permit Not Transferable

- A. **Not transferable.** The Home Occupation Permit is not transferable to another resident.
- B. **New permits required.** A new Home Occupation Permit, for the same or different home occupation conducted by a new resident, shall be obtained before conducting an allowed home occupation.

9.05.130 Changes in Home Occupation

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

9.05.140 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Home Occupation Permit application.

Chapter 9.06 Reasonable Accommodations

Sections:

9.06.010	Purpose
9.06.020	Applicability
9.06.030	Application Requirements
9.06.040	Review Authority
9.06.050	Review Procedures
9.06.060	Findings and Decision
9.06.070	Rescission of Approval of Reasonable Accommodation
9.06.080	Post Decision Procedures

9.06.010 Purpose

- A. **The Acts.** This Chapter provides a procedure to request Reasonable Accommodation for persons with disabilities seeking equal access to housing under the California Fair Employment and Housing Act, the Federal Fair Housing Act, and the Americans with Disabilities Act (ADA) (also known as the Acts) in the application of zoning laws and other land use regulations, policies, and procedures.
- B. **Adjustment to physical design standards.** A Reasonable Accommodation is typically an adjustment to physical design standards (e.g., setbacks) to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled resident.

9.06.020 Applicability

- A. **Eligible applicants.**
 1. A request for Reasonable Accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning law (i.e., development standard) or other land use regulation, policy, or practice acts as a barrier to fair housing opportunities.
 2. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.
 3. This Chapter is intended to apply to those persons who are defined as disabled under the Acts.
- B. **Eligible request.**
 1. A request for Reasonable Accommodation may include a modification or exception to the practices, rules, and standards for the development, siting, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.
 2. A request for Reasonable Accommodation shall comply with Section 9.06.030 (Application Requirements), below.

9.06.030 Application Requirements

- A. **Filing.** An application for a Reasonable Accommodation shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
- B. **Required data.** The application shall include the information and materials specified in the Department handout for Reasonable Accommodation applications, together with the required fee in compliance with the Planning Fee Schedule.
- C. **Filing with other land use applications.** If the project involves both a request for Reasonable Accommodation and some other discretionary approval (e.g., Conditional Use Permit, Site Plan and Design Review, etc.), the applicant shall file the information required by Subsection A (Application), above, together with the materials required for the other discretionary approval.
- D. **Responsibility of the applicant.** It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.06.060 (Findings and Decision), below.

9.06.040 Review Authority

- A. **Director.** A request for Reasonable Accommodation shall be reviewed, and a decision shall be made, by the Director if no approval is sought other than the request for Reasonable Accommodation.
- B. **Other review authority.** A request for Reasonable Accommodation submitted for concurrent review with another discretionary land use application (e.g., Conditional Use Permit) shall be reviewed (and approved or denied) by the authority reviewing the discretionary land use application.

9.06.050 Review Procedures

- A. **Director's review.** The Director shall make a written decision and either approve, approve with modifications, or deny a request for Reasonable Accommodation in compliance with Section 9.06.060 (Findings and Decision), below.
- B. **Other review authority.**
 - 1. The written decision on whether to approve or deny the request for Reasonable Accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review.
 - 2. The decision to approve or deny the request for Reasonable Accommodation shall be made in compliance with Section 9.06.060 (Findings and Decision), below.

9.06.060 Findings and Decision

- A. **Findings.** The written decision to approve or deny a request for Reasonable Accommodation that will be consistent with the Acts shall be based on consideration of all of the following factors:
 - 1. Whether the housing, which is the subject of the request, will be used by an

- individual defined as disabled under the Acts;
2. Whether the request for Reasonable Accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
 3. Whether the requested Reasonable Accommodation would impose an undue financial or administrative burden on the City;
 4. Whether the requested Reasonable Accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning;
 5. Whether there are alternatives to the requested waiver or exception that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants or to the general public;
 6. Physical attributes of the property and structures; and
 7. Other Reasonable Accommodations that may provide an equivalent level of benefit.
- B. **Conditions of approval.** In approving a request for Reasonable Accommodation, the review authority may impose conditions of approval deemed reasonable and necessary to ensure that the Reasonable Accommodation will comply with the findings required by Subsection A (Findings), above.

9.06.070 **Rescission of Approval of Reasonable Accommodation**

A. **Rescission.**

1. An approval or conditional approval of an application made in compliance with this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances (e.g., the individual defined as disabled under the Acts vacates the subject site, etc.), unless allowed to remain in compliance with Subsection B (Discontinuance), below.
2. If rescinded or is subject to automatic expiration, the improvement made in compliance with the originally approved Reasonable Accommodation shall be removed from the subject property in compliance with Subparagraph B.2, below.

B. **Discontinuance.**

1. A Reasonable Accommodation shall lapse if the exercise of rights granted by it is discontinued for at least 180 consecutive days.
2. If the person(s) initially occupying a residence vacates, the Reasonable Accommodation shall remain in effect only if the review authority first determines that:
 - a. The modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this Development Code; or
 - b. The accommodation is to be used by another qualifying individual with a disability.
3. The review authority may request the applicant or the successor(s)-in-interest to the property to provide documentation that subsequent occupants are qualifying persons with disabilities.
4. Failure to provide the documentation within 30 days of the date of a request by the review authority shall constitute grounds for discontinuance by the City of a

previously approved Reasonable Accommodation.

5. Discontinuance shall require that the improvement made in compliance with the originally approved Reasonable Accommodation shall be removed from the subject property.

9.06.080 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Reasonable Accommodation application.

Chapter 9.07 Site Plan and Design Review

Sections:

9.07.010	Purpose and Intent
9.07.020	Applicability
9.07.030	Review Authority
9.07.040	Application Filing, Processing, and Review
9.07.050	Findings and Decision
9.07.060	Conditions of Approval
9.07.070	Issuance of Other Required Permits and Approvals
9.07.080	Minor Changes by Director
9.07.090	Post Decision Procedures

9.07.010 Purpose and Intent

- A. **Purpose.** The purpose of this Chapter is to provide a process for the appropriate review of construction and development projects.
- B. **Intent.** The intent of this Chapter is to ensure that all approved site and structural development:
1. Promotes the orderly development of the City in compliance with the goals, objectives, and policies of the General Plan, any applicable Specific Plan, and the standards specified in this Development Code;
 2. Respects the physical and environmental characteristics of the site;
 3. Ensures safe and convenient access and circulation for pedestrians and vehicles;
 4. Exemplifies the best professional high quality design practices through consistency with the City's Design Standards and Guidelines;
 5. Allows for and encourages individual identity for specific uses and structures;
 6. Encourages the maintenance of a distinct neighborhood and/or community identity;
 7. Minimizes or eliminates negative or undesirable visual impacts;
 8. Prevents inappropriate design or development of structures;
 9. Ensures development of a City having "image and character," which the term shall include beauty, fitness, harmony, quality, and spaciousness;
 10. Maintains and increases the desirability of other properties within the vicinity for the uses for which they are zoned;
 11. Prevents unsightliness which causes a decrease in the value of surrounding properties;
 12. Prevents the decline in the taxable value of real property in the vicinity and the cost of municipal services to these properties;
 13. Ensures that property values within the vicinity of new and modified development retain their stability;
 14. Provides standards that result in the maintenance or improvement, or both, of surrounding properties so that improvements are not discouraged with the result

that properties degenerate resulting in an accompanying deterioration of conditions; and

15. It is not a purpose or intent of this Chapter to control architectural character so rigidly that individual initiative is stifled in the design of any particular structure. Rather, it is the purpose and intent of this Chapter that any control exercised be that necessary to achieve the overall objectives of this Chapter.

9.07.020 **Applicability**

- A. **When required.** Site Plan and Design Review shall be required for all of the following construction or development activities:
 1. All structures erected to accommodate any of the land use activities listed in Part 3 (Specific to Zones), except for those specified in Subsection B (Exemptions), below.
 2. Before the issuance of a Building or Grading Permit for any construction activities identified in Table 9.3 (Review Authority for Site Plan and Design Review), below.
- B. **Exemptions.** The following are exempt from the requirement for a Site Plan and Design Review:
 1. A development for which a Site Plan and Design Review has been previously granted under the conditions of a Conditional Use Permit, Variance, or Zoning Use Permit, issued in compliance with this Development Code;
 2. Any fence, wall, or other dividing structure in a residential zone district erected in compliance with this Development Code;
 3. Non-Transect zone. A new single-family residence, or an addition to an existing single-family residence located in a non-Transect zone;
 4. Transect zone. A new single-family residence, or addition to an existing single-family residence located in a Transect zone, provided a Zoning Clearance has been obtained; and
 5. Accessory structures in compliance with Section 4.02.030
- C. **Referral to Director.** The Building Official shall refer to the Director all applications for Building or Grading Permits subject to the requirements of this Chapter.
- D. **Compliance with Chapter required.** Building or Grading Permits or Certificates of Occupancy shall not be issued until the requirements of this Chapter have been met.

9.07.030 **Review Authority**

- A. **Applicable review authority.**
 1. Other discretionary approval required. If the proposed construction or development activity that requires Site Plan and Design Review also requires another discretionary approval (e.g., Conditional Use Permit, Variance, etc.), then the applicable review authority shall be the authority identified in Table 9.2 (Review Authority) for the other discretionary approval.
 2. Site Plan and Design Review only. If the proposed construction or development activity only requires a Site Plan and Design Review, then the applicable review authority shall be the authority identified in Table 9.3 (Review Authority for Site Plan

and Design Review).

- B. **Director.** The Director shall either approve, conditionally approve, or deny a Site Plan and Design Review application for all construction or development activities that do require another discretionary approval (e.g., Minor Variance, Zoning Use Permit, etc.) subject to the Director's authority, or may refer the application to the Commission.
- C. **Commission.**
1. The Commission shall either approve, conditionally approve, or deny a Site Plan and Design Review application for all construction or development activities that do require another discretionary approval (e.g., Conditional Use Permit, Variance, etc.) subject to its authority.
 2. Upon receiving the referral specified in Subsection B., above, the Commission shall either approve, conditionally approve, or deny the Site Plan and Design Review application.
- D. **Council.** In cases where Site Plan and Design Review is considered concurrently with another entitlement subject to Council approval (e.g., legislative action [e.g., General Plan amendment]), the Site Plan and Design Review shall be reviewed and approved, conditionally approved, or denied by the Council.

Type of Construction Activity	Role of Review Authority ¹		
	Administrative Design Review (Minor Review) ²	Commission (Major Review)	Council (Major Review)
Construction of New Nonresidential Development. Construction of any structure erected to accommodate any of the land use activities as specified in the Applicability section, above (9.07.020)		Decision	Appeal
Additions to Existing Nonresidential Structures - Minor. 1. Additions to existing nonresidential structures where the addition matches the existing architecture, colors and materials, up to 50 percent of existing floor area or 50,000 square feet, whichever is less. 2. Additions of less than 15 percent of existing floor area to existing nonresidential structures where the addition does not match the existing architecture, colors or materials.	Decision	Appeal	Appeal
Additions to Existing Nonresidential Structures - Major. 1. Additions to existing nonresidential structures greater than or equal to 50 percent of the existing floor area, or 50,000 square feet, whichever is greater. 2. Additions to existing nonresidential structures greater than 15 percent of the existing floor area, where the addition does not match the existing architecture, colors, or materials. 3. Additions to existing nonresidential structures greater than 15 percent of the existing floor area, where the addition noticeably affects the view from a major street.		Decision	Appeal
Planned Developments. All Planned Developments with a Site Plan and Design Review component in compliance with Chapter 3.04		Recommends	Decision
Condominium, Duplex, or Multi-Family Development. Any new construction, exterior addition to, modification to, or alteration of any existing structure which is used in whole or in part as a condominium, duplex, or a multi-family residence containing two, three, or four units.	Decision	Appeal	Appeal
Condominium and Multi-Family Developments. Initial construction, exterior additions to, alterations of, or modification to an existing structure which is used in whole or in part as a condominium or a multi-family residence containing five or more units.		Decision	Appeal
Major Residential and Non-Residential Subdivisions. Any map that creates five or more parcels.		Recommends	Decision
Minor Subdivisions. Any map that creates four or fewer parcels.		Decision	Appeal
Parcel Map Waivers.	Decision	Appeal	Appeal
New landscape/hardscape plans. New landscape/hardscape plans for the initial landscaping of all public and private development projects including public landscape projects along major roads as designated by the General Plan, along arroyos, and on City-owned property.		Decision	Appeal

Table 9.3 Review Authority For Site Plan and Design Review

Type of Construction Activity	Role of Review Authority ¹		
	Administrative Design Review (Minor Review) ²	Commission (Major Review)	Council (Major Review)
Sign Permits. Proposals for any sign associated with an approved project or signs under an approved master sign program in compliance with Chapter 4.06.	Decision	Appeal	Appeal
Master Sign Programs. Master sign programs in compliance with Chapter 4.06.		Decision	Appeal
Minor changes. Minor changes that do not involve an increase in structure area or height, an increase in the number of dwelling units, or an intensity of use may be approved by the Director in compliance with Section 9.12.080 (Changes to an Approved Project).			

Note:

¹ “Recommend” means that the review authority makes a recommendation to a higher decision making body; “Decision” means that the review authority makes the final decision on the matter; “Appeal” means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 9.15 (Appeals).

² The review authority may defer action and refer the request to the next higher review authority for the final decision.

9.07.040 Application Filing, Processing, and Review

A. Application filing.

1. An application for a Site Plan and Design Review shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
2. The application shall include the information and materials specified in the Department handout for Site Plan and Design Review applications, together with the required fee in compliance with the Planning Fee Schedule.
3. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.07.050 (Findings and Decision), below.

B. Review with other land use applications. If the project for which the request for Site Plan and Design Review is being made also requires some other discretionary approval (e.g., Conditional Use Permit, etc.), the applicant shall file the information required by Subsection A. (Application filing), above, together for concurrent review with the application for discretionary approval.

C. Application review. Each application for a Site Plan and Design Review shall be reviewed to ensure that the application is consistent with the purpose of this Chapter; applicable development standards and regulations of this Development Code; and the City’s Design Standards and Guidelines.

1. A Site Plan and Design Review is initiated when the Department receives a complete application package including the required information and materials specified in the Department handout and any additional information required by the applicable review authority in order to conduct a thorough review of the proposed project.
2. Upon receipt of a complete application the applicable review authority shall review the design, location, site plan configuration, and the effect of the proposed development on adjacent properties by comparing the project plans to established development standards, regulations, and applicable design guidelines/policies.

3. During the course of the review process, the review authority may require the submittal of additional information or revised plans.
 - a. The applicant shall be notified in writing of any revisions or additional information required and shall submit the requested information to the Department within 180 days after the date of the notice or within the period of time designated by the review authority.
 - b. Failure to submit the required information within the 180-day period or within the period of time designated by the review authority may be cause for denial.
 4. After the Site Plan and Design Review application has been deemed complete in compliance with Section 9.01.070 (Initial Review of Application), the review authority shall either approve or deny the Site Plan and Design Review application and, if approved, may impose conditions deemed reasonable and necessary to protect the public health, safety and general welfare and ensure compliance with this Chapter and various regulations of the City.
- D. **On-site inspection.** An application for a Site Plan and Design Review may require that the Director perform an on-site inspection of the subject parcel before confirming that the request complies with all of the applicable criteria and provisions specified in this Chapter.
- E. **Public hearing and appeal provisions.**
1. A public hearing shall not be required for an Administrative Design Review on a Site Plan and Design Review application.
 2. A public hearing shall be required for the Director's, Commission's, or Council's decision on a Site Plan and Design Review application, only if being processed concurrently with another discretionary approval (e.g., Conditional Use Permit, Variance, etc.) requiring a public hearing. Notice of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 9.17 (Public Hearings).
 3. The review authority's decision may be appealed, in compliance with Chapter 9.15 (Appeals).

9.07.050 Findings and Decision

- A. **Meets requirements of this Chapter.** The review authority shall determine whether or not the application meets the requirements of this Chapter in compliance with Section 9.01.070 (Initial Review of Application).
- B. **Other review authority.**
 1. The decision to approve or deny the Site Plan and Design Review shall be made by the authority responsible for reviewing the other discretionary land use application (e.g., Conditional Use Permit, Variance, etc.) in compliance with the applicable review procedure for the other discretionary review.
 2. The decision to approve or deny the Site Plan and Design Review shall be made in compliance with Subsection C (Required Findings), below.
- C. **Required findings.** The review authority may approve a Site Plan and Design Review application, only after first making all of the following findings. The proposed development will:
 1. Be allowed within the subject zone;

2. Be designed such that:
 - a. The project will not be detrimental to the public health, safety, or general welfare, and not detrimental to adjacent property;
 - b. Architectural design and functional plan of the structure(s) and related improvements are of reasonable aesthetic quality and compatible with adjacent developments;
 - c. Structure(s) and related improvements are suitable for the proposed use of the property and provide adequate consideration of the existing and contemplated uses of land and orderly development in the general area of the subject site; and
 - d. The project's site plan and design is consistent with the City's Design Standards and Guidelines.
3. Be designed to include the following criteria, as applicable:
 - a. Compliant with this Chapter, this Development Code, Municipal Code Title 15 (Buildings and Construction), and all other applicable City regulations and policies;
 - b. Efficient site layout and design;
 - c. Compatible and appropriate scale to neighboring properties and developments;
 - d. Efficient and safe public access (both pedestrian and vehicular) and parking;
 - e. Appropriate and harmonious arrangement and relationship of proposed structures and signs to one another and to other development in the vicinity, based on good standards of design;
 - f. Appropriate relationship to land use and development of adjacent properties, including topographic and other physical characteristics of the land;
 - g. Proper site utilization and the establishment of a physical and architectural relationship to existing and proposed structures on the site;
 - h. Compatible architectural style with the character of the surrounding area, both to avoid repetition of identical design where not desired, and to ensure compatibility in design where desired;
 - i. Harmonious relationship with existing and proposed developments and the avoidance of both excessive variety and monotonous repetition;
 - j. Compatible in color, material, and composition of the exterior elevations to neighboring visible structures;
 - k. Appropriate exterior lighting which provides for public safety and is not of a nature that will constitute a hazard or nuisance to adjacent properties;
 - l. Compatible in scale and aesthetic treatment of proposed structures with public areas;
 - m. Appropriate open space and use of water efficient landscaping; and
 - n. Consistent with the General Plan and any applicable Specific Plan.

9.07.060 Conditions of Approval

- A. **Necessary conditions.** In approving a Site Plan and Design Review application, the review authority may impose conditions deemed reasonable and necessary to ensure

that the approval would be in compliance with the findings required by Section 9.07.050 (Findings and Decision), above.

- B. **Similarity of style may be required.** When a neighborhood or zone has adopted/assumed a distinct character or style, and it is found that it is desirable to continue the character or style in the architectural features of the proposed structure, the similarity may be required.

9.07.070 Issuance of Other Required Permits and Approvals

- A. **Permits for grading, structures, and uses.** Upon approval or conditional approval of a Site Plan and Design Review, or a revised Site Plan and Design Review, permits may be issued for grading, structures, and uses.
- B. **Compliance with Site Plan and Design Review.** Grading shall not be commenced and no structure shall be altered, enlarged, erected, moved, or rebuilt subject to the provisions of this Chapter, except in full compliance with the approved Site Plan and Design Review and the conditions imposed on the review.
- C. **Determination by Director.** Compliance shall be determined by the Director, or in the case of disagreement with the applicant, by the applicable review authority.
- D. **Determination by Building Inspector.** Before a Building Permit may be issued for any structure in a development requiring Site Plan and Design Review, the Building Inspector shall make a determination that the proposed structure(s) is in compliance with the approved Site Plan and Design Review.

9.07.080 Minor Changes by Director

Minor changes in a Site Plan and Design Review that do not involve an increase in structure area or height, an increase in the number of dwelling units, or an intensity of use may be approved by the Director in compliance with Section 9.12.080 (Changes to an Approved Project).

9.07.090 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Site Plan and Design Review application.

Chapter 9.08 Specific Plans

Sections:

9.08.010	Purpose
9.08.020	Intent
9.08.030	Applicability
9.08.040	Minimum Project Area
9.08.050	Initiation of Specific Plans
9.08.060	Application Filing and Initial Review
9.08.070	Application Processing
9.08.080	Adoption of Specific Plan
9.08.090	Amendment of Specific Plan

9.08.010 Purpose

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

9.08.020 Intent

- A. **General Plan implementation.** The City may prepare, or accept an application for, a Specific Plan in order to systematically implement the General Plan.
- B. **Adopted by ordinance.** A Specific Plan adopted by ordinance shall replace the base zone(s) for the subject property, and the development standards and guidelines identified in the Specific Plan shall take precedence over the general standards and guidelines contained in this Development Code.
- C. **Adopted by resolution.** A Specific Plan adopted by resolution shall be applied as guidelines and the applicable standards contained in this Development Code shall take precedence over the development standards and guidelines identified in the Specific Plan.

9.08.030 Applicability

- A. **Specific Plan required.** When required by the General Plan, this Development Code, initiated by the City, or filed by property owner(s) to systematically implement the General Plan, a Specific Plan shall be prepared, processed, approved and implemented, or denied in compliance with this Chapter.
- B. **Flexibility and innovation.** A Specific Plan is designed to provide for flexibility, innovative use of land resources and development, a variety of housing and other development types, and an effective and safe method of pedestrian and vehicular circulation.
- C. **Commission and Council review.** An application for a Specific Plan shall be considered by the Commission and Council.

9.08.040 Minimum Project Area

A Specific Plan may only be requested for a site(s) with a minimum of two acres.

9.08.050 Initiation of Specific Plans

A Specific Plan may be set in motion in the following manner:

- A. **Initiated.** May be initiated by the Council;
- B. **Proposed.** May be proposed by the Director; or
- C. **Filed.** An application may be filed by the owner(s) of one or more parcels that would be the subject of the Specific Plan. If filed by a property owner(s), the following shall first occur:
 - I. A pre-application conference with the Director before the filing of a Specific Plan application, in compliance with Section 9.01.070 (Initial Review of Application).
 - a. The purpose of this conference is to generally:
 - (1) Inform the applicant of City requirements as they apply to the Specific Plan;
 - (2) Review the City's review process, possible project alternatives, or modifications; and
 - (3) Identify information and materials the City will require with the Specific Plan application, and any necessary technical studies and information relating to the environmental review of the Specific Plan.
 - b. Neither the pre-application review nor the provision of information and/or pertinent policies shall be construed as either a recommendation for approval or denial of the Specific Plan by the Director and/or any City staff. Failure to identify all required studies or all applicable requirements shall not constitute a waiver of those requirements.
 - 2. Public meeting(s) required.
 - a. Before the preparation of the Specific Plan, at least one public meeting shall be held before the Council.
 - b. The purpose of the meeting will be to allow the applicant the opportunity to inform the Council and members of the public about the Specific Plan and for the Council and members of the public to identify potential community concerns and anticipated impacts relating to the proposed Specific Plan.
 - c. Public notice of the meeting shall be given in compliance with Chapter 9.17 (Public Hearings).
 - d. Comments offered by the Council or City staff shall not be construed as either an endorsement or rejection of the Specific Plan.

9.08.060 Application Filing and Initial Review

If filed by a property owner(s), the Specific Plan application shall comply with all of the following.

- A. **Application.**

1. Filing. An application for a Specific Plan shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
 2. Required data.
 - a. The application shall include the information and materials specified in the Department handout for Specific Plan applications, together with the required fee in compliance with the Planning Fee Schedule.
 - b. The draft Specific Plan shall include the detailed information in the form of text and diagram(s), organized in compliance with Government Code Section 65451.
 3. Responsibility. It is the responsibility of the applicant to provide evidence in support of the finding required by Section 9.08.080 (Adoption of Specific Plan), below.
- B. Project review procedures.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Chapter.
- C. Notice and hearings.**
1. Public hearings shall be required for the Commission's recommendation and the Council's action on a Specific Plan or an amendment.
 2. The public hearings shall be scheduled once the Director finds the application complete in compliance with Section 9.01.070 (Initial Review of Application).
 3. Notice of the public hearings shall be given and the hearings shall be conducted in compliance with Chapter 9.17 (Public Hearings).

9.08.070 Application Processing

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

- A. Director's evaluation.**
1. After the filing of a draft Specific Plan, the Director shall review the draft plan to determine whether it is in compliance with the provisions of this Chapter.
 2. If the draft plan is not in compliance, it shall be returned to the applicant with written specification(s) as to why it does not comply, and with suggested revisions to ensure compliance.
 3. When a draft plan is returned by the applicant to the Department and the Director determines it is complete and in compliance with this Chapter, the plan shall be deemed to be complete and accepted for processing, in compliance with Section 9.01.070 (Initial Review of Application).
- B. Environmental review required.** The draft Specific Plan shall be subject to environmental review as identified in Section 9.01.080 (Environmental Assessment).
- C. Staff report.** A written staff report shall be prepared for the draft Specific Plan that shall include a detailed recommendation for approval or denial.

9.08.080 Adoption of Specific Plan

- A. Mandatory finding for adoption.** A Specific Plan may only be adopted if first found

consistent with the General Plan in compliance with Government Code Section 65454.

- B. **Method of adoption.** The Specific Plan shall be adopted by ordinance or by resolution of the Council, in compliance with Government Code Section 65453.

9.08.090 Amendment of Specific Plan

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

Chapter 9.09 Temporary Use Permits

Sections:

9.09.010	Purpose
9.09.020	Temporary Defined
9.09.030	Applicability
9.09.040	Exempt Temporary Uses
9.09.050	Allowed Temporary Uses
9.09.060	Application Filing, Processing, and Review
9.09.070	Director's Review
9.09.080	Findings and Decision
9.09.090	Conditions of Approval
9.09.100	Condition of Site Following Temporary Use
9.09.110	Post Decision Procedures

9.09.010 Purpose

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

9.09.020 Temporary Defined

For purposes of this Chapter, a temporary (short term) land use activity is defined as a land use that is interim, non-permanent, and/or seasonal in nature,

9.09.030 Applicability

- A. **Short term activities.** A Temporary Use Permit allows short term activities that might not meet the normal development or use standards of the applicable zone, but may otherwise be acceptable because of their temporary nature.
- B. **Categories of land uses.** The following two categories of temporary land uses identify the level of permit required, if any, based on the proposed duration, size, and type of use:
 1. Exempt temporary uses. Exempt temporary uses are identified in 9.09.040 (Exempt Temporary Uses), below; and
 2. Temporary uses requiring a Temporary Use Permit. Temporary uses requiring a Temporary Use Permit are identified in 9.09.050 (Allowed Temporary Uses), below.

9.09.040 Exempt Temporary Uses

The following minor and limited duration temporary uses are exempt from the requirement for a Temporary Use Permit. Uses that do not fall within the categories defined below shall comply with 9.09.050 (Allowed Temporary Uses), below.

A. Construction Yards – On-Site

1. On-site contractors' construction/storage yard(s), in conjunction with an approved construction project on the same parcel.
2. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the companion Building Permit, authorizing the construction project, whichever first occurs.

B. Emergency facilities. Emergency public health and safety needs/land use activities, as determined by the Council.**C. Garage/yard sales.** Garage/yard sales (e.g., personal property sales) only when conducted on residentially zoned property in compliance with the following standards:

1. Only one garage/yard sale may be conducted within any four-month period and the sale shall be limited to not more than three consecutive days or to two consecutive weekends not to exceed four days in all.
2. All signs advertising a garage/yard sale shall be in compliance with Section 4.06.140 (Temporary Signs). All garage/yard sale signs shall be removed within 24 hours following the final close of the sale.
3. The sale shall not be conducted between the hours of 8:00 p.m. of any day and 7:00 a.m. of the following day.
4. The sales shall not encroach or be made on or from public streets or rights-of-way.
5. No licensed retail or wholesale dealer shall be allowed to consign or offer for sale any goods or merchandise or participate in any private sale authorized by this Subsection.
6. Any garage/yard sale not in compliance with the conditions specified in this Subsection is hereby declared to be unlawful and a public nuisance.

D. Special Event Permits. A Special Event Permit shall be obtained from the before conducting athletic events, parades, and public assemblies, occurring on or within the public rights-of-way or other publicly owned property, in compliance with LMC Section 12.45.120 (Permit required).

9.09.050 Allowed Temporary Uses

The following temporary uses are allowed on private property, subject to the issuance of a Temporary Use Permit, and only when conducted in compliance with Section 9.09.090 (Conditions of Approval), below.

A. Contractors' construction yards – off-site. The temporary use of a site for an off-site contractor's construction/storage yard(s). The permit may be effective for up to 12 months, or the expiration of the companion Building Permit, authorizing the construction project, whichever first occurs.**B. Events.**

1. Entertainment events. Amusement rides, arts and crafts exhibits, auctions, carnivals, circuses, concerts, fairs, festivals, flea markets, food events, outdoor entertainment/sporting events, and other similar events as determined by the Director for a period not to exceed 10 days twice per year, separated by at least 30 days between uses. These events shall be conducted at least 200 feet away from any residence.
2. Outdoor sales displays. Outdoor sales displays, except in the downtown, conducted

by a retail business holding a valid Business License, issued in compliance with Municipal Code Chapter 3.08 (Business License), may be allowed a maximum of four outdoor sale events (excluding City sponsored activities) and shall be conducted in compliance with Section 6.03.090 (Outdoor Sales Display). For purposes of this Subsection an outdoor sales display shall be no longer than four consecutive days in duration.

3. **Outdoor sales events.** Outdoor sales events, except in the downtown, conducted by a retail business holding a valid Business License at a single fixed location, issued in compliance with Municipal Code Chapter 3.08 (Business License), may be allowed a maximum of four outdoor sale events (excluding City sponsored activities). For purposes of this Subsection an outdoor sales event shall be no longer than four consecutive days in duration.
 4. **Seasonal sales events.** Seasonal sales (i.e., Halloween pumpkin sales and Christmas tree sale lots) only by businesses holding a valid Business License, in compliance with Municipal Code Chapter 3.08 (Business License Tax) not to exceed 40 days for pumpkin and tree sales. All other seasonal sales shall not exceed four events per year with a maximum of five days for each event.
- C. **Storage of structures or equipment.** Temporary storage structures within residential areas, not to exceed 30 days.
- D. **Mobile homes.** A mobile home to be utilized as a temporary dwelling in a residential zone while a single-family dwelling is under construction on the same parcel shall be allowed subject to all of the following provisions:
1. The mobile home may only be located and occupied while actual construction activities are taking place upon the parcel. In no case may the period of placement and use exceed 12 months.
 2. The mobile home may only be occupied by the property owner; who is also the builder designated on the Building Permit, and the owner's/builder's family.
 3. City may require surety adequate to ensure the timely removal and compliance with all conditions of approval may be required in compliance with Section 9.12.050 (Performance Guarantees).
 4. The minimum yards for the zone shall be maintained.
 5. Additional conditions necessary and appropriate to ensure compatibility with surrounding development, existing and contemplated, may be imposed on the approved permit.
- E. **Temporary real estate sales office and model home complex.** One temporary real estate office may be located in any approved subdivision in any zone in the City.
1. The office shall be used only for the sale of property located within the subdivision in which the office is located.
 2. The temporary real estate office shall be removed at the end of two years following the date of the recording of the Final Map of the subject subdivision in which the office is located.
 3. If any parcels within the subdivision have not been sold at the end of the original two-year period, the Director may approve extensions.
- F. **Temporary work trailers.**
1. A trailer or mobile home may be used as a temporary work site for employees of a business:

- a. During construction or remodeling of a permanent commercial, industrial, or mixed-use structure, when a valid Building Permit is in force; or
 - b. Upon demonstration by the applicant that the temporary work site is a short-term necessity, while a permanent work site is being obtained.
2. A permit for temporary work trailer(s) may be approved for up to 12 months. The Director may approve extensions.
- G. **Other similar temporary uses.** Similar temporary uses that, in the opinion of the Director, are compatible with the subject zone and surrounding land uses.

9.09.060 Application Filing, Processing, and Review

- A. **Filing.** An application for a Temporary Use Permit shall be filed with the Department in the following manner:
1. An application for a Temporary Use Permit shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures). The application shall include the information and materials specified in the Department handout for Temporary Use Permit applications, together with the required fee in compliance with the Planning Fee Schedule.
- B. **Responsibility.** It is the responsibility of the applicant to establish evidence in support of the findings required by Section 9.09.080 (Findings and Decision), below.
- C. **Public hearing not required.** A public hearing shall not be required for the Director's decision on a Temporary Use Permit application.

9.09.070 Director's Review

The Director may approve a Temporary Use Permit for a temporary use that would be operated in compliance with Section 9.09.090 (Conditions of Approval) below; or the Director may deny the application or defer action and refer the application to the Commission for review and final decision.

9.09.080 Findings and Decision

- A. **Director's review.** The Director shall review the application and shall record the decision in writing with the findings on which the decision is based.
- B. **Required findings.** The Director (or the Commission on a referral) may approve a Temporary Use Permit application, with or without conditions, only after first making all of the following findings:
1. The operation of the requested temporary use at the location proposed and within the time period specified will not endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, safety, or general welfare;
 2. The operation of the requested temporary use will not be detrimental to adjoining properties through the creation of excessive dust, light, noise, odor, or other objectionable characteristics;
 3. The proposed parcel is adequate in size and shape to accommodate the temporary

use without detriment to the enjoyment of other properties located adjacent to and in the vicinity of the subject parcel;

4. The proposed parcel is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the temporary use will or could reasonably be expected to generate; and
5. Adequate temporary parking to accommodate vehicular traffic to be generated by the use will be available either on-site or at alternate locations acceptable to the Director.

9.09.090 Conditions of Approval

- A. **May impose conditions.** In approving a Temporary Use Permit application, the Director (or the Commission on a referral) may impose conditions that are deemed reasonable and necessary to ensure that the permit would be in full compliance with the findings required by Section 9.09.080 (Findings and Decision), above.
- B. **Requirements and conditions from other City departments.** Other City departments (e.g., Building, Engineering, Fire, and Police) may also recommend conditions for incorporation into the approved Temporary Use Permit and may have requirements and standards specified in the LMC that may have direct affect on the operation of the temporary use.
- C. **Appropriate conditions.** These conditions may address any pertinent factors affecting the operation of the temporary event, or use, and may include the following:
 1. Fixed period of time. Unless otherwise stated in the permit, a provision for a fixed period of time not to exceed 30 days for a temporary use not occupying a structure, including promotional activities, or 12 months for all other temporary uses or structures, or for a shorter period of time as determined appropriate by the Director;
 2. Operating hours and days. Regulation of operating hours and days, including limitation of the duration of the temporary use, as identified in Subparagraph I., above;
 3. Temporary pedestrian and vehicular circulation. Provision for adequate temporary pedestrian and vehicular circulation, parking facilities (including vehicular ingress and egress), and public transportation, if applicable;
 4. Regulation of nuisance factors. Regulation of nuisance factors including prevention of glare or direct illumination on adjacent parcels, dirt, dust, gases, heat, noise, odors, smoke, trash, and vibration;
 5. Regulation of temporary structures. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;
 6. Sanitary and medical facilities. Provision for sanitary and medical facilities, as appropriate;
 7. Waste collection, recycling, and/or disposal. Provision for solid, hazardous, and toxic waste collection, recycling, and/or disposal;
 8. Police/security and safety measures. Provision for police/security and safety measures, as appropriate;
 9. Signs. Regulation of signs;

10. Performance bond or other security. Submission of a performance bond or other security measures, in compliance with Section 9.12.050 (Performance Guarantee) and satisfactory to the Director, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition, or better, as determined by the Director, in compliance with Section 9.09.100 (Condition of Site Following Temporary Use), below;
 11. Compliance with applicable provisions. A requirement that the approval of the requested Temporary Use Permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful approval of any/all required permits from any other department or governing agency; and
 12. Other conditions. Other conditions that would ensure that the operation of the proposed temporary use would be conducted in an orderly and efficient manner, and in full compliance with the purpose of this Chapter.
- D. **Applicant's agreement.** The applicant agrees in writing to comply with any and all of the conditions imposed by the review authority in the approval of the Temporary Use Permit.

9.09.100 Condition of Site Following Temporary Use

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

9.09.110 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Temporary Use Permit application.

Chapter 9.10 Variances And Minor Variances

Sections:

9.10.010	Purpose
9.10.020	Applicability
9.10.030	Review Authority
9.10.040	Application Filing, Processing, and Review
9.10.050	Findings and Decision
9.10.060	Precedents
9.10.070	Conditions of Approval
9.10.080	Use of Property before Final Action
9.10.090	Post Decision Procedures

9.10.010 Purpose

A. The Purpose of this Chapter is to ensure that:

1. Variances and Minor Variances are only approved when, because of special circumstances applicable to the property, the strict application of this Development Code denies the owner of the property privileges enjoyed by other property located nearby and in an identical zone; and
2. Conditions are applied that would ensure that the Variance or Minor Variance shall not constitute an approval of special privilege(s) inconsistent with the limitations upon other property in the vicinity and zone in which the subject property is located.

B. Does not extend to land uses.

1. The power to approve Variances and Minor Variances does not extend to allowable land uses in compliance with Government Code Section 65906.
2. Flexibility in allowable land uses is provided in Chapter 9.03 (Conditional Use Permits and Zoning Use Permits).

9.10.020 Applicability

- A. **Variances – Commission.** The Commission may approve a Variance that allows for any adjustment from any of the development standards required by this Development Code, and only after first making the findings specified in Section 9.10.050 (Findings and Decision), below.
- B. **Minor Variances – Director.** The Director may approve a Minor Variance for only those items specified in Table 9.4 (Types of Minor Variances Allowed), below, and only after first making the findings specified in Section 9.10.050 (Findings and Decision), below.

Table 9.4 Types of Minor Variances Allowed

Types of Minor Variances Allowed	Maximum Variance
1. Height of a fence, hedge, or wall. An increase of the allowed maximum height of a fence, hedge, or wall located within an interior side or rear setback, not adjoining a street.	Up to eight feet ¹
2. Build-to-line in Transect zones. A relaxation of the specified build-to-line, defined by the façade, for sites located within Transect Zones.	10 percent
3. Distance between structures. A decrease of the minimum required distance between detached accessory structures and main structures on the same site.	10 percent
4. Location of new addition. Allowing any new addition to an existing structure to be located as close to the property line as any existing encroachment, but no closer than any applicable Fire Code limitations.	
5. Floor-to-area ratio (FAR). An increase in the allowable floor-to-area ratio.	10 percent
8. Coverage. An increase of the maximum allowable parcel coverage.	10 percent
6. Front façades in Transect zones. A relaxation of the specified front façade requirements for sites located within Transect zones.	10 percent
7. Residential additions not meeting parking requirements in non-Transect zones. Allowing additions up to 400 square feet, to be constructed when and only when the resident cannot meet the two-car parking requirement due to the subject parcel configuration.	
9. Parcel dimensions (e.g., area, depth, or width). A decrease in the minimum required parcel area, parcel depth, or parcel width.	10 percent
10. Setbacks. A decrease of the minimum required setback areas (e.g., side, street-side, and rear) for structures.	20 percent

Notes:

¹ Additional two feet may only be allowed with the addition of lattice (defined as 50% open, continuous width), in compliance with Part 4 (General to Zones).

9.10.030 Review Authority

- A. **Responsibility.** The applicable review authority shall approve or deny Variance and Minor Variance applications, and impose conditions deemed reasonable and necessary to preserve the public convenience, health, interest, safety, or welfare, and necessary to make the findings required by Section 9.10.050 (Findings and Decision) below.
- B. **Applicable review authority.** Variances and Minor Variances may be approved in compliance with the following:
 - 1. Variances. The Commission may approve Variances in compliance with this Chapter and State law.
 - 2. Minor Variances. The Director may approve Minor Variances, or may defer action and refer the application to the Commission for review and final decision, in compliance with this Chapter and State law.

9.10.040 Application Filing, Processing, and Review**A. Filing.**

1. An application for a Variance or Minor Variance shall be filed and processed in compliance with Chapter 9.01 (Application Processing Procedures).
2. The application shall include the information and materials specified in the Department handout for Variance or Minor Variance applications, together with the required fee in compliance with the Planning Fee Schedule.
3. It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.10.050 (Findings and Decision), below.

B. Notice, hearings, and appeals.

1. Variances – public hearing required. A public hearing shall be required for the Commission’s decision on a Variance application.
 - a. Scheduling hearing. The public hearing shall be scheduled once the Director has determined the application complete.
 - b. Giving notice. Notice of the public hearing shall be given and the hearing shall be conducted in compliance with Chapter 9.17 (Public Hearings).
 - c. Appeals. The Commission’s decision is appealable to the Council in compliance with Chapter 9.15 (Appeals).
2. Minor Variances.
 - a. Public hearing not required.
 - (1) A public hearing shall not be required for the Director’s decision on a Minor Variance application in compliance with Government Code Section 65901.
 - (2) The Director shall have the discretion to provide notice (e.g., mailing and/or posting the subject parcel) if determined to be appropriate by the Director.
 - b. Appeals. The Director’s decision is appealable to the Commission in compliance with Chapter 9.15 (Appeals).

9.10.050 Findings and Decision**A. Authorized actions.**

1. The Commission (Variance) or the Director (Minor Variance) shall record the decision in writing and shall recite the findings upon which the decision is based, in compliance with Government Code Section 65906 or as that Section may be amended from time to time.
2. The Director may defer action on a Minor Variance and refer the application to the Commission for review and final decision.

B. Required findings. The applicable review authority may approve a Variance or Minor Variance application, with or without conditions, subject to all of the following findings.

1. General findings. The review authority may approve a Variance or Minor Variance application only after first making all of the following findings in compliance with Government Code Section 65906:
 - a. There are special circumstances or conditions applicable to the subject property

(e.g., location, shape, size, surroundings, topography, or other physical features, etc.) that do not apply generally to other properties in the vicinity under an identical zoning classification;

- b. Strict compliance with Development Code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
- c. Approving the Variance or Minor Variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same vicinity and zone in which the subject property is situated; and
- d. The requested Variance or Minor Variance would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

9.10.060 Precedents

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

9.10.070 Conditions of Approval

In approving a Variance or Minor Variance application, the applicable review authority may impose conditions deemed reasonable and necessary to ensure that the approval would be in compliance with the findings required by Section 9.10.050 (Findings and Decision), above.

9.10.080 Use of Property before Final Action

Permits shall not be issued for any structure involved in an application for a Variance or Minor Variance until and unless the same shall have become final, in compliance with Section 9.12.030 (Effective Dates of Permits).

9.10.090 Permits to Run with the Land

A Variance or Minor Variance approved in compliance with the provisions of this Chapter shall continue to be valid upon a change of ownership of the business, parcel, service, structure, or use that was the subject of the permit application in the same area, configuration, and manner as it was originally approved in compliance with this Chapter. and the provisions of Chapter 9.16 (Nonconforming Provisions).

9.10.100 Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the decision on a Variance or Minor Variance application.

Chapter 9.11 Zoning Clearances

Sections:

9.11.010	Purpose
9.11.020	Applicability
9.11.030	Review Procedure
9.11.040	Post Decision Procedures

9.11.010 Purpose

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

9.11.020 Applicability

Where Part 3 (Specific to Zones) or another provision of this Development Code requires a Zoning Clearance as a prerequisite to establishing a land use or structure, a Zoning Clearance shall be required at the time of the Director's review of any of the following:

- A. **Initiation of a land use.** A Zoning Clearance shall be obtained before the initiation or commencement of any use of land not requiring the construction of a structure.
- B. **Change of land use.**
 1. Whenever a use is proposed to be changed from a use for which a Zoning Clearance has been issued, whether or not the new use involves a new lessee, operator, or owner, a new Zoning Clearance shall be obtained.
 2. A Zoning Clearance shall also be required even if the lessee, operator, or owner of the previous use did not file for or receive a Zoning Clearance.
- C. **Building Permit, Grading Permit or other construction permit.**
 1. A Zoning Clearance shall be obtained before the City issues a new or modified Building Permit, Grading Permit, or other construction-related permit required for the alteration, construction, modification, moving, or reconstruction of any structure.
 2. The following types of projects and structures, only when proposed to be constructed within the Transect Zones, shall require the issuance of a Zoning Clearance:
 - a. The reconstruction or remodeling of existing structures (including facade improvements); and
 - b. Residential construction of a single family dwelling unit, without a tentative or parcel map.
 3. Before a Building Permit may be issued for any structure in a development requiring Site Plan and Design Review in compliance with Chapter 9.07, the Building Inspector shall make a determination that the proposed structure is in compliance with the approved plan.

- D. **Business License.** A Zoning Clearance shall be obtained before the City issues a new or modified Business License Tax, in compliance with Municipal Code Chapter 3.08 (Business License Tax).

9.11.030 – Review Procedure

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

9.11.040 – Post Decision Procedures

The procedures and requirements in Chapter 9.12 (Permit Implementation, Time Limits, and Extensions), and those related to appeals (Chapter 9.15) and modifications and/or revocations (Chapter 9.18) shall apply following the Director’s action on a Zoning Clearance.

Chapter 9.12 Permit Implementation, Time Limits, and Extensions

Sections:

- 9.12.010 Purpose
- 9.12.020 Conformance to Approved Plans
- 9.12.030 Effective Dates of Permits
- 9.12.040 Applications Deemed Approved by Operation of Law
- 9.12.050 Performance Guarantees
- 9.12.060 Expiration
- 9.12.070 Time Extensions
- 9.12.080 Changes to an Approved Project
- 9.12.090 Resubmittals

9.12.010 Purpose

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

9.12.020 Conformance to Approved Plans

- A. **Compliance.** All work performed under a Building Permit for which project drawings and plans have received approval by the, Director, Commission, or Council shall be in compliance with the approved drawings and plans, and any conditions of approval imposed by the applicable review authority.
- B. **Changes.** Changes to an approved project shall be submitted and processed in compliance with Section 9.12.080 (Changes to an Approved Project), below.

9.12.030 Effective Dates of Permits

- A. **Approvals, Permits, and Variances.** A Certificate of Appropriateness, Conditional Use Permit, Home Occupation Permit, Minor Variance, Reasonable Accommodation, Site Plan and Design Review, Temporary Use Permit, Variance, or Zoning Use Permit shall become effective 15 days following the actual date the decision was rendered by the applicable review authority and close of the 14-day appeal period, if no appeal is filed in compliance with Chapter 9.15 (Appeals).
- B. **Plans/Amendments.**
 - 1. Council actions to adopt or amend a Development Agreement, a Specific Plan (adopted by ordinance), this Development Code, Planned Development or the Zoning Map shall become effective on the 30th day following the date the ordinance is actually adopted by the Council.
 - 2. Council actions to adopt or amend the General Plan or a Specific Plan (adopted by resolution) shall become effective on the actual date the decision is rendered by the Council.

- C. **Issued on the effective date.** Permits, certificates, and/or other approvals shall not be issued until the effective date; provided, that no appeal of the review authority's decision has been filed, in compliance with Chapter 9.15 (Appeals).

9.12.040 Applications Deemed Approved by Operation of Law

- A. **Applicable provisions.** A permit application deemed approved by operation of law in compliance with Government Code Section 65956(b) shall be subject to all applicable provisions of this Development Code, which shall be fully satisfied by the applicant before a Building Permit is issued or a land use not requiring a Building Permit is exercised or established.
- B. **Public notice.** The permit application shall be deemed approved only if the application received proper notice in compliance with Chapter 9.17 (Public Hearings).

9.12.050 Performance Guarantees

- A. **Deposit of security.**
1. As a condition of approval of a Certificate of Appropriateness, Conditional Use Permit, Home Occupation Permit, Minor Variance, Reasonable Accommodation, Site Plan and Design Review, Temporary Use Permit, Variance, or Zoning Use Permit, upon a finding that the City's health, safety, and welfare warrant, the review authority may require the execution of a covenant to deposit security and the deposit of security in a reasonable amount to ensure the faithful performance of one or more of the conditions of approval of the permit or approval in the event that the obligor fails to perform.
 2. The applicant/owner may offer to provide adequate security for the faithful performance of a condition(s) of approval imposed as part of the approval process if the Director determines that the condition(s) may be implemented at a later specified date (e.g., inability to install required landscaping due to weather conditions).
 3. The security shall, as required by law or otherwise at the option of the City, be in a form which includes but is not limited to cash, a certified or cashier's check, letter of credit, or a performance bond executed by the applicant and a corporate surety authorized to do business in California and approved by the City.
 4. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director.
 5. Security required in compliance with this Section shall be payable to the City.
- B. **Release of security.** Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.
- C. **Failure to comply.**
1. Upon failure to perform any secured condition(s), the City may perform the condition, or cause it to be done, and may collect from the obligor all costs incurred, including administrative, engineering, legal, and inspection costs.
 2. Any unused portion of the security shall be refunded to the obligor after deduction of the cost of the work.

9.12.060 Expiration

- A. Expiration of permit or approval except Conditional Use Permits.** Unless otherwise specified in the permit or approval, all permits and approvals, except for Conditional Use Permits, for projects not subject to the Subdivision Map Act shall comply with the following expiration provisions.
1. Shall be implemented.
 - a. To ensure continued compliance with the provisions of this Development Code, the permit or approval shall be implemented within two years following the date of approval, unless, by conditions of the permit or approval, a different (either greater or lesser) time is prescribed, or the permit or approval shall expire and be deemed void, unless an extension is approved by the applicable review authority, in compliance with Section 9.12.070 (Time Extensions), below.
 - b. Any time limit set by the applicable review authority shall be reasonable, based upon the size and the nature of the proposed project.
 - c. If after construction commencement, work is discontinued for a minimum period of two years, the permit or approval shall expire and be deemed void.
 - d. If the application for the permit or approval also involves the approval of a tentative map, construction commencement shall be implemented before the expiration of the companion final map.
 2. Allowable phasing.
 - a. Where the permit or approval provides for development in two or more phases or units in sequence, the permit or approval shall not be approved until the review authority has approved the final phasing plan for the entire project site. The project applicant shall not be allowed to develop one phase in compliance with the pre-existing base zone and then develop the remaining phases in compliance with this Section, without prior review authority approval.
 - b. Pre-approved phases.
 - (1) If a project is to be built in pre-approved phases, each subsequent phase shall have two years from the previous phase's date of construction commencement to the next phase's date of construction commencement to have occurred, unless otherwise specified in the permit or approval, or the permit or approval shall expire and be deemed void.
 - (2) If the application for the permit or approval also involves the approval of a tentative map, the phasing shall be consistent with the tentative map and the permit or approval shall be implemented before the expiration of the companion final map.
 3. Shall be implemented before expiration. A permit or approval shall be implemented before its expiration. The permit or approval shall not be deemed implemented until the applicant has:
 - a. Obtained a Building Permit and continuous on-site construction activity including pouring of foundations, installation of utilities, or other similar substantial improvement has commenced and diligently pursued toward completion; or
 - b. Obtained a Grading Permit and has completed a significant amount of on-site grading, as determined by the Director, in preparation for the work described in Subparagraph a, above; and
 - c. Diligently continued the approved grading and construction activities in a timely

- manner in compliance with the subject Building Permit; or
- d. Actually implemented the allowed land use, in its entirety, on the subject property in compliance with the conditions of approval; or
 - e. Met all of the applicable requirements as determined by the Director.
- B. Effect of expiration.** Where the permit or approval, except for Conditional Use Permits, has expired and/or has been deemed void:
1. No further action is required by the City;
 2. No further reliance may be placed on the previously approved permit or approval;
 3. The applicant shall have no rights previously granted under the permit or approval;
 4. The applicant shall file a new application(s) along with all required fees and obtain all required approvals before construction can commence or an allowable use may be implemented; and
 5. Any security provided by the applicant under the previously approved permit or approval may be utilized by the City to provide suitable protection from any harm that may result from the terminated development.

9.12.070 Time Extensions

A. Director's action to extend.

1. The Director shall have the authority to extend the period specified in Section 9.12.060 (Expiration), above, for up to one additional one-year period. The Director may instead refer the matter to the Commission for review and final decision.
2. The applicant's written request for an extension of time shall be on file with the Department before expiration of the permit or approval, together with the filing fee required by the Planning Fee Schedule.
3. Public hearing not required.
 - a. A public hearing shall not be required for the Director's decision on an extension of time.
 - b. However, the Director may conduct a public hearing in compliance with Chapter 9.17 (Public Hearings) if deemed appropriate by the Director.
 - c. The Commission shall conduct a public hearing on a referral from the Director in compliance with Chapter 9.17 (Public Hearings).

B. Suspension of expiration.

1. The filing of a written extension request shall suspend the actual expiration of the permit or approval until the extension request has been acted upon by the Director.
2. Building or Grading Permits shall not be issued in compliance with the permit or approval during the period of the suspension.

C. Applicable review authority's action on further extension.

1. Upon good cause shown, a further extension may be approved, approved with modifications, or denied by the applicable review authority (e.g., Director, Commission, and/or Council) which originally granted the permit or approval, subject to the findings identified in Subsection D (Required findings), below.

2. The permit or approval may be extended for up to one additional one-year period, up to a maximum of three years following the original date of approval, unless otherwise allowed by State law.
 3. A public hearing shall not be required for the Director's decision. However, the Director may conduct a public hearing in compliance with Chapter 9.17 (Public Hearings) if deemed appropriate by the Director.
 4. The Commission or Council shall conduct a public hearing in compliance with Chapter 9.17 (Public Hearings).
- D. **Required findings.** An extension of the permit or approval may be granted only if the applicable review authority first finds that there have been no changes in circumstances, law, or General Plan or Development Code policies that would preclude the review authority from making the findings upon which the original approval was based.
- E. **Further extensions.** An application for an extension of the permit or approval in excess of three years following the original date of approval shall be treated as a new application which shall be filed in compliance with Chapter 9.01 (Application Processing Procedures).

9.12.080 Changes to an Approved Project**A. Application.**

1. A development or new land use allowed through a permit or approval granted in compliance with this Part shall be in substantial compliance with the approved drawings and plans, and any conditions of approval imposed by the review authority, except where changes to the project are approved in compliance with this Section.
2. An applicant shall request desired changes in writing, and shall also furnish appropriate supporting materials and an explanation of the reasons for the request.
3. Requested changes may involve changes to one or more conditions imposed by the review authority or actual changes to the project (e.g., hours of operation, expansion of a use, etc.) as originally proposed by the applicant or approved by the review authority.
4. Changes shall not be implemented until first approved by the applicable review authority in compliance with this Section, and may be requested either before or after construction or establishment and operation of the approved use.

B. **Notice and hearing.** If the matter originally required a noticed public hearing, the review authority shall hold a public hearing, except for the minor changes outlined below (See Subsection C), and shall give notice, in compliance with Chapter 9.17 (Public Hearings).

C. **Minor changes by Director.** The Director may authorize minor changes to an approved permit or other approval only if the changes:

1. Are consistent with all applicable provisions of this Development Code and the spirit and intent of the original approval; and
2. Do not involve a feature of the project that was:
 - a. A basis for findings in a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report for the project;
 - b. A basis for conditions of approval for the project; or

- c. A specific consideration by the review authority (e.g., the Director, Commission, or Council) in granting the permit or approval.
- 3. Do not involve any expansion or intensification of the use or structure.
- D. **Major changes.** Major changes include changes to the project involving features specifically described in Subsection C, above, and shall only be approved by the original review authority through a new application, processed in compliance with this Development Code.

9.12.090**Resubmittals****A. Resubmittal after denial with prejudice.**

- 1. The review authority may deny an application for a discretionary planning permit, or amendment, on the grounds that two or more similar applications for the same site have been denied in the past two years (also known as denial with prejudice), or that another cause exists for limiting the refiling of the application.
- 2. For a period of 12 months following the actual date of denial with prejudice by the Director, Commission, or Council, or, if appealed, the actual date of denial by the applicable review authority considering the appeal, of a discretionary planning permit or amendment, no application for the same or substantially similar planning permit or amendment shall be filed for the same site, or any portion thereof.

B. Exception to Subsection A, above. The Director may allow exception to Subsection A., above, based on one or more of the following findings:

- 1. New evidence material to a revised decision will be presented that was unavailable or unknown to the applicant at the previous hearing(s) and that could not have been discovered in the exercise of reasonable diligence by the applicant.
- 2. There has been a substantial and permanent change of circumstances since the previous hearing(s), which materially affects the applicant's real property.
- 3. A mistake was made at the previous hearing(s) that was a material factor in the denial of the previous application.

C. Resubmittal after denial without prejudice. There shall be no limitation on subsequent applications for a site where a project was denied without prejudice.**D. Director's determination, appeal.**

- 1. The Director shall determine whether a new application is for a planning permit or amendment that is the same or substantially similar to a previously approved or denied permit or amendment, and shall either process or reject the application in compliance with this Section.
- 2. The Director's determination may be appealed to the Commission, in compliance with Chapter 9.15 (Appeals).

Chapter 9.13 Administrative Responsibility

Sections:

- 9.13.010 Purpose
- 9.13.020 Planning Agency
- 9.13.030 City Council
- 9.13.040 Planning Commission
- 9.13.050 Historic Preservation Commission
- 9.13.060 Director

9.13.010 Purpose

The purpose of this Chapter is to describe the authority and responsibilities of the Council, Commission, Historic Preservation Commission, and Director in the administration of this Development Code.

9.13.020 Planning Agency

The Commission, the Historic Preservation Commission, the Director of Community Development, and the Community Development Department staff shall function as the Planning Agency and as the Advisory Agency, when so required or authorized, in compliance with Government Code Section 65100.

9.13.030 City Council

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

- A. **Review authority on specified legislative planning matters.** Final legislative decisions on Development Agreements and amendments, Development Code amendments, General Plan amendments, Specific Plans and amendments, Zoning Map amendments, related environmental documents, and other applicable policy or Development Code matters related to the City's planning process.
- B. **Appeals.** The review of appeals filed from Commission decisions.
- C. **Compliance.** The above listed functions shall be performed in compliance with Table 9.2 (Review Authority), the California Environmental Quality Act (CEQA), and the City's CEQA guidelines.
- D. **Imposition of conditions.** In making decisions on applications, the Council may impose conditions it deems reasonable and necessary to implement the General Plan, any applicable Specific Plans, the Municipal Code standards that apply to development, and to further the public health, safety and general welfare of the community.

9.13.040 Planning Commission

- A. **Establishment.** The Planning Commission, referred to in this Development Code as the Commission, is established in compliance with Municipal Code Chapter 2.55 (Planning Commission).
- B. **Duties and authority.** The Commission shall perform the duties and functions prescribed by Municipal Code Section 2.55.020 (Duties and responsibilities) and this Development Code, and the Council may, from time to time by resolution, prescribe additional powers and duties not inconsistent with State Law, including but not limited to the following:
1. The review of development projects (e.g., Conditional Use Permits, Variances, etc.), including referrals from the Director;
 2. The review of appeals from the Director's decisions and determinations;
 3. The recommendation to the Council for final legislative decisions, on Development Agreements and amendments, Development Code amendments, General Plan amendments, Specific Plans and amendments, Zoning Map amendments, related environmental documents, and other applicable policy or regulatory matters related to the City's planning process;
 4. Implement the General Plan, this Development Code, and the Design Standards and Guidelines; and
 5. The above listed functions shall be performed in compliance with Table 9.2 (Review Authority), Table 9.3 (Review Authority for Site Plan and Design Review), the California Environmental Quality Act (CEQA), and the City's CEQA guidelines.
- C. **Imposition of conditions.** In making decisions on applications, the Commission may impose conditions it deems reasonable and necessary to implement the General Plan, any applicable Specific Plans, the Municipal Code standards that apply to development, and to further the public health, safety and general welfare of the community.
- D. **Meeting rules.** The Commission shall conduct public hearings and meetings in compliance with Chapter 9.17 (Public Hearings).

9.13.050 Historic Preservation Commission

- A. **Establishment.** The Historic Preservation Commission is established in compliance with Municipal Code Chapter 2.47 (Historic Preservation Commission).
- B. **Membership.**
1. The Historic Preservation Commission shall consist of five members, all of whom shall be residents of the City.
 2. Commission members shall be appointed from among professionals in the disciplines of archaeology, architecture, history, planning, or other historic preservation-related disciplines to the extent that these professionals are available in the community.
 3. Commission membership shall also include lay members who have demonstrated special competence, experience, knowledge, or interest in historic preservation.
- C. **Duties and authority.** The Historic Preservation Commission shall perform the duties and functions prescribed by Municipal Code Section 2.47.020 (Duties and responsibilities) and this Development Code, and the Council may, from time to time by resolution, prescribe additional powers and duties not inconsistent with State Law,

including but not limited to the following:

1. Review and approve or deny certificates of appropriateness in compliance with Chapter 9.02 (Certificates of Appropriateness);
2. Maintain a continuing survey of all heritage resources within the City;
3. Recommend action for the preservation of buildings, natural features, sites, structures, works of art, or similar objects which have a significant aesthetic, archaeological, architectural, community, cultural, or historic value;
4. Maintain and publish a register of all designated landmarks;
5. Encourage public awareness of involvement in the architectural and environmental heritage of the City through education and interpretive programs;
6. Explore and recommend means for protection, retention, and use of any designated or potential heritage resources through either governmental or private action;
7. Coordinate activities with the Planning Commission in order to integrate heritage resource consideration into the planning process;
8. Recommend and encourage the appreciation, protection, and use of structures of aesthetic, architectural, or historic value which have not been officially designated through private efforts;
9. When requested by any heritage resource owner, provide advice and guidance for the preservation of the heritage resource;
10. Encourage and participate in the development of a Cultural Heritage Element in the General Plan; and
11. Cooperate with and encourage the formation of private cultural heritage groups in the City, County, State, and Federal government.

9.13.060 Director

- A. **Appointment.** The Director of Community Development, or the Director's designee, referred to in this Development Code as the Director, shall be appointed by the City Manager.
- B. **Duties and authority.** The Director shall:
 1. Have the responsibility to perform all of the functions designated by State law;
 2. Perform the duties and functions prescribed in this Development Code, including the review of administrative development projects, in compliance with Table 9.2 (Review Authority) and Table 9.3 (Review Authority for Site Plan and Design Review), Government Code Section 65901 et seq., the California Environmental Quality Act (CEQA), and the City's CEQA guidelines;
 3. Perform other responsibilities assigned by the Council, Commission, or City Manager; and
 4. Delegate the responsibilities of the Director to Department staff under the supervision of the Director.

Chapter 9.14 Amendments (Development Code, General Plan, and Zoning Map)

Sections:

- 9.14.010 Purpose
- 9.14.020 Initiation of Amendment
- 9.14.030 Processing, Notice, and Hearings
- 9.14.040 Commission's Action on Amendment
- 9.14.050 Council's Action on Amendment
- 9.14.060 Findings and Decision
- 9.14.070 Rezoning – Annexations
- 9.14.080 Effective Dates
- 9.14.090 Zoning Map Designation – PD's
- 9.14.100 Existing PUD Permits

9.14.010 Purpose

This Chapter provides procedures for the amendment of this Development Code, the General Plan, or the Official Zoning Map.

9.14.020 Initiation of Amendment

An amendment may be initiated by the Council, Commission or Director, or as follows:

A. General Plan or Zoning Map Amendment.

1. In the case of the General Plan or the Zoning Map, an amendment may also be initiated by the filing of an amendment application with the Department by the owner(s) or authorized agent(s)/representative(s) of property owner(s) for which the amendment is sought, or the plaintiff in an action in eminent domain to acquire the subject property.
2. If the property is under multiple ownership, all owners or their authorized agents/representatives shall join in filing the application.

B. **Development Code Amendment.** In the case of this Development Code, the Council may also adopt an urgency measure as an interim ordinance in compliance with Government Code Section 65858.

9.14.030 Processing, Notice, and Hearings

A. Application filing and processing.

1. Filing. If initiated by the filing of an amendment application in compliance with Section 9.14.020(A) (General Plan or Zoning Map amendment), the application shall be processed in compliance with Chapter 9.01 (Application Processing Procedures).
 - a. A change of zoning district designation for any area shall be made only where such change is in accord with the General Plan of the City of Livermore. In the event a proposed change of any zoning district is not in accord with the

General Plan of the City, a proposal for an amendment to the General Plan shall be considered two weeks prior to the proposed zoning district amendment. Proposals for zoning district changes may be considered concurrently with a related proposed General Plan amendment with a two-thirds vote of the City Council prior to the hearing date. In order to ensure consistency between the General Plan and the Development Code, approval of any such zoning district change is still contingent upon approval of the associated General Plan policy change and map amendment.

2. **Required data.** The application shall include the information and materials specified in the Department handout for amendment applications, together with the required fee in compliance with the Planning Fee Schedule.
 3. **Responsibility.** It is the responsibility of the applicant to provide evidence in support of the findings required by Section 9.14.060 (Findings and Decision), below.
- B. Timing of General Plan Amendments.** No mandatory element of the General Plan may be amended more frequently than four times in a single calendar year, in compliance with Government Code Sections 65358.
- C. Public hearings required.** The Commission and Council shall each conduct one or more public hearings regarding the amendment.
- D. Notice and hearing.** Notice of the public hearings shall be provided and the hearings shall be conducted in compliance with Chapter 9.17 (Public Hearings). (Ord. 1913 § 3, 2010)

9.14.040 Commission's Action on Amendment

A. Recommendation to Council.

1. All amendments. After the public hearing, the Commission shall forward a written recommendation, and reasons for the recommendation, to the Council whether to approve, approve in modified form, or deny the proposed amendment, based on the findings identified in Section 9.14.060 (Findings and Decision), below.
2. Recommendation for approval of Development Code or Zoning Map Amendments. A recommendation for approval or approval in modified form of a Development Code or Zoning Map amendment shall require only a majority vote.
3. Recommendation for approval of General Plan Amendments. A recommendation for approval or approval in modified form of a General Plan amendment shall require the affirmative vote of not less than a majority of the total voting members in compliance with Government Code Section 65354.

9.14.050 Council's Action on Amendment

A. Approval.

1. All amendments. Upon receipt of the Commission's recommendation to approve, or approve in modified form, the proposed amendment, the Council shall conduct a public hearing and either approve, approve in modified form, or deny the proposed amendment based on the findings identified in Section 9.14.060 (Findings and Decision), below.

2. Approval of Development Code or Zoning Map Amendments. The action by the Council to approve the Commission's recommendation regarding a Development Code or Zoning Map amendment shall be by a majority vote of the members present and shall be final and conclusive.
3. Approval of General Plan Amendments. The action by the Council to approve the Commission's recommendation regarding a General Plan amendment shall require the affirmative vote of not less than a majority of the total voting members in compliance with Government Code Sections 65356 and shall be final and conclusive, except as described in subsection B of this section.

B. Referral to Commission.

1. If the Council proposes to adopt a substantial modification(s) to the amendment not previously considered by the Commission, the proposed modification shall be first referred to the Commission for its recommendation, in compliance with Government Code Sections 65356 (General Plan amendments) and 65857 (Development Code or Zoning Map amendments).
2. Failure of the Commission to report back to the Council within the time limits specified in Government Code Sections 65356 and 65857 following the referral shall be deemed approval by the Commission of the proposed modification(s).

9.14.060 Findings and Decision

An amendment to this Development Code, the General Plan, or the Official Zoning Map may be approved only if all of the following findings are first made, as applicable to the type of amendment:

A. Findings for General Plan Amendments.

1. The amendment is internally consistent with all other provisions of the General Plan;
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
3. The affected site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

B. Findings for Development Code and Zoning Map Amendments.

1. Findings required for all Development Code and Zoning Map Amendments.
 - a. The proposed amendment is consistent with the General Plan and any applicable Specific Plan; and
 - b. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

2. Additional finding for Development Code Amendments. The proposed amendment is internally consistent with other applicable provisions of this Development Code.
3. Additional finding for Zoning Map Amendments. The affected site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the requested zone designation and the proposed or anticipated uses and/or development will not endanger, jeopardize, or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

9.14.070 **Prezoning – Annexations**

- A. **Prezoning required.** Before the annexation to the City of any property, the sponsor of any annexations shall file an application for prezoning of the subject property to be annexed and the City shall establish the zone(s) which will be in effect on the effective date of the annexation.
- B. **Same as Zoning Map Amendments.** The process for prezoning property to be annexed to the City shall be the same as is specified in this Chapter for Zoning Map amendments.
- C. **Compliance with plans.** The zoning shall be in compliance with the General Plan and any applicable Specific Plan.
- D. **Prezoning.**
 1. Any property lying outside the corporate limits of the City, but being adjacent to the City limits and inside its sphere of influence, may be prezoned with a City zone classification in compliance with Government Code Section 65859 and this Chapter.
 2. If any property has been prezoned in this manner, the assigned zone classification shall become effective at the same time the annexation of the property becomes effective.

9.14.080 **Effective Dates**

- A. **General Plan.** A General Plan amendment shall become effective immediately upon the adoption of a resolution by the Council.
- B. **Development Code and Zoning Map.** A Development Code or Zoning Map amendment shall become effective on the 30th day following the adoption of an ordinance by the Council.

9.14.090 **Zoning Map Designation – Planned Development (PD)**

- A. A PD district shall be noted on the Zoning Map by one of the following designations, followed by the given district number:
 PD-R-__ (residential)
 PD-I-__ (industrial)

PD-C-__ (commercial, including BCP and CSGC)
PD-OS (open space)

- B. The ordinance(s) adopting, or amending, the PD district shall not be codified, but shall be kept on file in the Department offices as a permanent reference file under the PD district number.

9.14.100 Existing PUD Permits

- A. A PD district with a PUD permit existing on the effective date of the ordinance codified in this Chapter shall remain in effect until the City or property owner initiates an application for a PD ordinance in compliance with this Chapter.
- B. If a property owner proposes any amendment (major or minor) to a PUD permit existing on the effective date of the ordinance codified in this Chapter, that amendment may only be approved by an amendment approved in compliance with this Chapter.
- C. If the amendment is approved, it shall only be adopted as part of a new PD ordinance containing all of the relevant terms of the original PUD permit, plus the amendment.
- D. If the City initiates and adopts a Zoning Map amendment which affects a PUD permit, a structure or use covered by the PUD permit which is inconsistent with the new zoning shall become a legal nonconforming structure or use, subject to Chapter 9.16 (Nonconforming Provisions).

Chapter 9.15 Appeals

Sections:

9.15.010	Purpose
9.15.020	Appeal Subjects and Jurisdiction
9.15.030	Filing and Processing of Appeals
9.15.040	Judicial Review

9.15.010 Purpose

This Chapter establishes procedures for the appeal and calls for review of determinations and decisions rendered by the Commission, Historic Preservation Commission, and Director.

9.15.020 Appeal Subjects and Jurisdiction

- A. **Development Code Administration and Interpretation.** The following determinations and actions of the Director, Department staff, and Historic Preservation Commission may be appealed to the Commission and then to the Council:
1. Interpretations. Any determination on the meaning or applicability of the regulations contained in this Development Code that are believed to be in error, and cannot be resolved with the Director; and
 2. Enforcement actions. Any enforcement action filed in compliance with Chapter 9.20 (Enforcement).
- B. **Planning permit decisions.**
1. Director's decisions. Any decision of the Director may be appealed to the Historic Preservation Commission or the Commission, as applicable.
 2. Historic Preservation Commission's decisions. Any decision of the Historic Preservation Commission may be appealed to the Commission.
 3. Commission's decisions. Any decision of the Commission may be appealed to the Council.

9.15.030 Filing and Processing of Appeals

- A. **Eligibility.**
1. An appeal in compliance with this Chapter may be filed by any aggrieved person, except that in the case of a decision on a Conditional Use Permit, Variance, and/or other decision that followed a public hearing, an appeal may only be filed by a person who, in person or through a representative, appeared at the public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.
 2. Any action or decision by the Commission, Historic Preservation Commission, Director, or Department staff in compliance with this Development Code may be appealed by a Council member acting as an individual.

- B. Timing and form of appeal.** An appeal shall be submitted in writing and shall specifically state the pertinent facts and the basis for the appeal.
1. The pertinent facts and the basis for the appeal shall include, at a minimum, the specific grounds for the appeal, where there was an error or abuse of discretion by the previous review authority (e.g., Commission, Historic Preservation Commission, Director, or other City official) in the consideration and action on the matter being appealed, and/or where the decision was not supported by the evidence on the record. Appeals filed by a City official, a Historic Preservation Commissioner, a Commissioner, or a Councilmember shall be exempt from the requirements of this Subparagraph.
 2. The appeal shall be filed with the Department or City Clerk, as applicable, within 15 days following the actual date the decision was rendered.
 - a. Appeals addressed to the Historic Preservation Commission or the Commission shall be filed with the Department; and
 - b. Appeals addressed to the Council shall be filed with the City Clerk.
 3. The appeal shall be accompanied by the filing fee identified in the Planning Fee Schedule.
 4. Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is rendered by the applicable review authority.
- C. Scope of planning permit appeals.** An appeal of a decision on a planning permit shall be limited to issues raised at the public hearing, or in writing before the hearing, or information that was not known at the time of the decision that is being appealed.
- D. Report and scheduling of hearing.**
1. When an appeal has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority, identified in Section 9.15.020 (Appeal Subjects and Jurisdiction), above.
 2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Chapter 9.17 (Public Hearings).
 3. Any interested party may appear and be heard regarding the appeal.
- E. Decision.**
1. In deciding an appeal the review authority considering the appeal shall not hear or consider any evidence of any kind other than the evidence received from the previous review authority, or any argument on the merits of the case other than that contained in the notice of appeal, unless it sets the matter for hearing before itself, as provided in this Chapter, and gives the same notice of hearing as is required in compliance with Chapter 9.17 (Public Hearings).
 2. If new or different evidence is presented on appeal, the Commission or Council may refer the matter to the Director, Historic Preservation Commission, or Commission, as applicable, for further consideration.
 3. In the event of a tie vote by the review authority on an appeal, the decision being appealed shall stand.
 4. Provision of notice of decision.
 - a. Following the final decision on an application for a permit or other approval

required by this Development Code, the City shall provide notice of its final decision to the appellant, applicant (if not the appellant), and to any person who specifically requested notice of the City's final action.

- b. The notice of the final decision shall contain applicable findings, conditions of approval, and the reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, or general welfare of the City.

F. Effective date of appeal decisions.

1. Commission's decision. A decision of the Commission is final and effective after 5:00 p.m. on the 15th day following the actual date the decision is rendered, when no appeal to the decision has been filed in compliance with this Chapter.
2. Council's decision.
 - a. Adoption of ordinance. Council's action to adopt or amend a Development Agreement, a Specific Plan (adopted by ordinance), this Development Code, or the Zone Map shall become effective on the 30th day following the date the ordinance is actually adopted by the Council.
 - b. Adoption of resolution. Council's action to grant a permit or other approval or adopt or amend the General Plan or a Specific Plan (adopted by resolution) is final and shall become effective on the actual date the decision is rendered by the Council.

9.15.040 Judicial Review

No person shall seek judicial review of a City decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Council have first been exhausted in compliance with this Chapter.

Chapter 9.16 Nonconforming Provisions

Sections:

9.16.010	Purpose and Intent
9.16.020	Definitions
9.16.030	Proof of Legal Nonconformity
9.16.040	Restrictions on Nonconforming Uses and Structures
9.16.050	Residential Exemptions
9.16.060	Loss of Nonconforming Status
9.16.070	Nonconforming Parcels
9.16.080	Effect of Conditional/Zoning Use Permit Requirements

9.16.010 Purpose and Intent

- A. **Purpose.** This Chapter provides regulations for nonconforming land uses, structures, and parcels that were lawful before the adoption, or amendment of this Development Code, but which would be prohibited, regulated, or restricted differently under the current terms of this Development Code or an amendment that changed applicable requirements.
- B. **Intent.**
1. In order to limit the number and extent of nonconforming uses, structures, parcels, created by adoption of this Development Code, it is the City's intent to generally allow nonconformities to continue until they are removed, but not to encourage their long term survival.
 2. It is further the intent of this Chapter that nonconformities shall not be altered, enlarged, expanded, extended, moved, or reestablished after abandonment or discontinuance or restored after involuntary destruction, except in compliance with this Chapter.
 3. This Chapter shall not apply to any use or structure established in violation of the previously adopted Development Code for the City, unless the use or structure presently conforms to the provisions of this Development Code.

9.16.020 Definitions

Definitions of the terms used in this chapter are located in Part II (Definitions of Terms and Uses)

9.16.030 Proof of Legal Nonconformity

The property owner has the burden to prove the claim of legal nonconformity and the related protected status that comes with that claim as specified in this Chapter.

- A. **Property owner's responsibility.** The property owner shall provide sufficient evidence to the satisfaction of the Director that the subject property is a legal nonconformity as specified in this Chapter.

- B. **City is not responsible.** The City is not responsible to prove the absence of legal nonconformity.
- C. **Appeal of determination.** The Director's determination of legal nonconformity shall be appealable in compliance with Chapter 9.15 (Appeals).

9.16.040 Restrictions on Nonconforming Uses and Structures

A legal nonconforming land use and the use of a legal nonconforming structure, as those terms are defined in Section 9.16.020 (Definitions), above, may be continued, including transfers of ownership; provided, that their continuation shall comply with the requirements of this Section. See Section 9.16.050 (Residential Exemptions), below for exceptions regarding certain residential uses and structures.

- A. **Nonconforming uses.** The continuance of a legal nonconforming use shall be allowed subject to the following provisions:
 - 1. Change of ownership. Change of management, ownership, or tenancy of a nonconforming use shall not affect its nonconforming status; provided, that the use and intensity of use, as determined by the Director, does not change.
 - 2. Additional development. Additional development of any property on which a nonconforming use exists shall require that all new uses be in compliance with the applicable provisions of this Development Code.
 - 3. Conversion of a nonconforming use. If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed.
 - 4. Changes to a nonconforming use. A nonconforming use shall not be established or replaced by another nonconforming use, nor shall any nonconforming use be expanded or changed, except as provided in this Chapter.
 - 5. Single-tenant structures. A nonconforming use operating within a single-tenant structure may only be replaced by a conforming use or another nonconforming use that is the same as or similar to the previous nonconforming use, provided not more than 180 days have passed since the cessation of the previous nonconforming use, and further provided the replacement nonconforming use does not create new impacts or an increase in intensity of the land use.
 - 6. Multi-tenant structures. A nonconforming use operating within a multi-tenant structure may be replaced by a conforming use, a nonconforming use that is the same as or similar to the previous nonconforming use within the tenant space, provided not more than 180 days has passed since the cessation of the previous nonconforming use, or by a nonconforming use that is the same as or similar to an existing nonconforming use within the structure, and further provided the replacement nonconforming use does not create new impacts or an increase in intensity of the land use.
- B. **Nonconforming structures.**
 - 1. Alteration. Nonconforming structures shall not be altered so as to increase the difference between the existing conditions and the development standards specified in the regulations for the zone in which the structure is located.
 - 2. Moving or enlargement. Nonconforming structures shall not be moved or enlarged unless the new location or enlargement shall conform to the current development standards for the zone in which the structure is located.

3. Ordinary maintenance and repairs. Nonconforming structures may undergo ordinary maintenance and repairs.

9.16.050 Residential Exemptions

An involuntarily damaged or destroyed nonconforming single- or multi-family dwelling unit may be reconstructed or replaced with a new structure with the same footprint (including preexisting nonconforming setbacks), height, and number of dwelling units, in compliance with current Building and Fire Code requirements.

9.16.060 Loss of Nonconforming Status**A. Termination by discontinuance.**

1. Nonconforming use. If a nonconforming use is discontinued for a continuous period of 180 or more consecutive calendar days, the use shall lose its legal nonconforming status, and the continued use of the property shall be required to be in compliance with the applicable provisions of this Development Code.
2. Affordable rental housing units. None of the restrictions specified in this Subsection shall apply if doing so would decrease the number of low-income rental housing units available in the City.

B. Termination by destruction. Nonconforming status shall terminate if a nonconforming structure, or a conforming structure occupied by a nonconforming use, is involuntarily damaged or destroyed as a result of an accident or by earthquake, fire, flood, or other act of nature; except as provided by Section 9.16.050 (Residential Exemptions), above, and except as follows.

1. 50 percent or less. If the cost of repairing or replacing the damaged portion of the structure is 50 percent or less of the appraised value of the structure immediately before the damage, the structure may be restored to no more than the same size and use, and the use continued, if the restoration is started within one year of the date of damage and be completed within two years following initiation of restoration.
2. Exceeds 50 percent.
 - a. If the cost of repairing or replacing the damaged portion of the structure exceeds 50 percent of the appraised value of the structure immediately before the damage, or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full compliance with the applicable regulations for the zone in which it is located and the nonconforming use shall not be resumed.
 - b. This limitation shall not apply if doing so would decrease the number of affordable rental housing units available in this City.
3. Appraised and estimated values.
 - a. All appraised values referred to in this Section shall be determined by a State licensed appraiser and confirmed by the Building Official.

- b. Estimates of repairing or replacing the damaged portion of the structure for purposes of this Section shall be made by or shall be reviewed and approved by the Building Official and shall be based on the minimum cost of construction in compliance with the Building Code.

9.16.070 Nonconforming Parcels

- A. **Legal building site.** A nonconforming parcel that does not comply with the applicable area, depth, or width, requirements of this Development Code shall be considered a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director by evidence furnished by the applicant.
 1. Approved subdivision. The parcel was created by a recorded subdivision as a legal building site;
 2. Individual parcel legally created by deed. The parcel is under one ownership and was legally created by a recorded deed as a legal building site before the effective date of the amendment that made the parcel nonconforming; or
 3. Partial government acquisition. The parcel was created in compliance with the provisions of this Development Code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size is decreased not more than 20 percent and the yard facing a public right-of-way was decreased not more than 50 percent.
- B. **Subdivision of a nonconforming parcel.** No subdivision or lot line adjustment shall be approved that would result in the nonconformity of an existing parcel or any nonconforming use on the parcel.

9.16.080 Effect of Conditional/Zoning Use Permit Requirements

- A. **Absence of Conditional/Zoning Use Permit.** A use lawfully existing without the approval of a Conditional Use Permit or Zoning Use Permit that would be required by this Development Code shall be deemed conforming only to the extent of its previous lawful use (e.g., maintaining the same site area boundaries, hours of operation, etc.). Any change in use would require the approval of a Conditional Use Permit or Zoning Use Permit
- B. **Previous Conditional/Zoning Use Permit in effect.** A use that was authorized by a Conditional Use Permit or Zoning Use Permit but is not allowed by this Development Code in its current location may continue, but only in compliance with the original Conditional Use Permit or Zoning Use Permit conditions of approval.

Chapter 9.17 Public Hearings

Sections:

9.17.010	Purpose
9.17.020	Notice of Hearing
9.17.030	Scheduling of Hearing
9.17.040	Hearing Procedure
9.17.050	Recommendation by Commission
9.17.060	Decision and Notice
9.17.070	Effective Date of Decision

9.17.010 Purpose

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

9.17.020 Notice of Hearing

When this Development Code requires a noticed public hearing before a decision on a permit, or for another matter, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090, 65091, 65094, and Public Resources Code 21000 et seq., and as required by this Chapter.

- A. **Content of notice.** Notice of a public hearing shall include all of the following information, as applicable.
1. **Hearing information.** The date, time, and place of the hearing and the name of the review authority; a brief description of the City's general procedure concerning the conduct of hearings and decisions (e.g., the public's right to appear and be heard); and the phone number, street address, and website of the Department, where an interested person could call or visit to obtain additional information.
 2. **Project information.** The date of filing of the application and the name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; and a general description, in text and/or by diagram, of the location of the property that is the subject of the hearing.
 3. **Statement on environmental document.** If a proposed Negative Declaration, Mitigated Negative Declaration, or final Environmental Impact Report has been prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines, the hearing notice shall include a statement that the review authority will also consider approval of the proposed CEQA determination.
- B. **Method of notice distribution.** Notice of a public hearing required by this Chapter for a planning permit, amendment, appeal, or other approval shall be given as follows, as required by Government Code Sections 65090 and 65091.
1. **Mailing.** Notices shall be mailed or delivered at least 10 days before the scheduled hearing to the following:

- a. Project site owner(s) and the applicant. The owner(s) of the property being considered in the application or the owners' authorized agent, and the applicant.
 - b. Local agencies. Each local agency expected to provide roads, schools, sewage, streets, water, or other essential facilities or services to the property which is the subject of the application, whose ability to provide those facilities and services may be significantly affected.
 - c. Affected owners.
 - (1) All owners of real property, as shown on the latest adopted tax roll of the County, located within a radius of a minimum of 300 feet of the exterior boundaries of the parcel that is the subject of the hearing.
 - (2) The Director shall have the authority to extend the radius specified in Subparagraph (1), above, at the Director's sole discretion.
 - d. Persons requesting notice. Any person who has filed a written request for notice with the Director, and has paid the required fee for the notice.
 - e. Other person(s). Any other person(s), whose property might, in the judgment of the Director, be affected by the proposed project.
2. Alternative to mailing. If the number of property owners to whom notice would be mailed in compliance with Subparagraph B.1, above is more than 1,000, the Director may choose to provide the alternative notice allowed by Government Code Section 65091(a)(3).
 3. Publication and posting. Either one of the following, publication or posting, shall be required for all applications requiring public notice:
 - a. Publication required. Notice shall be published at least once in a newspaper of general circulation in the City at least 10 days before the scheduled hearing; or
 - b. Posting required. Notice shall be posted at least 10 days before the scheduled hearing in at least three public places within the City, including one on the project site.
 - c. When required by the Director. When required by the Director, the project site shall be posted in compliance with the following courtesy notice provisions:
 - (1) Process for posting courtesy notices.
 - (a) Once an application has been scheduled for hearing, the applicant will receive a letter from the Department specifying that courtesy notice shall be posted. Included in this letter will be the Department's courtesy notice original to use as an example.
 - d. On sites less than one acre, a four-square-foot sign not to exceed six feet in height is required.
 - (1) On sites one acre or larger, a 32-square-foot sign not to exceed eight feet in height is required.
 - (2) For South Livermore Valley Specific Plan (SLVSP) projects the sign text shall include the total number of acres planted or preserved as part of the project.
 - (3) If the project is approved, the sign shall be amended to include anticipated construction dates.
 - (a) The applicant will be required to post the courtesy notice on the project site a minimum of 10 days before the scheduled hearing.

- (b) Upon posting of the courtesy notice, the applicant will be required to complete the "Certificate of Posting" and return it to the Department at least three days before the scheduled hearing.
 - (c) The courtesy notice shall remain posted until all hearings have taken place. This may include Commission and/or Council hearings.
 - (d) Following final City action on the project, the applicant is responsible for removing all courtesy notices from the project site within 10 days.
- (4) Placement of courtesy notice. Courtesy notices shall be placed on the project site within 25 feet from the primary street frontage of the project site and properly maintained.
 - (5) Installation of courtesy notice. The courtesy notice shall be staked at between a height of four feet and seven feet above grade and shall not be attached to fences, telephone poles, or trees.
4. Additional notice. In addition to the types of notice required above, the Director may provide any additional notice with content or using a distribution method (e.g., posting on the City's website) as the Director determines is necessary or desirable.
 5. Failure of receipt of notice. Failure of property owners to receive notice of a hearing shall in no way affect the validity of action taken, as required by Government Code Section 65093.

9.17.030 Scheduling of Hearing

After the completion of any environmental document required by the California Environmental Quality Act (CEQA), the City's CEQA Guidelines, and a Department staff report, a matter requiring a public hearing shall be scheduled on an agenda (Director, Historic Preservation Commission, Commission, or Council, as applicable) reserved for public hearings, but no sooner than any minimum time period established by State law.

9.17.040 Hearing Procedure

- A. **Time and place of hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. **Continued hearing.** Any hearing may be continued from time to time without further notice; provided, the chair of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- C. **Deferral of final decision.** The review authority may announce a tentative decision, and defer their action on a final decision until appropriate findings and/or conditions have been prepared.

9.17.050 Recommendation by Commission

After a public hearing on a proposed Development Agreement or amendment, a Specific Plan or amendment, or an amendment to this Development Code, the General Plan, or the Zoning Map, the recommendation and findings of the Commission shall be forwarded to the Council.

9.17.060 Decision and Notice**A. Decision.**

1. The review authority may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting agenda in compliance with Section 9.17.040 (Hearing Procedure), above.
2. Prior to making a decision, the Director may instead refer the matter to the Historic Preservation Commission, or the Commission for review and final decision.
3. The decision of the Council on any matter shall be final and conclusive.

B. Notice of decision.

1. Provision of notice. Following the final decision on an application for a permit or other approval required by this Development Code, the City shall provide notice of its final action to the applicant and to any person who specifically requested notice of the City's final action.
2. Contents of notice. The notice of the final decision shall contain applicable findings, conditions of approval, reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, or general welfare of the City, and the procedure for appeal.

9.17.070 Effective Date of Decision**A. Director's, Historic Preservation Commission's, or Commission's decision.**

The decision of the Director, Historic Preservation Commission, or Commission is final and effective after 5:00 p.m. on the 15th day following the actual date the decision is rendered, when no appeal to the decision has been filed in compliance with Chapter 9.15 (Appeals).

B. Council's decision.

1. Adoption of ordinance. Council's action to adopt or amend a Development Agreement, a Specific Plan (adopted by ordinance), this Development Code, or the Zone Map shall become effective on the 30th day following the date the ordinance is actually adopted by the Council.
2. Adoption of resolution. Council's action to grant a permit or other approval or adopt or amend the General Plan or a Specific Plan (adopted by resolution) is final and shall become effective on the actual date the decision is rendered by the Council.

Chapter 9.18 Permit Modifications and Revocations

Sections:

9.18.010	Purpose
9.18.020	Modifications
9.18.030	Revocations
9.18.040	Hearing and Notice Required
9.18.050	Findings to Modify or Revoke

9.18.010 Purpose

This Chapter provides procedures for securing punitive modification or revocation of previously approved permits or approvals.

9.18.020 Modifications

The City's action to modify a permit or approval, instead of revocation, may include conditioning any operational aspect of the project, including buffers, duration of the permit or entitlement, hours of operation, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, or any other aspect/condition determined to be reasonable and necessary to ensure that the permit or approval is operated in a manner consistent with the original findings for approval.

9.18.030 Revocations

The City's action to revoke a permit or approval, instead of modification, shall have the effect of terminating the permit or approval and denying the privileges granted by the original approval.

9.18.040 Hearing and Notice Required

A. Hearing required.

1. The appropriate review authority shall hold a public hearing to modify or revoke a permit or approval granted in compliance with the provisions of this Development Code.
2. The hearing shall be noticed and conducted in compliance with Chapter 9.17 (Public Hearings).

B. Notice.

1. Ten days before the public hearing, notice shall be mailed or delivered to the applicant for the permit or approval being considered for modification or revocation, and/or owner of the property for which the permit or approval was granted.
2. The only exception to the 10-day notice provision shall be for Temporary Use Permits which, because of their short term nature, shall only require a 24-hour

notice.

3. Notice shall be deemed delivered two days after being mailed, certified and first class, through the United States Postal Service, postage paid, to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property.

9.18.050 Findings to Modify or Revoke

- A. **Permits.** A Conditional Use Permit or other City planning permit or approval (except a Variance, see Subsection B., below) may be modified or revoked by the review authority (e.g., Director, Commission, or Council) that originally approved the permit, if the review authority first makes any one of the following findings:
 1. Circumstances under which the permit or approval was granted have been changed by the applicant to an extent that one or more of the findings that justified the original approval can no longer be made, and the public health, safety, and welfare require the modification or revocation;
 2. The permit or other approval was granted, in whole or in part, on the basis of a fraud, misrepresentation, or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the permit or approval;
 3. One or more of the conditions of the original permit or approval have not been substantially fulfilled or have been violated;
 4. The approved use or structure, except those approved under a Conditional Use Permit and Zoning Use Permit, has not been implemented within two years of the date of approval;
 5. The approved use or structure has ceased to exist or has been suspended for a period in excess of 12 months;
 6. An improvement authorized in compliance with the permit or approval is in violation of any applicable code, law, ordinance, regulation, or statute; or
 7. The improvement/use allowed by the permit or approval has become detrimental to the public health, safety, or welfare or the manner of operation constitutes or is creating a nuisance.
- B. **Variances.** A Variance (major or minor) may be modified or revoked by the review authority which originally approved the Variance, if the review authority first makes any one of the following findings, in addition to any one of the findings specified in Subsection A, above:
 1. Circumstances under which the original approval was granted have been changed by the applicant to a degree that one or more of the findings contained in the original approval can no longer be made in a positive manner, and the grantee has not substantially exercised the rights granted by the Variance; or
 2. One or more of the conditions of the Variance have not been met, or have been violated, and the grantee has not substantially exercised the rights granted by the Variance.

Chapter 9.19 Interpretation

Sections:

- 9.19.010 Purpose
- 9.19.020 Effect on Previously Issued Permits
- 9.19.030 Existing Agreements, Covenants, or Easements

9.19.010 Purpose

The purpose of this Chapter is to provide clarity regarding this Development Code and any other agreements, covenants, deed restrictions, easements, ordinances, regulations, or other rules affecting the use of real property.

9.19.020 Effect on Previously Issued Permits

Nothing contained in this Development Code shall be deemed to require any change in the plans, construction, or designated use of any structure for which a Building Permit has been properly issued, in compliance with the provisions of ordinances then effective, and upon which actual construction has been started before the effective date of the ordinance codified in this Chapter, or pertinent amendments thereto; provided, that in all cases actual construction shall be diligently carried on until completion of the structure.

9.19.030 Existing Agreements, Covenants, or Easements

This Development Code is not intended to interfere with, abrogate, or annul any covenants, deed restrictions, easements, or other agreements between parties; except, that where this Development Code imposes a greater restriction upon the use of structures or premises or upon the height of structures, or requires larger open spaces than are imposed by the other agreements, covenants, deed restrictions, easements, ordinances, regulations, or other rules, the provisions of this Development Code shall control.

Chapter 9.20 Enforcement

Sections:

9.20.010	Purpose
9.20.020	Permits and Approvals
9.20.030	Enforcement Responsibility
9.20.040	Inspections
9.20.050	Initial Enforcement Action
9.20.060	Recording Notice of Violation
9.20.070	Violations
9.20.080	Legal Remedies
9.20.090	Remedies are Cumulative
9.20.100	Recovery of Costs
9.20.110	Additional Permit Fees
9.20.120	Reinspection Fees

9.20.010 Purpose

This Chapter establishes provisions that are intended to ensure compliance with Livermore Municipal Code Section 1.24 (Compliance Orders), as well as the requirements of this Development Code and any conditions of planning permit approval, to promote the City's planning efforts, and for the protection of the public health, safety, and welfare of the City.

9.20.020 Permits and Approvals

All departments, officials, and public employees of the City who are assigned the authority or duty to issue certificates, licenses, or permits shall comply with the provisions of this Development Code.

- A. **Permits in conflict with Development Code.** Certificates, licenses, or permits for uses or structures that would be in conflict with the provisions of this Development Code shall not be issued.
- B. **Permits deemed void.** Any certificate, license, or permit issued in conflict with the provisions of this Development Code shall be void and of no effect.

9.20.030 Enforcement Responsibility

A. Responsibility of Director.

1. The Director shall exercise the authority provided in California Penal Code Section 836.5, and issue Notices of Violation, stop work orders, and citations for any violations of this Development Code pertaining to the use of any land, and the addition, alteration, construction, conversion, erection, installation, moving, reconstruction, or use of any structure.
2. Wherever the term Director is used in this Chapter, it shall be understood to mean the Director, or the designee(s) of the Director.

- B. **Responsibility of Police Chief and City Attorney.** The Police Chief and City Attorney shall render any and all necessary assistance to the Director for the enforcement of this Development Code.

9.20.040 Inspections

- A. **Pre-approval inspections.** Every applicant seeking a permit or any other approval in compliance with this Development Code shall allow the City officials handling the application access to any premises or property that is the subject of the application.
- B. **Post approval inspections.** If the permit or other approval is approved in compliance with this Development Code, the owner or applicant shall allow appropriate City officials access to the premises in order to determine continued compliance with the approved permit and/or any conditions of approval imposed on the permit.
- C. **Failure to allow inspections.** Failure to allow access for any inspection or reinspection may result in the denial, revocation, or voiding of the permit or approval, as applicable to the status of the permit or approval.

9.20.050 Initial Enforcement Action

This Section describes the procedures for initiating enforcement action in cases where the Director has determined that real property within the City is being used, maintained, or allowed to exist in violation of the provisions of this Development Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Chapter may be avoided.

- A. **Notice to responsible parties.** The Director shall provide the record owner of the subject site and any person in possession or control of the site with a written Courtesy Notice of Violation, which shall include the following information:
1. A legal description of the property where the violation exists including street address and/or Assessor's Parcel Number;
 2. A description of each violation and citations of applicable Development Code provisions being violated and required corrective action(s);
 3. A compliance date for correcting the violation(s) in compliance with Subsection B., below;
 4. A statement that the City will seek full reimbursement from the property owner for all administrative costs associated with the abatement of the violation(s) in compliance with Section 9.20.100 (Recovery of Costs), and/or initiate legal action as described in Section 9.20.080 (Legal Remedies); and
 5. A statement that the property owner or any person in possession or control of the site may appeal the Courtesy Notice of Violation in compliance with Chapter 9.15 (Appeals)
- B. **Time limit for correction.**
1. The Courtesy Notice of Violation shall state that the violation(s) shall be corrected within 30 days from the date of the notice to avoid further enforcement action by the City, unless the responsible party contacts the Director within that time to arrange for a longer period for correction.

2. The 30-day time limit may be extended by the Director upon a showing of good cause.
 3. The Director may also require through the Courtesy Notice of Violation that the correction occur within less than 30 days if it is determined that the violation(s) constitutes a hazard to public health or safety.
- C. **Use of other enforcement procedures.** The enforcement procedures of Section 9.20.080 (Legal Remedies) may be employed by the Director after or instead of the provisions of this Section where the Director determines that this Section would be ineffective in securing the correction of the violation(s) within a reasonable time.

9.20.060 Recording Notice of Violation

- A. **Record notice with County Recorder's Office.** If property in the City exists in violation of this Development Code and the owner fails or refuses to correct the violation, the City may record a Notice of Violation against the affected property in the County Recorder's Office.
- B. **City actions before recordation.** Before recording a Notice of Violation, the City shall do all of the following:
1. Mailing of notice.
 - a. The Director shall send a written Notice of Violation to the current owner(s) and any mortgage holder(s) that a violation(s) exists and request that the owner(s) correct the violation within a specified, reasonable period of time.
 - b. The Director may, in the Director's discretion, send more than one Notice of Violation and conduct an informal show cause hearing to discuss the violation with the owner(s).
 - c. All notices of violation and hearing notices shall be posted on the violating property.
 2. Failure to correct violation.
 - a. If the owner fails or refuses to correct the violation(s) within the specified time, the Director shall mail to the current owner(s) by regular first class and by certified mail a Notice of Intention to record a Notice of Violation, describing the real property in detail, naming the owner(s), describing the violation in detail (including relevant Municipal Code sections), and stating that an opportunity will be given to the owner(s) to present evidence.
 - b. The notice shall specify a time, date, and place for a Commission hearing or nuisance abatement hearing at which the owner may present evidence to the Commission why the Notice of Violation should not be recorded.
 - c. The Commission hearing shall take place no sooner than 30 days and no later than 60 days following the date of mailing and/or posting of the Notice of Violation.
 3. Commission's actions.
 - a. The Commission shall hear the matter on the date scheduled.
 - b. If, after the owner(s) and the City staff have presented evidence, the Commission determines that there is no violation, the Director shall mail a clearance letter to the current owner.

- c. If the owner(s) fails to appear, or the Commission determines that there is a violation(s), the Commission may, by resolution, direct the Director to record the Notice of Violation with the County Recorder.
4. Constructive notice. The Notice of Violation, when recorded, shall be deemed to be constructive notice of the violation(s) to all successors-in-interest in the property, under California Civil Code Sections 1213 and 1215.
5. Release or cancellation of Notice of Violation. If the owner corrects the violation(s) or the property otherwise becomes conforming after the Notice of Violation has been recorded, and the owner has notified the City in writing and consented to an inspection to confirm the correction, the Director shall record a release or cancellation of the Notice of Violation.

9.20.070 Violations

A. Violations of this Development Code.

1. Violation and Public Nuisance. Any use of land or structures operated or maintained contrary to the provisions of this Development Code and any structure constructed or maintained contrary to the provisions of this Development Code are hereby declared to be a violation of this Development Code and a public nuisance.
2. Violation of any Required Condition. The violation of any required condition imposed on a permit or approval shall constitute a violation of this Development Code and may constitute grounds for modification or revocation of the permit in compliance with Chapter 9.18 (Permit Modifications and Revocations).
3. Violation of Affordable Housing Restrictions of Section 10.06.050.
 - a. It is unlawful, a public nuisance, and a misdemeanor for a person to sell or rent an affordable unit at a price or rent exceeding the maximum allowed in Section 10.06.050 (Affordable Housing) or to a household not qualified under that Section.
 - b. A person who violates the affordable housing restrictions is subject to a \$750.00 fine for each month from the date of original noncompliance with Section 10.06.-050 (Affordable Housing).
 - c. The City Attorney's office or the County District Attorney, as appropriate, is authorized to abate violations of Section 10.06.050 (Affordable Housing) and to enforce the provisions of that Section and all implementing regulatory agreements and resale controls placed on affordable units, by civil action, injunctive relief, and/or any other method permitted by law.
4. Efforts shall be made to Correct. All efforts shall be made to correct any conflicts with an issued certificate, license, or permit if deemed appropriate by the Director.

B. Public nuisance. Upon verification by the Director, any use or structure that is altered, constructed, converted, demolished, enlarged, established, erected, maintained, moved, or operated contrary to the provisions of this Development Code or any applicable condition of approval imposed on a permit or approval, is hereby declared to be unlawful and a public nuisance, and shall be subject to the fines, penalties, and remedies specified in Municipal Code Chapters 1.16 (General Penalty) and 1.20 (Administrative Citations), Chapter 9.21 (Penalties), and this Chapter.

C. Infractions. Any responsible person, whether an agent, principal, or otherwise, violating or causing the violation of any provision(s) of the Municipal Code, this Development

Code, or any permit or approval issued in compliance with this Development Code, may, at the discretion of the City Attorney, be prosecuted as infraction, unless the violation is specifically identified as a misdemeanor in the Municipal Code, and upon conviction thereof, shall be punishable by the applicable fine(s) specified in Municipal Code Chapter 1.16 (General Penalty) and Chapter 9.21 (Penalties).

D. Citations.

1. Any responsible person violating or causing the violation of any provision(s) of the Municipal Code, this Development Code, or any permit or approval issued in compliance with this Development Code may be issued an administrative citation by a Director.
2. The responsible person shall be liable for and shall remit payment of any fine(s) assessed in connection with an administrative citation in compliance with Municipal Code Chapter 1.20 (Administrative Citations) and Chapter 9.21 (Penalties).
3. Any person who is subject to an administrative citation may appeal the citation to the Hearing Officer in compliance with Municipal Code Chapters 1.20 (Administrative Citations) and 8.14 (Public Nuisances).
4. Failure to appeal the administrative citation within 30 days of issuance shall result in the appellant/responsible person exhausting all administrative remedies.

E. Continuing violation.

1. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation(s) of this Development Code or any applicable condition of approval imposed on a permit or approval is committed, continued, or allowed to continue and the violator shall be punished accordingly.
2. A new violation committed within 12 months of the original violation shall constitute a continuing violation.

F. Stop Work Order or other similar notice.

1. Any construction verified in violation of this Development Code or any conditions imposed on a permit or approval shall be subject to the issuance of a "Stop Work Order" or other similar notice issued by the City.
2. Any verified violation of a Stop Work Order or other similar notice shall constitute a misdemeanor and a public nuisance, and shall be subject to the fines, penalties, and remedies specified in Municipal Code Chapter 1.16 (General Penalty), Chapter 9.21 (Penalties), and this Chapter.

9.20.080 Legal Remedies

The City may choose to undertake any one or all of the following legal actions to correct and/or abate any nuisances or violation(s) of this Development Code.

A. Civil actions.

1. Injunction. The City Attorney may apply to the Court for injunctive relief to terminate a violation(s) of this Development Code.
2. Abatement proceedings. Where any person fails to abate a violation(s) after being provided a Notice of Violation in compliance with Subsection 9.20.050 A. (Notice to responsible parties), above, and the opportunity to correct or end the violation(s), the City Attorney shall apply to the Court for an order authorizing the City to

undertake actions necessary to abate the violation(s) and require the violator to pay for the cost of the actions.

3. Nuisance abatement. The City may pursue any remedies or enforcement action(s) for the abatement of a nuisance, in compliance with Municipal Code Section 1.16.030 (Public nuisance).

B. Civil penalties and remedies.

1. Civil penalties. Any person, who willfully violates the provisions of this Development Code, or any permit or approval issued in compliance with this Development Code, shall be liable for a civil penalty in compliance with the Administrative Citation Fee Schedule, specified in Municipal Code Chapter 1.20 (Administrative Citations), for each day that a violation(s) continues to exist.
2. Costs and damages. Any person violating any provisions of this Development Code, or any permit or approval issued in compliance with this Development Code, shall be liable to the City for the costs incurred and the damages suffered by the City, its agents, and agencies as a direct result of the violation(s).
3. Procedure. In determining the amount of the civil penalty to impose, the Court should consider all relevant circumstances, including the extent of the harm caused by the conduct constituting a violation(s), the nature and persistence of the conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the defendant, whether corporate or individual, and any corrective action taken by the defendant.

C. Criminal actions and penalties. See Section 9.20.070 (Violations), above.

9.20.090 Remedies are Cumulative

- A. **Cumulative, not exclusive.** All remedies contained in this Development Code for the handling of violations or enforcement of the provisions of this Development Code shall be cumulative and not exclusive of any other applicable provisions of City, County, or State law.
- B. **Other remedies.** Should a person be found guilty and convicted of an infraction or misdemeanor for the violation of any provision(s) of this Development Code, or any permit or approval issued in compliance with this Development Code, the conviction shall not prevent the City from pursuing any other available remedy to correct the violation(s).

9.20.100 Recovery of Costs

This Section establishes procedures for the recovery of administrative costs, including staff and City Attorney time expended on the enforcement of the provisions of this Development Code in cases where no permit is required in order to correct a violation. The intent of this Section is to recover City administrative costs reasonably related to enforcement in compliance with Code of Civil Procedure Section 1033.5 and this Section.

A. Record of costs.

1. The Department shall maintain records of all administrative costs incurred by responsible City departments associated with the processing of violations and enforcement of this Development Code, and shall recover the costs from the

property owner in compliance with this Section.

2. Staff and City Attorney time shall be calculated at an hourly rate as established and revised from time to time by the Council.

B. Notice.

1. Upon investigation and a determination that a violation(s) of any of the provisions of this Development Code, or any condition(s) imposed on a permit or approval is found to exist, the Director shall notify the owner of record or any person having possession or control of the property by mail, of the existence of the violation(s), the Department's intent to seek full reimbursement from the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have.
2. The notice shall be in a form approved by the City Attorney and posted on the property where the violation is located.

C. Summary of costs and notice.

1. At the conclusion of the case, the Director shall send a summary of costs associated with enforcement action (including any delinquent citation fees) to the owner and/or person having possession or control of the property by certified and first class mail.
2. The summary shall include a notice in a form approved by the City Attorney, advising the responsible party of their right to request a hearing on the charges for City cost recovery within 10 days of the date of the notice, and that if no request for hearing is filed, the responsible party will be liable for the charges.
3. In the event that no request for hearing is timely filed or, after a hearing the Director affirms the validity of the costs, the property owner or person in control shall be liable to the City in the amount stated in the summary or any lesser amount as determined by the Director.
4. The costs shall be recoverable in a civil action in the name of the City, in any court of competent jurisdiction, or by tax assessment or a lien on the property in compliance with Government Code Section 54988, at the City's election.
5. The obligation to pay any unpaid costs shall be made a personal obligation of the property owner.
6. The obligation may be recovered against the property owner through a civil action initiated by the City or its authorized collection agent, or in any other manner provided for by law.
7. The City shall be entitled to recover all costs related to the civil action, including the City Attorney's fees.

D. Attorney's fees.

1. In any action or administrative proceeding to abate a nuisance, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney's fees; however, the amount of attorney's fees awarded to a prevailing party shall not exceed the amount of attorney's fees incurred by the City in the action or proceeding.
2. An award of attorney's fees in compliance with this Section shall only be allowed where the City elects, at the initiation of the action or proceeding, to seek recovery of its own attorney's fees.

- E. Request for hearing on costs.** Any property owner, or other person having possession or control of the subject property, who receives a summary of costs shall

have the right to a hearing before the Director on their objections to the proposed costs.

1. A request for hearing shall be filed with the Department within 10 days of the service by mail of the Director's summary of costs, on a form provided by the Department.
2. Within 30 days of the filing of the request, and on 10 days written notice to the owner, the Director shall hold a hearing on the owner's objections, and determine their validity.
3. In determining the validity of the costs, the Director shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include:
 - a. Whether the present owner created the violation(s);
 - b. Whether there is a present ability to correct the violation(s);
 - c. Whether the owner moved promptly to correct the violation(s); and
 - d. The degree of cooperation provided by the owner.
4. The Director's decision shall be appealable directly to the Council as provided by Chapter 9.15 (Appeals).

9.20.110 Additional Permit Fees

Any person who establishes a land use, in conflict with the established or approved use for a property, or alters, constructs, demolishes, enlarges, erects, maintains, or moves any structure without first obtaining any permit or approval required by this Development Code, shall pay the additional permit processing fees established by the Planning Fee Schedule for the correction of the violations, before being granted a permit for a use or structure on the site.

9.20.120 Reinspection Fees

A. Amount and applicability of reinspection fees.

1. A reinspection fee shall be imposed on each person who receives a Notice of Violation, notice and order, or letter of correction of any provision of this Development Code, any permit or approval issued in compliance with this Development Code, the Municipal Code, adopted Building Code, or State law.
 - a. The fee amount shall be established by the Planning Fee Schedule.
 - b. The fee may be assessed for each inspection or reinspection conducted when the particular violation for which an inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner specified in, the notice or letter.
2. The fee shall not apply to the original inspection to document the violation(s) and shall not apply to the first scheduled compliance inspection made after the issuance of a notice or letter, if the correction(s) has been made.

B. Continuation of the original case.

1. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the provisions of this Development Code

or the Municipal Code for less than 180 days, the violation shall be deemed a continuation of the original case, and all inspections or reinspections, including the first inspection for the repeated offense, shall be charged a reinspection fee.

2. This fee is intended to compensate for administrative costs for unnecessary City inspections, and is not a penalty for violating this Development Code or the Municipal Code.
3. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this Development Code in compliance with Municipal Code Chapters 1.16 (General Penalty) and 1.20 (Administrative Citations), Chapter 9.21 (Penalties), or costs incurred by the City for the abatement of a public nuisance, in compliance with Municipal Code Section 1.16.030 (Public nuisance).

Chapter 9.21 Penalties

Sections:

- 9.21.010 Purpose
- 9.21.020 Violations – Infractions and Misdemeanors

9.21.010 Purpose

The purpose of this Chapter is to provide penalties for infractions and misdemeanors related to violations of this Development Code.

9.21.020 Violations – Infractions and Misdemeanors

A. Infractions.

1. Guilty of an infraction. Any corporation, firm, or person, whether as principal agent, employee or otherwise, violating or causing the violation of any of the provisions of this Development Code shall be guilty of an infraction, unless otherwise specifically stated.
2. Penalties for infractions. Penalties for infractions shall be as specified in Government Code Section 36900 and Municipal Code Chapter 1.16 (General Penalty).

B. Misdemeanors.

1. Guilty of a misdemeanor. Notwithstanding the above, any violation occurring after a third infraction citation has been issued shall be considered as a misdemeanor.
2. Penalties for misdemeanors. Penalties for misdemeanors shall be as specified in Penal Code Section 19 and Municipal Code Chapter 1.16 (General Penalty).

