

## ARTICLE 7

# Planning Permit Procedures

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## CHAPTER 17.70 - PERMIT APPLICATION FILING AND PROCESSING

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### Sections:

- 17.70.010 - Purpose
- 17.70.020 - Authority for Land Use and Zoning Decisions
- 17.70.030 - Multiple Permit Applications
- 17.70.040 - Application Preparation and Filing
- 17.70.050 - Application Fees
- 17.70.060 - Indemnification
- 17.70.070 - Initial Application Review
- 17.70.080 - Project Evaluation and Staff Reports

### 17.70.010 - Purpose

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

### 17.70.020 - Authority for Land Use and Zoning Decisions

Table 7-1 (Review Authority) identifies the appropriate review authority responsible for reviewing and making decisions and considering appeals filed on each type of application required by this Development Code.

### 17.70.030 - Multiple Permit Applications

- A. **Concurrent filing.** An applicant for a development project that requires the filing of more than one application (e.g., Tentative Subdivision Map, Use Permit, etc.), shall file all related applications concurrently, together with all application fees required by Section 17.70.050 (Application Fees), unless these 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 (e.g., a project for which applications for Zoning Map amendment and a Use Permit are filed shall have both applications decided by the Council, instead of the Commission acting upon the Use Permit as otherwise provided by Table 7-1).

TABLE 7-1 - REVIEW AUTHORITY

Type of Action	Development Code Section	Role of Review Authority (1)		
		Director	Planning Commission	City Council
<b>Administrative and Legislative</b>				
Cultural Heritage-Related Actions	17.52	Recommend	Recommend	Decision
Development Agreements	17.76	Recommend	Recommend (2)	Decision
Development Code Amendments	17.94	Recommend	Recommend (2)	Decision
General Plan Amendments	17.94	Recommend	Recommend (2)	Decision
Interpretations	17.10.050	Decision (3)	Appeal	Appeal
Specific Plans	17.78	Recommend	Recommend (2)	Decision
Zoning Map Amendments	17.94	Recommend	Recommend (2)	Decision
<b>Planning Permits</b>				
Certificates of Occupancy	17.72.020	Issue (4)	Decision	Appeal
Development Review Permits	17.72.030	See Section 17.72.030 D. and Table 7-2		
Extensions of Time	17.74.060	Decision (3)	Appeal	Appeal
Limited Term Permits	17.72.040	Decision (3)	Appeal	Appeal
Lot Line Adjustments	17.84.040	Decision (3)	Appeal	Appeal
Minor Use Permits (MUP)	17.72.060	Decision (3)	Appeal	Appeal
Minor Variances	17.72.070	Decision (3)	Appeal	Appeal
Planned Development Permits	17.72.050	Recommend	Decision	Appeal
<b>Sign Permits</b>				
Master Sign Programs, murals, and Sign Exceptions Permitted	17.38	Recommend	Decision	Appeal
Sign Permits for signs within the Historical Combining Zone that do not comply with Subsection 17.28.040 C.2b, freeway oriented signs, all monument signs, and signs within specified areas.	17.38	Issued by the Development Review Committee (5)	Appeal	Appeal
All other Sign Permits	17.38	Issue (3)	Appeal	Appeal
Tentative Maps	17.81	Recommend	Decision	Appeal
Use Permits (UP)	17.72.060	Recommend	Decision	Appeal
Variances	17.72.070	Recommend	Decision	Appeal

Notes:

- (1) "Recommend" means that the review authority makes a recommendation to a higher decision-making body; "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 17.91 (Appeals).

- (2) The Commission's recommendation shall be processed in compliance with Section 17.92.050 (Recommendation by Commission).
- (3) The Director may defer action and refer the request to the Commission, so that the Commission may instead make the decision.
- (4) The Building Inspector may issue the Certificate of Occupancy under the direction of the Director.
- (5) See Section 17.72.030 D. (Development Review Committee) regarding the Development Review Committee.

### 17.70.040 - Application Preparation and Filing

#### A. Pre-application conference.

1. An applicant is encouraged to request a pre-application conference before completing and filing a planning permit application. 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.
2. 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.
3. Failure by City staff to identify all required studies or all applicable requirements shall not constitute a waiver of those 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 required fees and/or deposits, and all other information and materials required by the list of required application contents in the Department handout for the specific type of application. Applicants are encouraged to contact the Department before submitting an application to verify which materials are necessary for application filing.

**C. Eligibility for filing.** An application may only be filed by the owner of the subject site, an authorized representative of the owner, or other person with the written consent of the property owner.

#### D. Rejection of application.

1. **Application not technically complete.** If the Department determines that an application does not contain all of the required fees and/or deposits, and all other information and materials required by the list of application contents in the Department handout for the specific type of application, the Department shall not accept the application for processing.
2. **Application cannot lawfully be approved.** If the Department determines that an application cannot lawfully be approved by the City (e.g., a request for a Zoning Map amendment or Tentative Map could not be granted in the absence of a concurrent General Plan amendment; or a Use Permit application proposes a use that is not allowed in the applicable zone, etc.), the Department shall not accept the application for processing.

**17.70.050 - Application Fees**

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

**17.70.060 - Indemnification**

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

**17.70.070 - Initial Application Review**

- A. **Review for completeness.** The Director shall review each application for a development permit (e.g., Development Review Permit, Limited Term Permit, Planned Development Permit, Use Permit, or Variance, etc.) for completeness and accuracy before it is accepted as complete in compliance with Government Code Section 65943. The Director's determination of completeness shall be based on the City's list of required application contents (see Section 17.70.040.B - Application contents), and any additional written instructions provided to the applicant in any pre-application conference, and/or during the initial application review period.
  - 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. **Appeal of determination.** Where the Director has determined that an application is incomplete, and the applicant believes that the application is complete and/or that the information requested by the Director is not required, the applicant may appeal the Director's determination in compliance with Chapter 17.91 (Appeals).
  3. **Time for submittal of additional information.** When an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness shall occur. The time available to an applicant for submittal of additional information is limited by following Subsection A.4.
  4. **Expiration of application.**
    - a. If an applicant fails to provide the additional information identified in the Director's letter within 90 days following the date of the letter, the application shall expire and be deemed withdrawn, without any further action by the City.
    - b. The Director may grant one 90-day extension, if the applicant files a written request with the Department before expiration of the original 90-day period.
    - c. After the expiration of an application, future City consideration shall require the submittal of a new, complete application and associated fees.
  5. **Environmental information.** After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with the City's *Environmental Review Guidelines*.
- B. Referral of application.** At the discretion of the Director, or where otherwise required by this Development Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project.

### 17.70.080 - Project Evaluation and Staff Report

- A. **Staff evaluation.** The Director shall review each discretionary application filed in compliance with this Article to determine whether it complies and is consistent with the requirements of this Development Code, other applicable requirements of the Municipal Code, the General Plan, and any applicable specific plan.
- B. **Staff report.** The Director shall provide a staff report recommending to the Commission and/or Council (as applicable) whether the application should be approved, approved subject to conditions, or denied.
- C. **Report distribution.** Each staff report shall be provided to the applicant at the same time as the review authority before action on the application.

## CHAPTER 17.72 - PERMIT REVIEW PROCEDURES

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### Sections:

- 17.72.010 - Purpose
- 17.72.020 - Certificates of Occupancy
- 17.72.030 - Development Review Permits
- 17.72.040 - Limited Term Permits
- 17.72.050 - Planned Development Permits
- 17.72.060 - Use Permits and Minor Use Permits
- 17.72.070 - Variances and Minor Variances

### 17.72.010 - Purpose

- A. **Permit review procedures.** This Chapter provides procedures for the final review, and approval or denial of the planning permit applications established by this Development Code.
- B. **Subdivision review procedures.** Procedures and standards for the review and approval of subdivision maps are in Article 8 (Subdivision Regulations and Procedures).
- C. **Application filing and initial processing.** Where applicable, the procedures of this Chapter are carried out after those described in Chapter 17.70 (Permit Application Filing and Processing), for each application.

### 17.72.020 - Certificates of Occupancy

- A. **Purpose.** A Certificate of Occupancy 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 that apply to the use or structure.
- B. **Applicability.** No vacant land in any zone shall be occupied or used except for agricultural purposes and public utility lines, and no structure shall be occupied within any zone until a Certificate of Occupancy has been issued.
- C. **Issuing authority.** The Building Inspector is authorized to issue Certificates of Occupancy under the direction of the Director.
- D. **Application required.** An application for a Certificate of Occupancy for a new or changed use of land, a new structure, or an existing structure that has been altered or moved shall be filed with the Building Inspector before any land or structures shall be occupied or used.
- E. **Inspection and issuance.** A Certificate of Occupancy shall be issued after:
  - 1. Written notice that the premises are ready for use or occupancy; and
  - 2. Inspection confirms that the structure or use is in compliance with this Development Code and other applicable regulations.



**17.72.030 - Development Review Permits**

- A. Purpose.** The Development Review Permit process is intended to promote a visually attractive community; ensure that the appearance each structure will be compatible and harmonious with surrounding properties and community-wide themes; and achieve the purposes of the General Plan, the Municipal Code, and this Development Code.
- B. Definitions.** The following terms are defined for the purposes of this Section.
- 1. Minor and incidental.** Includes minor proposals or construction incidental to an existing project consistent with the regulations, rules, and standards for Development Review which are established from time to time by the Council. See Section 17.74.070 (Changes to an Approved Project) for the definition of the term "minor."
  - 2. Outdoor use area.** An outdoor area used for the display, sale, or storage of goods, materials, or services associated with a primary land use.
- C. Applicability.** The following applications and activities shall require Development Review in compliance with this Section:
1. Building Permits (e.g., exterior changes to the structure);
  2. Minor Use Permits (only if a Building Permit is required);
  3. Minor Variances (only if a Building Permit is required);
  4. Planned Development Permits;
  5. Sign Permits;
  6. Specific plans with architectural elements;
  7. Use Permits (only if a Building Permit is required);
  8. Variances (only if a Building Permit is required); and
  9. Other physical improvements (e.g., landscaping, conversion to, and paving of, parking lots) that do not require a Building Permit.
- D. Development Review Committee (DRC).**
1. The City's Development Review Committee shall be comprised of the following members in compliance with Municipal Code Section 2.30.050 (Development Review Committee - Established):
    - a. Three City employees including the Director, the City Engineer, and the Fire Chief, or their designees;
    - b. One member of the Commission appointed by the Council; and
    - c. One design professional under contract with the City and appointed by the Council.
  2. Review and decisions by the Development Review Committee shall be subject to and comply with the City's design and development ordinances and guidelines then in effect.
  3. Development Review Permits may be granted in compliance with Table 7-2 (Development Review Permit Authority).

**TABLE 7-2 - DEVELOPMENT REVIEW PERMIT AUTHORITY**

Permit Review Threshold Categories	DRC	Commission
Duplex or multi-family unit with no more than four dwellings.	-	
Duplex or multi-family unit with five or more dwellings.		-
Commercial, industrial, nonresidential, or office structure with less than 2,000 square feet of gross floor area including outdoor use areas.	-	
Commercial, industrial, nonresidential, or office structure with 2,000 square feet or greater of gross floor area including outdoor use areas.		-
Addition to an existing lawfully used structure of between 1,000 and 2,500 square feet computed on total gross floor area of the existing structure plus the area of the addition.	-	
Addition to an existing lawfully used structure of 2,501 square feet or more, computed on total gross floor area of the existing structure plus the area of the addition.		-
Replacement of existing structure of the same capacity, size, and use.	-	
Replacement of existing structure resulting in an increase in capacity, size, or use.		-
Minor facade changes and sign permits within the Historic District, unless exempt pursuant to Section 17.28.040. C2, and all monument signs and signs within specified areas.	-	
Sign Exception Permits.		-
Grading activities or use conversion:  Site disturbance in excess of 50 cubic yards of soil and/or more than five feet in depth when determined by the Community Development Director and City Engineer to impact scenic resources, or significantly affect natural topographic features and vegetation.  A proposed use conversion requiring an increase in parking area as required by City ordinance, resolution, or regulation then in effect.		-
The Director shall determine the review authority for proposals that do not meet the threshold criteria identified above.		

- E. **Staff review exemptions.** A permit for a single-family dwelling, façade changes or additions of less than 1,000 square feet that comply with the City’s design guidelines and are compatible with the existing architecture, or other activity deemed by the Director to be minor and incidental shall be reviewed by Department staff, who shall have final authority to review, and approve or deny the application in compliance with this Section. See Section 17.74.070 (Changes to an Approved Project) for the definition of the term "minor."
  
- F. **Conceptual Development Review.** The Development Review Committee shall conduct conceptual Development Review for projects that are not yet formally filed, but whose applicants desire conceptual or preliminary review of their development project before filing their formal Development Review application. The applicant shall submit an application, fee, site plan, and elevations and the Development Review Committee provides preliminary comments on the site plan and elevations to the applicant.

- G. Project proposed by City or other governmental agency.** The Development Review Committee shall review each Building Permit application (e.g., exterior changes to the structure) for a project proposed by the City, the Redevelopment Agency, and any other local, State, or Federal agency for which review is required in compliance with Subsection C. (Applicability), above. This review shall be advisory only and shall not affect the authority of the Council, the Redevelopment Agency, or any other local, State, or Federal agency, respectively, conducting the project to make any final determination regarding the project.
- H. Application requirements.** An application for a Development Review Permit shall be prepared, filed, and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection J. (Findings required for approval), below.
- I. Environmental review.** A Development Review Permit may require environmental review in compliance with the California Environmental Quality Act and the City's *Environmental Review Guidelines* prior to approval.
- J. Findings required for approval.** The approval of a Development Review Permit shall require that the review authority first make all of the following findings:
1. The proposed project is consistent with the General Plan and any applicable specific plan;
  2. The proposed project is allowed within the applicable zone and complies with all other applicable provisions of this Development Code and the Municipal Code; and
  3. The design, location, size, and characteristics of the proposed project are in compliance with any project-specific design standards in effect and any standards and guidelines for Development Review Permits which may be established from time to time by the Council.
- K. Final Development Review.**
1. When the review authority for final Development Review completes its review, it shall approve, conditionally approve, or deny the application based on the findings in Subsection J. (Findings required for approval).
  2. A copy of the decision, findings, and any applicable conditions shall be provided to the applicant.
- L. Expiration and extension of approvals.** Permit approval shall expire, and may be extended in compliance with Chapter 17.74 (Permit Implementation, Time Limits, and Extensions).
- M. Project changes.** Changes to an approved Development Review Permit may only be granted in compliance with Section 17.74.070 (Changes to an Approved Project).
- N. Referrals by the Development Review Committee.** If the Development Review Committee determines that a proposed project raises issues that should be resolved by the Commission and/or the Council, the Development Review Committee may suspend its consideration of the application and refer the matter to the Commission and/or Council for a determination.
- O. Conditions of approval.** The review authority may require conditions of approval to ensure that the project will comply with the findings required by Subsection J. (Findings required for approval), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for denial of the Certificate of Occupancy and/or revocation of the permit.

- P. Post review procedures.** The procedures and requirements in Chapter 17.74 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Development Code Administration), shall apply following the decision on an application for a Development Review Permit.

### 17.72.040 - Limited Term Permits

- A. Purpose.** This Section establishes procedures and standards for Limited Term Permits for the short-term activities specified in this Section. These are activities that may not comply with particular standards of the applicable zone, but may otherwise be acceptable because of their temporary nature and if reviewed and appropriately conditioned in compliance with this Section.
- B. Applicability.** The activities regulated by this Section shall not be established, operated, or conducted in any manner without the prior approval and maintenance of a Limited Term Permit.
- C. Review authority.** A Limited Term Permit may be reviewed and approved or denied administratively by the Director, in compliance with this Section.
- D. Exempt short-term activities.** The following activities are allowed without a Limited Term Permit. Subsection E. (Allowed short-term activities) identifies short-term activities that may be allowed with Limited Term Permit approval.
- 1. Construction yards - On-site.** On-site contractor's construction yard for an approved construction project. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the Building Permit authorizing the construction project, whichever first occurs.
  - 2. Emergency shelter or facilities.** Emergency public health and safety needs/land use activities, as determined by the Council.
  - 3. Fund-raising community events or car washes.**
    - a. Community events (e.g., bake sales, yard sales, etc.) conducted on property within a commercial, industrial, or institutional zone, limited to a maximum of two days for each sponsoring organization.
    - b. Car washes conducted on property within a commercial, industrial, or institutional zone, limited to a maximum of two days per month for each sponsoring organization.
    - c. Sponsorship shall be limited to educational, fraternal, religious, or service organizations directly engaged in civic or charitable efforts, or to tax exempt organizations in compliance with 501(c) of the Federal Revenue and Taxation Code.
  - 4. Garage sales.** See Municipal Code Section 5.44.010.
  - 5. Model homes.** A model home or model home complex may be authorized before the completion of subdivision improvements in compliance with the following standards.
    - a. The sales office and any off-street parking shall be converted back to residential use and/or removed before the issuance of the Final Occupancy Permit or within 14 days from the sale of the last parcel in the subdivision, whichever first occurs.
    - b. The model home complex shall be used to sell only units within the subdivision within which the complex is located.
    - c. Model home permits will be finalized and the model homes will be allowed to be open

to the public only after all subdivision improvements are completed and accepted by the City.

- d. Model home sign permits will be issued only after all subdivision improvements are completed and accepted by the City.
  - e. The review authority may require other conditions of approval deemed reasonable and necessary to protect the public health, safety, and general welfare of persons residing or working in the neighborhood.
6. **Public property or public right-of-way.** Activities conducted on public property that are authorized by an Encroachment Permit, if required.
  7. **Public parks.** Activities conducted within public parks which are subject to the issuance of a permit from the Parks and Recreation Department.
  8. **Temporary occupancy during construction.**
    - a. **Major development projects.** A temporary structure and property may be used during the construction phase of an approved major development project (e.g., residential projects with five or more dwelling units or any commercial or industrial project). The structure or property may be used as offices or for the storage of equipment and/or tools; provided, the temporary structure is located within the City.
    - b. **Minor development projects.** An existing dwelling unit or a temporary structure and property may be used during the construction phase of an approved minor development project (e.g., residential projects with four or fewer dwelling units). The structure or property may be used as a temporary residence, an office, or for the storage of equipment and/or tools.
    - c. **Appropriate operating criteria.** Operation of the use shall comply with the following criteria:
      - (1) Proper provisions for adequate and safe ingress and egress;
      - (2) All work shall be performed on-site;
      - (3) Proper storage of asphalt, concrete, and dirt at designated sites within the subject property; provided, the applicant furnishes a schedule, acceptable to the Director, for the periodic disposal or recycling of these materials;
      - (4) Proper provisions designed to minimize potential conflicts between the work to be performed on-site and the ordinary business and uses conducted within the City;
      - (5) All work areas shall be kept in an orderly, clean, and safe condition; and
      - (6) Only one temporary structure (e.g., trailer) may be placed on-site.
    - d. **Duration of use.** The use may operate for up to 12 months following the issuance of the companion Building Permit, or upon completion of the subject development project, whichever first occurs.

- e. **Condition of site following completion.** All temporary structure and related improvements shall be completely removed from the subject site following expiration of the 12-month period or within 30 days of completion of the development project, whichever first occurs.
- E. Allowed short-term activities.** A Limited Term Permit may authorize the following short-term activities within the specified time limits, but in no event for more than 12 months. Other activities that are proposed to occur for no more than 12 months, but do not fall within the categories defined below shall instead comply with the planning permit requirements and development standards that otherwise apply to the property.
1. **Construction yards - Off-site.** Off-site contractors' construction yards, for an approved construction project. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the Building Permit authorizing the construction project, whichever first occurs.
  2. **Events.** Art and craft exhibits, carnivals, circuses, concerts, fairs, farmer's markets, festivals, flea markets, food events, open-air theaters, outdoor entertainment/ sporting events, religious revivals, rummage sales, second hand sales, swap meets, and other special events for up to five consecutive days, or four two-day weekends, within a 12-month period, allowed only on non-residentially zoned properties.
  3. **Fund-raising community events or car washes.**
    - a. Community events (e.g., bake sales, yard sales, etc.) conducted on property within a commercial, industrial, or institutional zone, limited to a maximum of four days for each sponsoring organization.
    - b. Car washes conducted on property within a commercial, industrial, or institutional zone, limited to a maximum of four days per month for each sponsoring organization.
    - c. Sponsorship shall be limited to educational, fraternal, religious, or service organizations directly engaged in civic or charitable efforts, or to tax exempt organizations in compliance with 501(c) of the Federal Revenue and Taxation Code.
  4. **Location filming.** The temporary use of a specific site for the location filming of commercials, movies, videos, etc., for the time specified by the Director, but not to exceed 180 days.
  5. **Model homes.** A model home or model home complex which exceeds any of the criteria identified in Subparagraph D. 5. (Model homes), above.
  6. **Seasonal sales lots.** Seasonal sales activities (e.g., Christmas tree lots, Fireworks booths, Thanksgiving pumpkins, etc.) including temporary residence/security trailers, on non-residentially zoned properties, for up to 30 days.
  7. **Temporary occupancy during construction.** Temporary structures and property may be used during the construction phase of an approved development project exceeding any of the criteria identified in Subparagraph D. 8. (Temporary occupancy during construction), above, in compliance with the following:
    - a. **Length of permit.** The permit may be approved for up to 18 months following the issuance of the companion Building Permit, or upon completion of the subject development project, whichever first occurs.

- b. **Extension of permit.** The permit may be extended by the Director if a written request for extension is submitted before expiration of the permit and reasonable reasons are provided by the applicant to justify the requested extension (e.g., the delay was caused by reasons beyond the control of the applicant). The permit may be extended for up to an additional 18 months.
8. **Temporary real estate sales offices.** A temporary real estate sales office may be established within the area of an approved subdivision, solely for the first sale of homes. An application for a temporary real estate office may be approved for a maximum of 12 months from the date of approval.
9. **Temporary structures.** A temporary classroom, office, or similar structure, including a manufactured or mobile unit, may be approved for a maximum of 12 months from the date of approval, as an accessory use or as the first phase of a development project.
10. **Temporary vendor carts/stands.** A temporary cart or stand may be used for the outdoor sales of food and beverages (e.g., fruit, hot dogs, ice cream) and merchandise, when conducted in compliance with the following standards:
- a. For the purposes of this Section the following terms shall have the following definitions:
- (1) Itinerant vendor shall mean and include:
- (a) Any person who has no established place of business within the City and who is engaged in transient business, traveling from place to place for the purpose of selling any goods, merchandise, services, or wares, or for the purpose of taking orders for the sale of any goods, merchandise, services, or wares to be delivered or performed at some future time and date; and
- (b) Any person who has obtained the proper City licenses, permits, and private permission to engage in a transient business in one location or set up a temporary location for the purpose of selling any goods, merchandise, services, or wares, or for the purpose of taking orders for the sale of any goods, merchandise, services, or wares to be delivered or performed at some future time and date.
- (2) Street vendor shall mean and include any person who will stand or park any cart or stand from which fruits, goods, merchandise, vegetables, wares, or food stuffs are sold, displayed, or offered for sale.
- b. The cart or stand may only operate within the confines of private courtyards, patios, plazas, interior gardens, or in parking lots if the applicant and property owner can demonstrate that the cart or stand will not impact parking, and shall complement and enhance the shopping center=s retail environment and enliven the streetscape within commercial zones of the City.
- c. The cart or stand may only operate within the commercial zones within the City.
- d. Only one cart or stand shall be allowed within a single shopping center.
- e. The permit for the cart or stand may be approved for up to 12 months. The permit may be extended by the Director if a written request for extension is submitted before expiration of the permit. The permit may be extended for up to an additional 12 months.

- f. The cart or stand vendor may only operate in compliance with the following limitations. Except as otherwise provided in this Section, no vendor shall operate within the City:
- (1) Between the hours of 7:00 p.m. and 11:00 a.m. daily;
  - (2) Within 1,000 feet of any park, playground, public recreation facility, or school property;
  - (3) Within 50 feet of any public street intersection;
  - (4) In a manner which constitutes a violation of California Vehicle Code Section 22400 and 22507;
  - (5) In a City parking lot; or
  - (6) Within the Downtown Historic District, unless associated with a seasonal event authorized by a Limited Term Permit issued in compliance with this Section.
- g. The provisions of this Subsection shall not apply to persons delivering articles upon order of or by agreement with a customer from a store or other fixed place of business or distribution.
- h. Each cart or stand shall be freestanding, non-motorized, portable, and limited to the sale of beverages, food, and other like merchandise.
- i. Each cart or stand shall be approved individually as to its design and aesthetic characteristics, location, and size, including signs.
- j. A Business License to operate the cart or stand shall be obtained from the City.
- k. No cart or stand, nor a portion of a cart or stand, shall be located within the public right-of-way, nor impede the normal use of circulation aisles or driveways, nor be located in a manner that encourages customers to stop in the circulation aisle, driveway, or street to obtain vendor service.
- l. The vendor shall be responsible to ensure that the cart or stand, and the area around the cart or stand, shall be kept in a clean, neat, orderly, safe, and sanitary condition at all times.
- m. Each cart or stand operating under the provisions of this Subparagraph and in compliance with the permit issued under this Section shall be equipped with a trash receptacle of a size sufficient to accommodate all of the trash and refuse generated by its vending activities.
- n. All signs associated with the cart or stand shall be in compliance with Chapter 17.38 (Signs).
- o. The vendor shall display the permit on their person at all times while engaged in any vending activities.
- p. The Director may require the vendor to post a cash bond or other surety acceptable to the Director to ensure compliance with any or all of the conditions identified in this Subparagraph. The posting shall be in compliance with Section 17.74.050 (Performance Guarantees).



11. **Temporary work trailers.** A trailer or mobile home used as a temporary work site for employees of a business, provided that:
    - a. The use is authorized by a Building Permit for the trailer or mobile home, and the Building Permit for the permanent structure;
    - b. The use is appropriate because:
      - (1) The trailer or mobile home will be in place during construction or remodeling of a permanent commercial or manufacturing structure for a maximum of 12 months; or
      - (2) The applicant has demonstrated that the temporary work site is a short-term necessity for a maximum of 12 months, while a permanent work site is being obtained.
    - c. The trailer or mobile home is removed before final building inspection or concurrently with the issuance of a Certificate of Occupancy for the permanent structure.
  12. **Similar short-term activities.** A short-term activity that the Director determines is similar to the other activities listed in this Subsection, and compatible with the applicable zone and surrounding land uses.
- F. Development standards.** The Director shall establish standards based on the type of short-term activity, using the requirements of the applicable zone for guidance.
- G. Application requirements.** An application for a Limited Term Permit shall be prepared, filed, and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). It is the responsibility of the applicant to establish evidence in support of the findings required by Subsection I. (Findings required), below.
- H. Project review, notice, and hearing.** Before a decision on a Limited Term Permit, the City shall provide notice in compliance with Chapter 17.92 (Public Hearings).
1. **Public notice.** The notice shall state that the Director will decide whether to approve or deny the Limited Term 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.
  2. **If hearing is requested.** If a public hearing is requested, the Director shall schedule the hearing which shall be noticed and conducted in compliance with Chapter 17.92 (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 H.1, above.
- I. Findings required.** The approval of a Limited Term Permit shall require that the Director first find that the proposed short-term activity complies with all applicable requirements of this Section.

- J. Post review procedures.** The procedures and requirements in Chapter 17.74 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Development Code Administration), shall apply following a decision on a Limited Term Permit application.
- 1. Site condition following short-term activity.** Each site occupied by a short-term activity shall be cleaned of debris, litter, or other evidence of the short-term activity on completion or removal of the activity, and shall thereafter be used in compliance with the provisions of this Development Code. Performance security may be required before initiation of the activity to ensure cleanup after the activity is finished.
  - 2. Performance security for temporary structures.** Before issuance of a Limited Term Permit the applicant shall provide performance security in a form and amount acceptable to the Director to guarantee removal of all temporary structures within 30 days following the expiration of the Limited Term Permit.
  - 3. Performance security requirements.** Any required performance security shall be furnished to the City in compliance with Section 17.74.050 (Performance Guarantees).

### 17.72.050 - Planned Development Permits

- A. Purpose.** The Planned Development Permit process is intended to provide for flexibility in the application of Development Code standards to proposed development under limited and unique circumstances. The purpose is to allow consideration of innovation in site planning and other aspects of project design, and more effective design responses to site features, uses on adjoining properties, and environmental impacts than the Development Code standards would produce without adjustment. The City expects each Planned Development Permit project to be of obvious, significantly higher quality than would be achieved through conventional design practices and standards.
- B. Applicability.**
- 1. Minimum site area.** Planned Development Permit approval may be requested for a residential, commercial, industrial, and/or mixed-use development on a site larger than one acre.
  - 2. Timing of permit.** No Building or Grading Permit shall be issued on a site for which a Planned Development Permit is proposed until the Planned Development Permit has been approved in compliance with this Section.
  - 3. Scope of approval.**
    - a. Planned Development Permit approval by the Commission, or the Council on appeal, may adjust or modify, where determined by the review authority to be necessary and justifiable, any applicable development standard of this Development Code (e.g., parcel size, parking, setbacks, street layout, structure height, etc.); provided, the approval shall not authorize a land use that is not allowed in the applicable zone by Article 2 (Zones, Allowable Land Uses, and Zone Standards).
    - b. A project proposing increased residential density may only be approved by the Council in compliance with Chapter 17.32 (Affordable Housing Density Bonuses and Incentives).

- C. **Application requirements.** An application shall be prepared, filed, and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F. (Commission=s action), below.
1. **Development or site plan required.** Each Planned Development Permit application shall be accompanied by a development or site plan for the entire area of the proposed planned development showing the material specified in Subsection 17.70.040 B. (Application contents) and describing exactly how the proposed project addresses the following items.
    - a. **Provision of affordable workforce housing units and a mix of housing types.** The applicant shall identify the location of all housing units, either attached or detached, which will be available for sale to low-to-moderate income families of Nevada County in compliance with Chapter 17.32 (Affordable Housing Density Bonuses and Incentives). The applicant shall also provide evidence of how the housing unit types have been mixed and integrated within the proposed project.
    - b. **Integration of community design principles of the General Plan.** The applicant shall identify how the project integrates the City's community design principles as the clustering, grouping, or mixing of uses, protecting important natural features, and providing internal pedestrian and bicycle connectivity.
    - c. **Future transportation/infrastructure needs and current project-related deficiencies.** The applicant shall provide an evaluation of how the project addresses and mitigates any existing transportation/infrastructure deficiencies in its immediate area of the community. The evaluation shall also show how the project will address any new demand placed on the City's transportation/infrastructure system through the provision of any on-site and off-site mitigation.
    - d. **Future park/recreation facility needs and maintenance costs.** The application shall identify all proposed park, recreation, or open space amenities proposed for the project and describe how the features meet the park and recreation goals of the General Plan. For all park, recreation, or open space amenities shown on the plan, the applicant shall provide a financing mechanism to cover projected maintenance costs.
    - e. **Future short- and long-term fiscal impacts.** The applicant shall provide information that documents the project's short- and long-term fiscal implications to the City. The information may be presented in the form of a fiscal impact analysis.
    - f. **Consistency with General Plan policies and Sphere of Influence Plan.** The application shall state how the proposed project is consistent with the goals and objectives of the General Plan and Sphere of Influence Plan. If the project is found to be inconsistent with any goal or policy, the applicant shall provide rationale or evidence of why an exception is warranted.
  2. **Additional requirements for Planned Development Permits involving annexation.** For any Planned Development Permit that involves an annexation to the City, the following application procedures shall be completed before the City is able to deem the application complete.
    - a. **Definition of annexation boundaries, phasing, and rate of growth.** For all applications involving an annexation, the applicant shall define and provide rationale for how the annexation boundaries were formed, how the project would be phased, and an estimated rate of growth for all development types. The description of the phasing plan shall reference the timing for initiating any site disturbance or grading, installation of infrastructure, construction of any public amenities (e.g., open space, parks, schools, etc.), and development of all uses shown on the development or site plan.

- b. **For annexation applications that are not contiguous to the City limits.** For all annexation applications that are not contiguous to the City limits:
- (1) The applicant shall request a review of the annexation boundaries by the Council in which the boundaries would be evaluated against the City Sphere of Influence Plan, City Master Utility Plans, and the provision of public services. The Council would provide direction as to the boundaries of annexation, public service issues that should be addressed as part of the application, and the timing or appropriate phasing of the annexation; and
  - (2) The application shall contain written confirmation of at least 51 percent of the registered voters of the intervening parcels of their support or non-opposition of the annexation.
- c. **For annexation applications that are entirely outside of the five-year time horizon.**
- (1) For annexation applications that are located entirely outside of the immediate five-year time horizon as specified by the City's Sphere of Influence Plan, the application shall be deferred unless authorized by resolution of the Council with concurrence of the Nevada County Local Agency Formation Commission (LAFCo).
  - (2) To initiate a review by the Council of the proposal and its alteration to the Sphere of Influence Plan, a written request shall be filed with the City.
  - (3) The Council may elect to support the application with conditions which involve revising the annexation boundaries, mitigating public service demands, and establishing the timing or appropriate phasing.
  - (4) A request for an exception to this procedure may be made to the Council and granted based on the following:
    - (a) The project's consistencies with General Plan goals, the City Sphere of Influence Plan, City Master Utility Plans, and the provision of public services;
    - (b) The property is presently developed, contiguous to the City, and seeks City services; or
    - (c) The project demonstrates a significant community or public benefit as evidenced by its design, ability to resolve an infrastructure deficiency, or provide an improvement of community-wide benefit.
- d. **Fiscal impact analysis required.** For all annexations, the applicant shall be required to prepare a fiscal impact analysis of the entire annexation area.
- e. **Economic/market analysis required.** For all annexations proposing a change in the land use designations or mix established for the property by the General Plan in the amount of 20 percent or more of its acreage or density, the applicant shall be required to prepare an economic/market analysis that verifies that the project will not impact the existing tax base, jobs/housing balance, and regional market demand.

- D. Review authority.** A Planned Development Permit may be granted by the Commission.
- E. Project review, notice, and hearing.**
- 1. Application review.** Each Planned Development Permit application shall be analyzed by the Director to ensure that the application is consistent with the purpose and intent of this Section. The Director shall submit a staff report and recommendation to the Commission for their consideration.
  - 2. Environmental review.** Each proposed Planned Development Permit shall require environmental review in compliance with the California Environmental Quality Act (CEQA) and the City's *Environmental Review Guidelines*.
  - 3. Public hearing.** The Commission shall conduct a public hearing on an application for a Planned Development Permit before the approval or denial of the permit. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
- F. Commission's action.** Following a public hearing, the Commission may approve or deny a Planned Development Permit, and shall record the decision and the findings upon which the decision is based.
- 1. Required findings.** Planned Development Permit approval shall require that the Commission first make all of the following findings:
    - a. The project is consistent with the General Plan and any applicable specific plan, and allowed within the applicable zone;
    - b. The project complies with all applicable requirements of this Development Code other than those modified by the Planned Development Permit;
    - c. The approved modifications to the development standards of this Development Code are necessary and appropriate to accommodate the superior design of the proposed project, its compatibility with adjacent land uses, and its successful mitigation of any identified environmental impacts;
    - d. The project complies with all applicable provisions of the City's Design Guidelines;
    - e. The project can be adequately, conveniently, and reasonably served by public facilities, services, and utilities;
    - f. The planning concepts and design features of the project are reasonably suited to the characteristics of the site and the surrounding neighborhood;
    - g. The location, size, planning concepts, design features, and operating characteristics of the project are and will be compatible with the character of the site, and the land uses and development intended for the surrounding neighborhood by the General Plan;
    - h. The site is adequate for the project in terms of size, shape, topography, and circumstances;
    - i. The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;

- j. The project meets standards of density of dwelling units, light and air, open space, and pedestrian and vehicular circulation which are similar to those required by the regulations of the zone in which the development is located; and
  - k. The project permanently establishes undisturbed or replanted land as open space in compliance with the General Plan.
2. **Conditions of approval.** In approving a Planned Development Permit, the Commission may require conditions of approval to ensure that the project will comply with the findings required by Subparagraph F.1 (Required findings), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for denial of the Certificate of Occupancy and/or revocation of the permit.
- G. Time limit and expiration.**
1. A Planned Development Permit may specify a development completion period acceptable to the Commission.
  2. If a time limit is not specified in the permit, the development completion period shall not exceed two years, or the total extensions granted to other associated entitlements (e.g., Tentative Map) by the City in conjunction with the Planned Development Permit, whichever first occurs.
  3. If construction of the project has not been completed within the required time limit identified in Subparagraphs 1. or 2., above, the Planned Development Permit shall automatically be terminated and deemed void, with no further action required by the City.
- H. Planned Development Permit amendment.**
1. **Commission action on requested changes.** A requested amendment to the Planned Development Permit, other than those allowed by Subparagraph 3., below, shall be submitted to the Commission for review and approval following the same review notice and hearing procedures as for the original approval.
  2. **Added conditions.** When considering an amendment to the Planned Development Permit, the Commission may, as a condition of approval, impose added changes or conditions to the amendment as it deems reasonable and necessary to carry out the purpose and intent of the original Planned Development Permit and this Section.
  3. **Minor changes by Director.** Minor changes in the Planned Development Permit which do not involve an increase in structure area, an increase in the number of dwelling units, or a change of use may be approved by the Director in compliance with Section 17.74.070 (Changes to an Approved Project).
- I. Post review procedures.** The procedures and requirements in Chapter 17.74 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Development Code Administration), shall apply following a decision on a Planned Development Permit application.

**17.72.060 - Use Permits and Minor Use Permits**

- A. Purpose.** A Use Permit or Minor Use Permit provides a process for reviewing uses and activities that may be appropriate in the applicable zone, but whose effects on a site and surroundings cannot be determined before being proposed for a specific site. Guarantees to ensure compliance with the terms and conditions of the permit may be required by the review authority in compliance with Section 17.74.050 (Performance Guarantees).
- B. Applicability.** A Use Permit or Minor Use Permit is required to authorize proposed land uses identified by Article 2 (Zones, Allowable Land Uses, and Zone Standards) as being allowable in the applicable zone subject to the approval of a Use Permit or Minor Use Permit.
- C. Review authority.**
- 1. Use Permits.** Use Permits shall be approved or denied by the Commission.
  - 2. Minor Use Permits.**
    - a. Minor Use Permits shall be approved or denied by the Director.
    - b. The Director may choose to refer any Minor Use Permit application to the Commission for hearing and decision.
- D. Application requirements.** An application for a Use Permit or Minor Use Permit shall be prepared, filed, and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F. (Findings required), below.
- E. 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.
- 1. Use Permits.** The Commission shall conduct a public hearing on an application for a Use Permit before a decision on the application. Notice of the hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
  - 2. Minor Use Permits.** Before a decision on a Minor Use Permit, the City shall provide notice of a public hearing in compliance with Chapter 17.92 (Public Hearings).
    - a. **Public notice.** The notice shall state that the Director will decide whether to approve or deny the Minor Use Permit application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision.
    - b. **If hearing is requested.** If a public hearing is requested, the Director shall schedule the hearing which shall be noticed and conducted in compliance with Chapter 17.92 (Public Hearings).
    - c. **If no hearing is requested.** If no public hearing is requested, the Director shall render a decision on the date specified in the public notice referred to in Subparagraph 2. a., above.

- F. Findings required.** Use Permit or Minor Use Permit approval shall require that the review authority first make all of the following findings:
1. The proposed use is consistent with the General Plan and any applicable specific plan;
  2. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Development Code and the Municipal Code;
  3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity; and
  4. The 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 density, intensity, and type of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zone in which the property is located.
- G. Conditions of approval.** In approving a Use Permit or Minor Use Permit, the review authority may impose conditions of approval to ensure that the project will comply with the findings required by Subsection F. (Findings required), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for denial of the Certificate of Occupancy and/or revocation of the permit.
- H. Post review procedures.** The procedures and requirements in Chapter 17.74 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Development Code Administration), shall apply following a decision on a Use Permit or Minor Use Permit application.

### 17.72.070 - Variances and Minor Variances

- A. Purpose.** The Variance and Minor Variance provide a process for City consideration of requests to waive or modify certain standards of this Development Code when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zone.
- B. Applicability.** A Variance or Minor Variance may be granted to waive or modify any requirement of this Development Code except: allowed land uses; residential density; specific prohibitions (for example, prohibited signs), or procedural requirements.



**C. Review authority.**

1. **Variance.** A Variance application shall be reviewed, and approved or denied by the Commission.
2. **Minor Variance.** A Minor Variance application shall be reviewed, and approved or denied by the Director.
  - a. The Director may grant a Minor Variance to reduce any of the requirements of this Development Code identified in Table 7-3, below.

**TABLE 7-3 - ALLOWABLE MINOR VARIANCES**

Types of Minor Variances Allowed	Maximum Adjustment
1. <b>Distance between structures.</b> A decrease in the minimum required distance between structures located on the same parcel	<b>15 percent</b>
2. <b>Fence or walls.</b> Fences, gates, pilasters, or walls in the side and rear setbacks that exceed six feet in height.	<b>8 feet maximum</b>
3. <b>Floor area ratio.</b> An increase in the maximum allowable floor area ratio.	<b>15 percent</b>
4. <b>Open space.</b> A decrease in the minimum open space requirements.	<b>20 percent</b>
5. <b>Parcel area.</b> A decrease in the minimum required parcel area or size.	<b>10 percent</b>
6. <b>Parcel coverage.</b> An increase in the maximum allowable parcel coverage.	<b>15 percent</b>
7. <b>Parcel width dimensions.</b> A decrease in the minimum required parcel width dimensions.	<b>10 percent</b>
8. <b>Parking, loading, and landscaping.</b> A decrease in the minimum parking and loading ratio standards and landscaping requirements.	<b>10 percent</b>
9. <b>Parking lot dimensions.</b> A decrease in the minimum parking lot and loading dimensions (e.g., aisle, driveway, and space widths).	<b>15 percent</b>
10. <b>Projections.</b> An increase in the allowable projection of canopies, cornices, eaves, fireplaces, landings, masonry chimneys, overhangs, raised porches, stairways, and steps into a required setback areas, but no closer than 3 feet to any property line.	<b>10 percent</b>
11. <b>Setback areas.</b> A decrease in a required setback.  Front setback  Side setbacks  Rear setback	<b>10 percent</b>
	<b>10 percent</b>
	<b>15 percent</b>
12. <b>Sign regulations.</b> (other than prohibited signs)	<b>10 percent</b>
13. <b>Structure heights.</b> An increase in the maximum allowable structure heights.	<b>10 percent</b>
14. <b>Required Variance.</b> A request which exceeds the limitations identified in this Subsection shall require the filing of a Variance application in compliance with this Section.	

- b. The Director may choose to refer any Minor Variance application to the Commission for hearing and decision.

- D. Application requirements.** An application for a Variance or Minor Variance shall be filed and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F. (Findings required), below.
- E. Project review, notice, and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with this Section, and all other applicable requirements of this Development Code.
- 1. Variance.** The Commission shall conduct a public hearing on an application for a Variance before a decision. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
  - 2. Minor Variances.** Before a decision on a Minor Variance, the City shall provide notice of a public hearing in compliance with Chapter 17.92 (Public Hearings).
    - a. Public notice.** The notice shall state that the Director will decide whether to approve or deny the Minor Variance 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. If hearing is requested.** If a public hearing is requested, the Director shall schedule the hearing which shall be noticed and conducted in compliance with Chapter 17.92 (Public Hearings).
    - c. If no hearing is requested.** If no public hearing is requested, the Director shall render a decision on the date specified in the public notice referred to in Subparagraph 2. a., above.
- F. Findings required.**
- 1. General findings.** Variance or Minor Variance approval shall require that the review authority first make all of the following findings:
    - a. There are special circumstances applicable to the property, including location, shape, size, surroundings, and topography, so that the strict application of this Development Code deprives the property of privileges enjoyed by other property in the vicinity and within the same zone;
    - b. The approval of the Variance or Minor Variance includes conditions of approval as necessary to ensure that the adjustment granted does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and within the same zone; and
    - c. The granting of the application will not authorize an activity or use which is not otherwise expressly authorized by the zone governing the parcel of property for which the application is made.

2. **Findings for off-site parking Variance.** The approval of a Variance to allow some or all of the parking spaces required for a nonresidential project to be located off-site, or to allow in-lieu fees or facilities instead of the required on-site parking spaces, shall require that the review authority first make both of the following findings in compliance with Government Code Section 65906.5, instead of those required by Subsection F.1, above.
    - a. The Variance will be an incentive to, and a benefit for, the nonresidential development; and
    - b. The Variance will further facilitate access to the nonresidential development by users of public transit facilities, and other modes of transportation (e.g., guideway facilities).
  3. **Finding for reasonable accommodation.** The review authority may also grant a Variance or Minor Variance to the site planning or development standards of this Development Code in compliance with this Section, based on the finding that the Variance or Minor Variance is necessary to accomplish a reasonable accommodation of the needs of a disabled person in compliance with the Americans with Disabilities Act (ADA).
- G. Conditions of approval.** In approving a Variance or Minor Variance, the review authority may impose conditions of approval to ensure that the project will comply with the findings required by Subsection F. (Findings required), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for denial of the Certificate of Occupancy and/or revocation of the permit.
- H. Post review procedures.** The procedures and requirements in Chapter 17.74 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Development Code Administration), shall apply following a decision on a Variance or Minor Variance application.

## CHAPTER 17.74 - PERMIT IMPLEMENTATION, TIME LIMITS, AND EXTENSIONS

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### Sections:

- 17.74.010 - Purpose
- 17.74.020 - Effective Date of Permit
- 17.74.030 - Application Deemed Approved
- 17.74.040 - Permits to Run with the Land
- 17.74.050 - Performance Guarantees
- 17.74.060 - Time Limits and Extensions
- 17.74.070 - Changes to an Approved Project
- 17.74.080 - Resubmittals
- 17.74.090 - Covenants of Easements

### **17.74.010 - Purpose**

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

### **17.74.020 - Effective Date of Permit**

The approval of a planning permit shall become effective on the 16<sup>th</sup> day following the date of application approval, where no appeal of the approval has been filed in compliance with Chapter 17.91 (Appeals).

### **17.74.030 - Application Deemed Approved**

A planning permit application that is deemed approved by operation of law in compliance with Government Code Section 65956 shall be subject to all applicable provisions of this Development Code, which shall be satisfied by the applicant before a Building Permit is issued or a land use not requiring a Building Permit is established.

### **17.74.040 - Permits to Run with the Land**

A Development Review Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Use Permit, or Variance approval that is granted in compliance with Chapter 17.72 (Permit Review Procedures) shall be deemed to run with the land through any change of ownership of the subject site, from the effective date of the permit, except in any case where a permit expires and becomes void in compliance with Section 17.74.060 (Time Limits and Extensions), below. All applicable conditions of approval shall continue to apply after a change in property ownership.

**17.74.050 - Performance Guarantees****A. Deposit of security.**

1. As a condition of approval of a Development Review Permit, Limited Term Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Use Permit, or Variance, upon a finding that the City's health, safety, and welfare warrant, the review authority may require the execution of a covenant to deposit security, and the deposit of security in a reasonable amount to ensure the faithful performance of one or more of the conditions of approval of the Development Review Permit, Limited Term Permit, Minor Use Permit, Minor Variance, Planned Development Permit, Use Permit, or Variance in the event that the obligor fails to perform.
2. The security shall, as required by law or otherwise at the option of the City, be in the form of cash, a certified or cashier's check, or a performance bond executed by the applicant and a corporate surety authorized to do business in California and approved by the City.
3. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the City Engineer in conjunction with the Director.
4. Any security required in compliance with this Section shall be payable to the City.

**B. Release of security.** Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.

**C. Failure to comply.**

1. Upon failure to perform any secured condition, the City may perform the condition, or cause it to be done, and may collect from the obligor, and surety in case of a bond, all costs incurred, including administrative, engineering, legal, and inspection costs.
2. Any unused portion of the security shall be refunded to the obligor after deduction of the cost of the work.
3. To the extent that the Director can demonstrate that the obligor willfully breached an obligation in a manner that the obligor knew, or should have known, would create irreparable harm to the City, the entire amount of the bond or deposit may be withheld.
4. The Director's determination may be appealed directly to the Council by the obligor by filing an appeal with the City Clerk within 15 days after the decision to withhold the bond, in compliance with Chapter 17.91 (Appeals).

**17.74.060 - Time Limits and Extensions****A. Time limits.**

1. Unless a condition of approval or other provision of this Development Code establishes a different time limit, any permit or approval not exercised within 12 months of approval shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below.
2. The permit shall not be deemed "exercised" until the permittee has received a Building Permit or has actually commenced the allowed use on the site in compliance with the conditions of approval.

3. After it has been exercised, a planning permit shall remain valid and run with the land in compliance with Section 17.74.040, as long as a Building Permit is active for the project, and after a final building inspection or Certificate of Occupancy has been granted.
  4. If a project is to be developed in approved phases, each subsequent phase shall be exercised within 12 months from the date that the previous phase was exercised, unless otherwise specified in the permit, or the permit shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below. If the project also involves the approval of a Tentative Map, the phasing shall be consistent with the Tentative Map and the permit shall be exercised before the expiration of the Tentative Map, or the permit shall expire and become void.
- B. Extensions of time.** Upon written request by the applicant, the applicable review authority may extend the time for an approved planning permit to be exercised.
1. **Filing and review of request.**
    - a. **Time for filing.** The applicant shall file a written request for an extension of time with the Director before the expiration of the permit, together with the filing fee required by the City's Planning Fee Schedule.
    - b. **Evidence to be provided.** The Director shall determine whether the applicant has made a good faith effort to exercise the permit. The burden of proof is on the applicant to establish, with substantial evidence, that circumstances beyond the control of the applicant (e.g., demonstrated problems with completing the acquisition of the parcel, poor weather during periods of planned construction, etc.) have prevented exercising the permit.
    - c. **Public hearing.** If the original approval required a public hearing, the applicable review authority identified in Table 7-1 (Review Authority) shall hold a public hearing on a proposed extension of time, after providing notice of the public hearing in compliance with Chapter 17.92 (Public Hearings).
  2. **Action on extension request.** A permit may be extended as follows for no more than two additional 12-month periods beyond the expiration of the original approval; provided, the applicable review authority first finds that there have been no changes in the conditions or circumstances of the site or project so that there would have been grounds for denial of the original project.
    - a. **Director's action.** Upon good cause shown, the first 12-month extension may be approved, approved with modifications, or denied by the Director, whose decisions may be appealed to the Commission, in compliance with Chapter 17.91 (Appeals).
    - b. **Commission's action.** One subsequent 12-month extension may be approved, approved with modifications, or denied by the Commission, whose decisions may be appealed to the Council in compliance with Chapter 17.91 (Appeals).
- C. Effect of expiration.** After the expiration of a planning permit in compliance with Subparagraph A.1., above, no further work shall be done on the site until a new planning permit and any required Building Permit or other City permits are first obtained.

### 17.74.070 - Changes to an Approved Project

Development or a new land use authorized through a planning permit granted in compliance with this Development Code shall be established only as approved by the review authority, and in compliance with any conditions of approval, except where a change to the project is approved in the following manner.

- A. **Application.** An applicant shall request a proposed change in writing, and shall also furnish appropriate supporting information and materials explaining the reasons for the request. A change may be requested either before or after construction, or establishment and operation of the approved land use.
- B. **No public hearing required.** No public hearing shall be required for the Director's action to approve minor changes in compliance with Subsection C. (Changes approved by the Director), below. However, if the requested changes are not found to be minor, a new permit application shall be processed in compliance with this Development Code, including the requirement for a public hearing in compliance with Chapter 17.92 (Public Hearings).
- C. **Changes approved by the Director.**
  - 1. The Director may authorize one or more changes to an approved site plan, architecture, or the nature of the approved land use where the Director first finds that the changes:
    - a. Are consistent with all applicable provisions of this Development Code;
    - b. Do not involve a feature of the project that was a basis for or subject of findings in a Negative Declaration or Environmental Impact Report for the project;
    - c. Do not involve a feature of the project that was specifically addressed or was the subject of conditions of approval for the project or that was a specific consideration by the review authority (e.g., the Director, Commission, or Council) in the project approval; and
    - d. Do not result in an expansion of the land use.
  - 2. The Director may choose to refer any requested change to the original review authority for review and final action.
- D. **Changes approved by original review authority.** A proposed change that does not comply with the criteria in Subsection C., above shall only be approved by the original review authority for the project through a new permit application processed in compliance with this Development Code.

### 17.74.080 - Resubmittals

- A. **Resubmittal prohibited within 12 months.**
  - 1. **May be disapproved with prejudice.** An application for a discretionary planning permit, entitlement, or amendment may be denied with prejudice.
  - 2. **Denial with prejudice defined.** An application may be denied with prejudice on the grounds that two or more similar applications for the same parcel have been denied in the past two years, or that another cause exists for limiting the refiling of the application.

3. **Exceptions to 12-month limitation.** For a period of 12 months following the date of denial of a discretionary planning permit, entitlement, or amendment, no application for the same or substantially similar discretionary permit, entitlement, or amendment for the same parcel shall be filed, except if the denial was without prejudice, or on the grounds of substantial new evidence or proof of changed circumstances to an extent that further consideration is deemed warranted.
- B. **No limitation on disapprovals without prejudice.** There shall be no limitation on subsequent applications for a site on which a project was denied without prejudice.
- C. **Director's determination, appeal.** 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. The Director's determination may be appealed to the Commission, in compliance with Chapter 17.91 (Appeals).

### 17.74.090 - Covenants of Easements

- A. **Method of creation of easements.** The method of creation of easements authorized by this Section shall be in addition to any other method allowed by law.
- B. **Recorded covenant of easement.** An easement may be created in compliance with this Section by a recorded covenant of easement made by an owner of real property to the City, in compliance with this Section.
- C. **Purposes of easements.** An easement created in compliance with this Section may be for one or more of the following purposes:
  1. Emergency access;
  2. Ingress and egress;
  3. Landscaping;
  4. Light and air access;
  5. Open space; or
  6. Parking.
- D. **Common ownership.** At the time of recording of the covenant of easement, all of the real property benefited or burdened by the easement shall be held in common ownership.
- E. **Contents of covenant.** A covenant of easement recorded in compliance with this Section shall be executed by the owner of the burdened property and shall include the following information:
  1. A legal description of the real property to be subject to the easement;
  2. A legal description of the real property to be benefited by the easement;
  3. Identification of the City approval, designation, or permit which was granted in reliance upon recordation of the covenant, or for which recordation of the covenant is or was a requirement; and
  4. A description of the purpose(s) of the easement.



- F. Acceptance by City Clerk.** The City Clerk may accept an easement as described in this Section on behalf of the City when an easement is required as a condition of a land use approval or permit.
- G. Recordation required.**
1. The covenant of easement shall be recorded in the County Recorder's Office.
  2. A copy of the recorded document shall be provided to the Director.
- H. Effective when recorded.**
1. The covenant of easement shall be effective when recorded and shall act as an easement in compliance with Chapter 3 (commencing with Section 801) of Title 2, Part 2, Division 2 of the Civil Code, except that it shall not merge into any other interest in the real property.
  2. From and after the time of its recordation, the covenant shall impart notice to all persons to the extent afforded by the recording laws of the State.
- I. Enforceability.**
1. Upon recordation, the burdens of the covenant shall be binding upon, and the benefits shall inure to, all successors-in-interest to the affected real property.
  2. Nothing in this Section shall create in any person other than the City and the owner of the real property benefited or burdened by the covenant standing to enforce or to challenge the covenant or any amendment or release.
- J. Action to release covenant.** In compliance with this Section, the Commission, or the Council on appeal, may approve and authorize recordation of a release of a covenant of easement.
- K. Petition for release.**
1. A petition for release of a covenant of easement may be made by any person whether or not that person has title to the real property, and shall be filed in writing with the Director on a form furnished by the Director.
  2. The form of the petition and the information required to be identified in the petition shall be prescribed by the Director.
  3. The Director shall not accept any petition for filing unless:
    - a. All information and data is identified and shown as required by the form;
    - b. The petition is verified by the party making the petition; and
    - c. The filing fee required by Subsection L., below has been paid.
- L. Fees.** The fee for filing a petition for release of a covenant of easement in compliance with this Section shall be as identified in the City's Planning Fee Schedule.

**M. Hearing by the Commission.**

1. Upon filing the petition, payment of the filing fees, and acceptance of the petition as complete by the Director, notice shall be provided and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
2. The Director shall provide a report and recommendation to the Commission. The Commission may decide to grant the petition, conditionally grant the petition, or deny the petition.
3. The decision of the Commission shall be mailed to all persons entitled to notice in compliance with Chapter 17.92 (Public Hearings).

**N. Appeal to Council.** Any action taken by the Commission under this Section may be appealed to the Council by filing with the Director a written appeal within 16 days after the decision of the Commission. The applicant, or any person, may file an appeal. The appeal shall be filed with the Director on a form furnished by the Director, and the information and data required to be identified in the notice shall be as prescribed by the Director. When the notice has been accepted by the Director for filing:

1. The Director shall, within 10 days file with the City Clerk a copy of the application and the appeal.
2. The Council shall hold at least one public hearing on the matter. The hearing of the Council shall be de novo. The City Clerk shall set the date of the first public hearing by the Council, which date shall not be less than 10 nor more than 60 days after the date on which the appeal was filed with the City Clerk. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings). Within a reasonable time after the Council has concluded its hearing, it shall, by resolution, identify its findings and decision on the petition for release of the easement.
3. The decision of the Council shall be final. The City Clerk shall mail a certified copy of the decision of the Council to the applicant and the appellant at the addresses shown on the appeal.

**O. Finding required.** The Commission, or the Council on appeal, may grant the petition for release of the covenant of easement only upon a finding that the restriction of the property is no longer necessary to achieve the land use goals of the City.**P. Release to be recorded.** Within 15 days after action of the Commission, or the Council on appeal, in granting a petition for release, the Director shall cause the recordation of the release in the County Recorder's Office.

## CHAPTER 17.76 - DEVELOPMENT AGREEMENTS

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### Sections:

- 17.76.010 - Purpose
- 17.76.020 - Application Requirements
- 17.76.030 - Notice and Hearings
- 17.76.040 - Standards of Review, Findings, and Decision
- 17.76.050 - Amendment or Cancellation
- 17.76.060 - Recordation
- 17.76.070 - Periodic Review
- 17.76.080 - Modification or Termination

### 17.76.010 - Purpose

The purpose of this Chapter is to establish procedures and requirements for the review and approval of development agreements, in compliance with Government Code Section 65864 et seq., and as these sections may be amended from time to time.

### 17.76.020 - Application Requirements

- A. **Contents of application.** An application for a development agreement shall be filed and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing). The application shall be accompanied by the detailed data/materials identified in the Department handout for development agreements. It is the responsibility of the applicant to establish evidence in support of the findings required by Subparagraph 17.76.040 A. 1. (Findings required), below.
- B. **Fees.** The applicant shall pay the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations in compliance with the City's Planning Fee Schedule. Fees and charges shall be paid before a determination by the City that the application is complete.
- C. **Qualified as an applicant.** Only a qualified applicant may file an application to enter into a development agreement.
  - 1. A qualified applicant is a person who has legal or equitable interest in the real property, as determined in the sole discretion of the City, which is the subject of the development agreement.
  - 2. The term applicant shall also include an authorized agent of the property owner.
  - 3. The Director may require an applicant to submit proof of interest in the real property and of the authority of the agent to act for the applicant.
  - 4. Before processing the application, the Director shall obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the development agreement.
- D. **Proposed form of agreement.**
  - 1. Each application shall be accompanied by the form of development agreement proposed by the applicant.

2. This requirement may be met by designating the City's standard form of development agreement, if the City has developed a standard form development agreement, and including specific proposals for changes in or additions to the language of the standard form.

**E. Review of application.**

1. The Director shall endorse on the application the date it is received. When application fees have been paid, the Director shall review the application and may reject it if it is incomplete or inaccurate for processing. If the Director finds that the application is complete, the Director shall accept it for filing. The Director shall review the application and determine the additional requirements necessary to complete the development agreement.
2. After receiving the required information, the Director shall prepare a staff report and recommendations and shall state whether or not the development agreement proposed, or in an amended form, will be consistent with the General Plan and any applicable specific plan.

### 17.76.030 - Notice and Hearings

- A. Director to give notice.** The Director shall give notice of intention to consider adoption of the development agreement and of any other public hearing required by law or these regulations.
- B. Notice requirements.** Notice for the public hearings to consider adoption of a development agreement shall be given and the hearings shall be conducted in compliance with Chapter 17.92 (Public Hearings).
- C. Failure to receive notice.** Failure of any person to receive notice, who is otherwise entitled to notice in compliance with State law or these regulations, does not affect the authority of the City to enter into a development agreement.
- D. Rules governing conduct of hearing.** The public hearing shall be conducted in compliance with the procedural standards adopted under Government Code Section 65804 for the conduct of Zoning Map amendment hearings.
1. Each person interested in the matter shall be given an opportunity to be heard.
  2. The applicant has the burden of proof at the public hearing on the proposed development agreement.
- E. Irregularity in proceedings.**
1. No action, inaction, or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, informality, irregularity, neglect, or omission ("error") as to any matter pertaining to application, finding, hearing, notice, petition, recommendation, record, report, or any matters of procedure.
  2. The only allowable exception to this rule will be if, after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed.
  3. There is not presumption that error is prejudicial or that injury was done if error is shown.

**17.76.040 - Standards of Review, Findings, and Decision**

- A. Commission=s recommendation.** The Commission shall make its recommendation in writing to the Council based on the findings identified in Subsection C., (Findings required), below.
- 1. Recommendation for approval.** After a public hearing on the proposed development agreement, and the Commission has recommended approval of the agreement, the recommendation and findings of the Commission shall be forwarded to the Council.
  - 2. Recommendation for denial.** After a public hearing on the proposed development agreement, and the Commission has recommended denial of the agreement, the following procedures shall apply.
    - a. If initiated by the filing of an application.** If the development agreement was initiated by the filing of an application, the Council shall not be required to take any further action unless an interested party requests a hearing by filing a written request with the City Clerk in compliance with Chapter 17.91 (Appeals).
    - b. If initiated by the City.** If the development agreement was initiated by the City, the recommendation and findings of the Commission shall be forwarded to the Council.
- B. Mailing of Commission=s recommendation.** A copy of the Commission=s recommendation shall be mailed to the applicant at the address shown on the application.
- C. Findings required.** The recommendation shall include the Commission's findings and determination whether or not the development agreement proposed:
1. Is consistent with the objectives, policies, general land uses, and programs specified in the General Plan, any applicable specific plan, and this Development Code;
  2. Is compatible with the uses authorized in, and the regulations prescribed for, the land use and zone in which the real property is located;
  3. Is in conformity with public convenience, general welfare, and good land use practice;
  4. Will be detrimental to the health, safety, and general welfare; and
  5. Will adversely affect the orderly development of property or the preservation of property values.
- D. Decision by the Council.**
1. After the Council completes the public hearing, it may accept, modify, or deny the Commission's recommendation. It may, but need not, refer matters not previously considered by the Commission during its hearing back to the Commission for report and recommendation. The Commission shall hold a public hearing on matters referred back to it by the Council.
  2. The Council shall not approve the development agreement unless it first makes the findings required by Subsection C., (Findings required), above.
- E. Approval of development agreement.** If the Council approves the development agreement, it shall do so by the adoption of an ordinance. After the ordinance approving the development agreement takes effect, the City may enter into the development agreement

**17.76.050 - Amendment or Cancellation**

- A. Initiation of amendment or cancellation.** Either party may propose an amendment to or cancellation of, in whole or in part, the development agreement previously entered into.
- B. Procedure.**
1. The procedure for proposing and adoption of an amendment to or cancellation of a development agreement is the same as the procedure for entering into a development agreement in the first instance (See Sections 17.76.020 through 17.76.040, above).
  2. Where the City initiates the proposed amendment to or cancellation of a development agreement, it shall first give notice to the property owner of its intention to initiate the proceedings at least 10 calendar days in advance of the giving of notice of intention to consider the amendment or cancellation required by Subsection 17.76.030 B. (Notice requirements), above.

**17.76.060 - Recordation**

- A. Recordation of agreement within 10 days.** Within 10 calendar days after the City enters into the development agreement, the City Clerk shall have the development agreement recorded with the County Recorder's Office.
- B. Recordation of notice to amend or cancel agreement.** If the parties to the agreement or their successors-in-interest amend or cancel the development agreement as provided in Government Code Section 65868 or if the City terminates or modifies the development agreement as provided in Government Code Section 6585.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the City Clerk shall have notice of the action recorded with the County Recorder's Office.

**17.76.070 - Periodic Review**

- A. Time for and initiation of review.** The City shall review a development agreement every twelve months from the date the development agreement is first entered into. The time for review may be modified either by agreement between the parties or by initiation in one or more of the following ways:
1. Recommendation of the Director;
  2. Affirmative vote of at least a majority of the members of the Commission present; or
  3. Affirmative vote of at least a majority of the members of the Council present.
- B. Notice of periodic review.**
1. The Director shall begin the review proceedings by giving notice that the City intends to undertake a periodic review of the development agreement to the property owner.
  2. The Director shall give the notice at least 10 calendar days in advance of the time at which the matter will be considered by the Council.
- C. Public hearing.** The Council shall conduct a public hearing at which the property owner shall demonstrate good faith compliance with the terms of the development agreement. The burden of proof on this issue is upon the property owner.

- D. Determination upon review.** The Council shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the development agreement.
- E. Procedures upon findings.**
1. If the City finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the development agreement during the period under review, the review for that period is concluded.
  2. If the City finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the development agreement during the period under review, the City may modify or terminate the development agreement in compliance with Section 17.76.080 (Modification or Termination), below.

### **17.76.080 - Modification or Termination**

- A. Proceedings upon modification or termination.** If, upon a finding under Section 17.76.070 E. 2., above, the City determines to proceed with modification or termination of the development agreement, the City shall give notice to the property owner of its intention to do so. The notice shall contain the following information:
1. The time and place of the hearing;
  2. A statement as to whether or not the City proposes to modify or terminate the development agreement; and
  3. Other information which the City considers necessary to inform the property owner of the nature of the proceeding.
- B. Hearing on modification or termination.**
1. At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard.
  2. The Council may refer the matter back to the Commission for report and recommendation.
  3. The Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the City.
  4. The decision of the Council shall be final.

## CHAPTER 17.78 - SPECIFIC PLANS

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### Sections:

- 17.78.010 - Purpose
- 17.78.020 - Applicability
- 17.78.030 - Minimum Project Area
- 17.78.040 - Initiation
- 17.78.050 - Preparation and Content
- 17.78.060 - Processing and Review
- 17.78.070 - Adoption of Specific Plan
- 17.78.080 - Implementation and Amendments

### 17.78.010 - Purpose

This Chapter provides procedures for the preparation, processing, review, adoption, and amendment of specific plans.

### 17.78.020 - Applicability

- A. **When required.** When required by the Council, the General Plan, or this Development Code to systematically implement the General Plan for any part of the City, a specific plan shall be prepared, processed, approved, and implemented in compliance with this Chapter.
- B. **Review authority.** An application for a specific plan shall be considered by the Commission, and approved or denied by the Council.
- C. **Effect of specific plan.** The regulations provided by an adopted specific plan shall replace those of the applicable zone, and the development standards and design guidelines identified in the specific plan shall take precedence over the general standards contained in this Development Code and any City adopted design guidelines.

### 17.78.030 - Minimum Site Area

The minimum site area for a specific plan shall be two acres. The site may be one parcel under single ownership or a combination of adjoining parcels subject to a unified planning concept.

### 17.78.040 - Initiation

A specific plan may be initiated in the following manner:

- A. **Council.** By a resolution by the Council;
- B. **Commission.** By a resolution by the Commission; or
- C. **Application.** The filing of an application with the Department by the owner or authorized agent of property for which the specific plan is sought. If the property is under more than one ownership, all of the owners or their authorized agents shall join in filing the application.



### 17.78.050 - Preparation and Content

The draft specific plan shall include detailed information in the form of text and diagrams, organized in compliance with Government Code Section 65451 and the following.

- A. Required information.** At a minimum, the following information shall be provided:
- 1. Proposed land uses.** The distribution, location, and extent of land uses proposed within the area covered by the specific plan, including open space areas;
  - 2. Infrastructure.** The proposed distribution, extent, intensity, and location of major components of public and private circulation/transportation, drainage, energy, potable water, sewers, solid waste disposal, utilities, and other essential facilities proposed to be located within the specific plan area and needed to support the proposed land uses;
  - 3. Land use and development standards.** Standards, criteria, and design guidelines by which development would proceed, and standards for the conservation, development, and utilization of natural resources, where applicable;
  - 4. Implementation measures.** A program of implementation measures, including financing, methods, programs, regulations, and public works projects, necessary to carry out and provide the proposed:
    - a. Development and conservation standards and criteria, infrastructure, and land uses;
    - b. Public services, facilities and utilities, based on a nexus between development exactions being imposed and the development-induced needs being met by those exactions;
    - c. Orderly phasing of the development; and
    - d. Other measures needed to protect the health, safety, and well-being of the community.
  - 5. Relationship to General Plan.** A discussion of the relationship of the specific plan to the goals, policies, and objectives of the General Plan; and
  - 6. Additional information.** The specific plan shall contain additional information deemed to be necessary by the Director based on the characteristics of the area to be covered by the plan, applicable goals, policies, and objectives of the General Plan, or any other issue determined by the Director to be relevant.
- B. Development or site plan required.** Additionally, each specific plan application shall be accompanied by a development or site plan for the entire area of the proposed specific plan showing the material specified in Subsection 17.70.040 B. (Application contents) and Subsection A. (Required information), above, describing exactly how the proposed specific plan addresses the following items.
- 1. Provision of affordable workforce housing units and a mix of housing types.** The applicant shall identify the location of all housing units, either attached or detached, which will be available for sale to low-to-moderate income families of Nevada County in compliance with Chapter 17.32 (Affordable Housing Density Bonuses and Incentives). The applicant shall also provide evidence of how the housing unit types have been mixed and integrated within the proposed project.

2. **Integration of community design principles of the General Plan.** The applicant shall identify how the project integrates the City's community design principles as the clustering, grouping, or mixing of uses, protecting important natural features, and providing internal pedestrian and bicycle connectivity.
  3. **Future transportation/infrastructure needs and current project-related deficiencies.** The applicant shall provide an evaluation of how the project addresses and mitigates any existing transportation/infrastructure deficiencies in its immediate area of the community. The evaluation shall also show how the project will address any new demand placed on the City's transportation/infrastructure system through the provision of any on-site and off-site mitigation.
  4. **Future park/recreation facility needs and maintenance costs.** The application shall identify all proposed park, recreation, or open space amenities proposed for the project and describe how the features meet the park and recreation goals of the General Plan. For all park, recreation, or open space amenities shown on the plan, the applicant shall provide a financing mechanism to cover projected maintenance costs.
  5. **Future short- and long-term fiscal impacts.** The applicant shall provide information that documents the project's short- and long-term fiscal implications to the City. The information may be presented in the form of a fiscal impact analysis.
  6. **Consistency with General Plan policies and Sphere of Influence Plan.** The application shall state how the proposed project is consistent with the goals and objectives of the General Plan and Sphere of Influence Plan. If the project is found to be inconsistent with any goal or policy, the applicant shall provide rationale or evidence of why an exception is warranted.
- C. **Additional requirements for specific plans involving annexation.** For any specific plan proposal that involves an annexation to the City, the following application procedures shall be completed before the City is able to deem the application complete.
1. **Definition of annexation boundaries, phasing, and rate of growth.** For all applications involving an annexation, the applicant shall define and provide rationale for how the annexation boundaries were formed, how the project would be phased, and an estimated rate of growth for all development types. The description of the phasing plan shall reference the timing for initiating any site disturbance or grading, installation of infrastructure, construction of any public amenities (e.g., open space, parks, schools, etc.), and development of all uses shown on the development or site plan.
  2. **For annexation applications that are not contiguous to the City limits.** For all annexation applications that are not contiguous to the City limits:
    - a. The applicant shall request a review of the annexation boundaries by the Council in which the boundaries would be evaluated against the City Sphere of Influence Plan, City Master Utility Plans, and the provision of public services. The Council would provide direction as to the boundaries of annexation, public service issues that should be addressed as part of the application, and the timing or appropriate phasing of the annexation; and
    - b. The application shall contain written confirmation of at least 51 percent of the registered voters of the intervening parcels of their support or non-opposition of the annexation.

3. **For annexation applications that are entirely outside of the five-year time horizon.**
    - a. For annexation applications that are located entirely outside of the immediate five-year time horizon as specified by the City's Sphere of Influence Plan, the application shall be deferred unless authorized by resolution of the Council with concurrence of the Nevada County Local Agency Formation Commission (LAFCo).
    - b. To initiate a review by the Council of the proposal and its alteration to the Sphere of Influence Plan, a written request shall be filed with the City.
    - c. The Council may elect to support the application with conditions which involve revising the annexation boundaries, mitigating public service demands, and establishing the timing or appropriate phasing.
    - d. A request for an exception to this procedure may be made to the Council and granted based on the following:
      - (1) The project's consistencies with General Plan goals, the City Sphere of Influence Plan, City Master Utility Plans, and the provision of public services;
      - (2) The property is presently developed, contiguous to the City, and seeks City services; or
      - (3) The project demonstrates a significant community or public benefit as evidenced by its design, ability to resolve an infrastructure deficiency, or provide an improvement of community-wide benefit.
  4. **Fiscal impact analysis required.** For all annexations, the applicant shall be required to prepare a fiscal impact analysis of the entire annexation area.
  5. **Economic/market analysis required.** For all annexations proposing a change in the land use designations or mix established for the property by the General Plan in the amount of 20 percent or more of its acreage or density, the applicant shall be required to prepare an economic/market analysis that verifies that the project will not impact the existing tax base, jobs/housing balance, and regional market demand.
- D. Costs to be borne by the applicant.** The specific plan, and all environmental and fiscal studies required as a result of the specific plan, shall be paid for by the applicant who may be repaid by future developers of other portions of the specific plan area on a pro rata basis.

### 17.78.060 - Processing and Review

A draft specific plan shall be processed in the same manner as required for general plans by State law, and as follows:

- A. **Public meetings required for City-initiated specific plans.**
  1. Before preparation of the draft specific plan, the City shall hold at least one public/neighborhood meeting to identify potential community impacts and concerns relating to the proposed plan concept.
  2. Before consideration of the draft specific plan by the Commission and Council, the City shall hold at least one public/neighborhood meeting to review the plan with the local community.

3. Public notice of the public/neighborhood meetings is required in compliance with Chapter 17.92 (Public Hearings).
- B. Application filing.** The following shall apply if the specific plan is initiated by the filing of a specific plan application:
1. An application for a specific plan shall be filed and processed in compliance with Chapter 17.70 (Permit Application Filing and Processing); and
  2. The application shall be accompanied by the information identified in the Department handout for specific plan applications and Section 17.78.050 (Preparation and Content), above.
- C. Environmental review.** The draft specific plan shall be subject to environmental review in compliance with the City's *Environmental Review Guidelines*;
- D. Staff report.** A written staff report shall be prepared for the draft specific plan which shall include detailed recommendations and proposed findings necessary for adoption of the plan; and
- E. Public hearings.** A proposed specific plan shall be subject to public hearings before both the Commission and Council before its adoption, as follows:
1. **Commission.**
    - a. **Director to schedule hearing.** The Director shall schedule a public hearing on the proposed specific plan.
    - b. **Notice of the hearing.** Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
    - c. **Commission=s recommendation.** The Commission shall make its recommendation in writing to the Council based on the findings identified in Section 17.78.070 (Adoption of Specific Plan), below.
      - (1) **Recommendation for approval.** After a public hearing on the proposed specific plan, and the Commission has recommended approval of the plan, the recommendation and findings of the Commission shall be forwarded to the Council.
      - (2) **Recommendation for denial.** After a public hearing on the proposed specific plan, and the Commission has recommended denial of the plan, the following procedures shall apply.
        - (a) **If initiated by the filing of an application.** If the specific plan was initiated by the filing of an application, the Council shall not be required to take any further action unless an interested party requests a hearing by filing a written request with the City Clerk in compliance with Chapter 17.91 (Appeals).
        - (b) **If initiated by the City.** If the specific plan was initiated by the City, the recommendation and findings of the Commission shall be forwarded to the Council.

- (3) **Mailing of Commission=s recommendation.** A copy of the Commission=s recommendation shall be mailed to the applicant at the address shown on the application.

**2. Council.**

- a. **City Clerk to schedule hearing.** After receipt of the Commission's recommendation, the City Clerk shall schedule a public hearing on the proposed specific plan.
- b. **Notice of the hearing.** Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 17.92 (Public Hearings).
- c. **Council=s action.** After the public hearing, the Council may adopt the specific plan, deny the plan, or adopt the plan with modifications, with appropriate findings in compliance with Section 17.78.070 (Adoption of Specific Plan), below; provided, any substantial modifications to the plan that were not previously considered by the Commission shall be first referred to the Commission for its recommendation, in compliance with Government Code Section 65356.

### **17.78.070 - Adoption of Specific Plan**

**A. Required findings.** The Council may adopt a specific plan only after first finding that:

1. The proposed specific plan is consistent with the General Plan;
2. The 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. as identified in the proposed specific plan), will ensure that future development will not endanger, jeopardize, or otherwise constitute a hazard to the public health, safety, or general welfare, or be injurious to the property or improvements in the vicinity and base zone in which the property is located;
3. The proposed specific plan will:
  - a. Ensure quality development by encouraging greater creativity and aesthetically pleasing designs for the individual components of the development and the development as a whole;
  - b. Ensure the timely provision of essential public services and facilities consistent with the demand for the services and facilities; and
  - c. Promote a harmonious variety of housing choices and commercial and industrial activities, if applicable; attain a desirable balance of residential and employment opportunities; and result in a high level of amenities and the preservation of the natural and scenic qualities of open space.
4. The subject site is:
  - a. Physically suitable for the proposed land use designations;
  - b. Physically suitable for the type and density/intensity of development being proposed;
  - c. Adequate in shape and size to accommodate the proposed development; and

- d. Served by streets adequate in width and pavement type to carry the quantity and type of traffic expected to be generated by the proposed development.
- B. Adoption.** The specific plan shall be adopted by ordinance, or by resolution of the Council, in compliance with Government Code Section 65453.

### **17.78.080 - Implementation and Amendments**

- A. Development within specific plan area.** After the adoption of a specific plan, all proposed development and new land uses within the area covered by the specific plan shall be consistent with the specific plan. No City approval (e.g., a public works project, Tentative Map, Parcel Map for which a Tentative Map was not required, a Use Permit, Development Review Permit, etc.), or an amendment to this Development Code may be approved/adopted within an area covered by a specific plan unless it is first found consistent with the specific plan.
- B. Specific plan fee.** The Council may impose a specific plan fee on development permits within the specific plan area, in compliance with Government Code Section 65456.
- C. Amendments.**
1. An adopted specific plan may be amended through the same procedure specified by this Chapter for the adoption of a specific plan.
  2. The specific plan may be amended as often as deemed necessary by the Council, in compliance with Government Code Section 65453.