

Division D7

Zoning Ordinance Administration

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Chapter I - Nonconforming Uses, Structures, and Parcels

Sections:

- D7-1 - Purpose
- D7-2 - Nonconforming Uses
- D7-3 - Nonconforming Structures
- D7-4 - Nonconforming Parcels
- D7-5 - Exemptions
- D7-6 - Unlawful Uses and Structures
- D7-7 - Nuisance Abatement

D7-1 - Purpose

- A. Purpose.** This Chapter provides regulations for nonconforming uses, structures, and parcels that were lawful before the adoption, or amendment of this Zoning Ordinance, but which would be prohibited, regulated, or restricted differently under the current terms of this Zoning Ordinance, or future amendments.
- B. Intent.** It is generally the intent of this Chapter to discourage the long-term continuance of nonconformities, providing for their eventual elimination, while allowing them to exist under the limited conditions identified in this Chapter.
- C. Detrimental to orderly development.** The continuance of a nonconforming use or structure is generally detrimental to the orderly development of the City and the general welfare of its residents and is particularly detrimental to the welfare of persons and property in the vicinity of any nonconformity.
- D. Illegal use or structure.** Any use or structure which was established or constructed in violation of the applicable zoning regulations in effect at the time of establishment or construction and which is not in conformity with the applicable regulations of this Zoning Ordinance, is not a nonconforming use or structure, and the use or structure is in violation of this Zoning Ordinance.

D7-2 - Nonconforming Uses

- A. Continued, transferred, or sold.** Nonconforming uses may be continued, transferred, or sold, but only in compliance with the provisions of this Chapter.
- B. Replacing nonconforming uses with similar uses.**
1. A nonconforming use may be changed to another nonconforming use of a similar or more restricted classification or nature; provided, the proposed new nonconforming use would not increase the degree or intensity of the nonconformity.
 2. The replacement nonconforming use shall serve as the "new benchmark" in terms of establishing the acceptable level of nonconformity.
 3. Where a nonconforming use is changed to another nonconforming use of a more restrictive classification, it shall not thereafter be changed to a use of a less restrictive classification.
- C. Enlargement or expansion of use not allowed.**
1. **Nonconforming use of land.** A nonconforming use of land which does not involve any structure, except accessory structures, shall not be enlarged or expanded in size or capacity, or extended to occupy a greater area, or increased in intensity. "Accessory structures," as used in this Subsection, include driveways, fences, parking areas, signs, walls, or minor structures less than 400 square feet in area.
 2. **Nonconforming use of a structure.** Changes to a nonconforming use of a structure by addition, enlargement, extension, reconstruction, or relocation, may be allowed only if the changes comply with all of the regulations of the subject zone and the following provisions:
 - a. A nonconforming use of a structure may only be expanded or enlarged in size or capacity, or extended to occupy a greater area, or increased in intensity through the approval of a Minor Use Permit granted in compliance with Section D6-28.
 - b. In approving the Minor Use Permit, the Zoning Administrator shall make the following finding, in addition to those identified in Section D6-28: The enlargement, expansion, extension, or increase would not increase the degree or the detrimental effects of the nonconformity.

D. Loss of nonconforming status.

1. If a nonconforming use of land, or a nonconforming use of a conforming structure, is discontinued for a continuous period of at least 180 calendar days, the rights to legal nonconforming status shall terminate.
2. The nonconforming use shall not be resumed once the use has ceased for at least 180 days.
3. A nonconforming use shall be deemed to have ceased when it has been discontinued, either temporarily or permanently, whether or not the discontinuance was with the intent to abandon the use.
4. The Zoning Administrator shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business receipts/records to document continued operation.
5. Without further action by the City, any further use of the site shall comply with all of the regulations of the subject zone and all other applicable provisions of this Zoning Ordinance.

D7-3 - Nonconforming Structures

- A. **Continued, transferred, or sold.** Nonconforming structures may be continued, transferred, or sold, but only in compliance with the provisions of this Chapter.
- B. **Nonconforming status.** Except as provided by Section D7-5.D (Nonconforming single- and multi-family dwelling units), below, the nonconforming status shall terminate if a nonconforming structure is involuntarily damaged or destroyed by earthquake, explosion, fire, flood, riot, war, wind, or other calamity or act of Nature; provided, the structure may be repaired and reoccupied only in the following manner:
 1. **When damage equals 50 percent or less.** A nonconforming structure involuntarily damaged to 50 percent or less of its current market value (as defined in Subsection B.5.b., below) may be reconstructed, repaired, restored, and used as before; provided, the restoration is initiated (as defined in Subsection B.5.a., below) within 180 days, and is substantially completed within 12 months from the date of application for the required Building Permit.
 2. **When damage equals greater than 50 percent.** A nonconforming structure involuntarily damaged to greater than 50 percent of its current market value (as defined in Subsection B.5.b., below) shall not be reconstructed, repaired, or restored, except in conformity with the applicable requirements of the subject zone.

- 3. Ordinary repair and maintenance allowed.** The ordinary and normal repair and maintenance work that may be required to keep a nonconforming structure in sound condition may be made in compliance with this Subparagraph; provided, no structural alterations or repairs shall be made, except those required by law or may be authorized under Subsection B.1., above. A nonconforming structure may undergo ordinary and normal repair and maintenance only in the following manner:

 - a. Minor.** Minor normal repair and maintenance may be made to a nonconforming structure:

 - (1) Provided, no structural alterations are made (exception: see following Subparagraph a (2)), and the work does not exceed 50 percent of the current market value of the structure during any calendar year period;
 - (2) When required structural alteration work is greater than 50 percent of the current market value of the structure, the work shall be subject to Minor Use Permit approval in compliance with Section D6-28; and
 - (3) For purpose of this Subparagraph the cost of any required foundation work shall not be counted within the 50 percent limitation.
 - b. Major.** Major repair to a nonconforming structure, when the cost of repairing or replacing the damaged portion of the structure exceeds 50 percent of the current market value of the structure, before damage or destruction, may be made only in compliance with Subparagraphs B.2 and B.3.a(2), above.
- 4. Other modifications allowed.** The addition, enlargement, extension, reconstruction, or structural alteration of a nonconforming structure may be allowed; provided, the modification is necessary to secure added safety or to reduce the fire hazard and/or to secure aesthetic advantages through the alignment, architecture, or closer conformity to surrounding allowed structures in the immediate neighborhood, and only in compliance with Subparagraphs B.2 and B.3a (2), above.

5. Definitions.

- a. **Restoration is initiated.** As used in this Subsection, “restoration is initiated” requires that, at a minimum, a complete Building Permit application has been filed.
- b. **Current market value.**
 - (1) As used in this Subsection, “current market value” is the market value of the structure immediately before the occurrence of the damage.
 - (2) For purposes of administering the provisions of this Subsection, the applicant shall submit an appraisal from a licensed appraiser and the City's Building Official shall verify the appraiser's determination of the current market value of the damaged structure, which determination shall be final, unless appealed in compliance with Division D7, Chapter II (Appeals and Calls for Review).

D7-4 - Nonconforming Parcels

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

D7-5 - Exemptions

- A. Historic structures.** Nonconforming structures of historical significance may be altered or enlarged with Minor Use Permit approval granted in compliance with Section D6-28, without conforming to current setback provisions; provided, the historic structure is:
1. Included in a San Ramon Landmark District;
 2. Listed as an historic resource;
 3. Has been certified to be an historic resource by the City, County, or State, or in the Federal Register of Historic Places; and
 4. To be altered or enlarged as an authentic replica of the original structure(s).
- B. Height of single-family dwellings.** An existing single family dwelling that is nonconforming only because it exceeds the height limit of the applicable zone, shall not be required to comply with the provisions of this Chapter.
- C. Single-family residences and detached residential accessory structures.** Where a single family residence, or its detached accessory structure(s), is nonconforming only by reason of substandard setbacks, the provisions of this Section shall not apply; provided, any structural alteration of a nonconforming structure shall not increase the degree of nonconformity, and any enlargements shall comply with the setback requirements of the subject zone.
- D. Nonconforming single- and multi-family dwelling units.**
1. Nonconforming single- and multi-family dwelling units that have been involuntarily damaged or destroyed by earthquake, explosion, fire, flood, riot, war, wind, or other calamity or act of Nature, may be reconstructed or replaced with a new structure using the same development standards applied to the damaged or destroyed structure (e.g., building footprint, building height, density standards, number of dwelling units, setbacks, and square footage); provided:
 - a. The applicant provides documentation, satisfactory to the Zoning Administrator, supporting the claim that the damage or destruction occurred involuntarily;
 - b. No expansion of the gross floor area or number of dwelling units occurs;
 - c. The replacement structure:
 - (1) Complies with the Building Code; and
 - (2) Will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the immediate vicinity of the replacement structure.

- d. A Building Permit is issued no later than 12 months after the date of destruction, and construction is diligently pursued to completion.
 2. If the preceding requirements are not met, the replacement structure shall comply with all of the regulations of the subject zone in effect on the date of application for the required Building Permit.
- E. Seismic retrofitting.**
1. Alterations, reconstruction, or repairs otherwise required by law (e.g., City adopted Building, Electrical, Plumbing Codes) shall be allowed.
 2. Reconstruction required to reinforce unreinforced masonry structures or to comply with Building Code requirements shall be allowed without cost limitations; provided, the retrofitting and Code compliance are limited exclusively to compliance with earthquake safety standards and other applicable Building Code requirements.
- F. Nonconforming upon annexation.** Nonconforming uses or structures, or both, which are lawfully existing at the time the property on which they are located is annexed to the City, and which do not conform to the regulations of the subject zone following annexation, shall be deemed nonconforming uses or structures, or both, and shall, upon annexation, be subject to the provisions of this Chapter.
- G. Nonconforming due to a lack of a Minor Use Permit or Use Permit.**
1. **Conformity of uses requiring Minor Use Permit or Use Permits.** A use lawfully existing without a Minor Use Permit or Use Permit that would be required by this Zoning Ordinance to have Minor Use Permit or Use Permit approval, in compliance with Section D6-28, shall be deemed conforming, but only to the extent that it previously existed (e.g., maintain the same site area boundaries, hours of operation, etc.)
 2. **Previous Minor Use Permits or Use Permits in effect.** A use that was authorized by a Minor Use Permit or Use Permit but is not allowed by this Zoning Ordinance in its current location may continue, but only in compliance with the original Minor Use Permit or Use Permit (e.g., if the original Minor Use Permit or Use Permit specified a termination date, then the use shall terminate in compliance with the requirements of the Minor Use Permit or Use Permit.)

H. Previous permits.

1. A use or structure which does not conform to the current regulations of the subject zone, but for which a Building Permit, or a permit or entitlement approved in compliance with this Zoning Ordinance, was issued and exercised before the applicability of this Zoning Ordinance, may be completed; provided, the work is diligently pursued to completion.
2. Upon completion, these uses or structures, or parts thereof, shall be deemed to be nonconforming and shall thereafter be subject to the provisions of this Chapter.
3. For the purposes of this Subsection, the provisions of Section D-6-34 (Time Limits and Extensions) shall govern the determination of whether the permit or entitlement has been exercised in a timely manner.

I. Public utilities. The provisions of this Chapter, concerning the required removal of nonconforming uses and structures, and the reconstruction of nonconforming structures partially destroyed, shall not apply to public utility structures when the structures pertain directly to the rendering of the service of distribution of a utility (e.g., electric distribution and transmission substations, gas storage, metering, and valve control stations, steam electric generating stations, water wells and pumps, etc.); nor shall any provision of this Chapter be construed to prevent the expansion, modernization, or replacement of the public utility structures, equipment, and features, that are used directly for the delivery of or distribution of the service.

J. Public acquisition.

1. **Nonconforming due to public acquisition.** Whenever any structure or parcel is rendered nonconforming within the meaning of this Chapter by reason of a reduction in a required parcel area, reduction of off-street parking facilities, or setbacks occurring solely by reason of dedication to, or purchase by, the City for any public purpose, or eminent domain proceedings, which result in the acquisition by the City or any agency authorized for the eminent domain proceedings of a portion of the property, the same shall not be deemed nonconforming within the meaning of this Chapter.
2. **Required reconstruction, remodeling, or repair.** Any required reconstruction, remodeling, or repair shall be limited to that necessary to render the structure reasonably safe for continued use; provided, all reconstruction, remodeling, or repair work shall be substantially completed within 12 months from the date of application for the required Building Permit.

D7-6 - Unlawful Uses and Structures

- A. **Unlawful uses and structures are in violation.** Uses and structures which did not comply with the applicable provisions of this Zoning Ordinance or prior planning and zoning regulations when established are violations of this Zoning Ordinance and are subject to the regulations of the Municipal Code.
- B. **No right to continue occupancy.** This Chapter does not grant any right to continue occupancy of property containing an illegal use or structure.
- C. **Can't continue without required permits.** The activity shall not be lawfully allowed to continue unless/until permits or entitlements required by this Zoning Ordinance and the Municipal Code are first obtained.

D7-7 - Nuisance Abatement

- A. **Not applicable to public nuisances.** The provisions of this Chapter shall not apply to a use or a structure which is, or which becomes, a public nuisance.
- B. **Continuance of public nuisances prohibited.** The provisions of this Chapter do not allow, and shall not be interpreted to allow, the continuation of a use or structure which is deemed a public nuisance or which is prohibited or otherwise made unlawful, in whole or in part, by the Municipal Code (including the Building Code, Fire Code, Zoning Ordinance, etc.) or by laws enacted by the State or Federal government which are applicable to this City.
- C. **Enforcement actions.** In the event that a nonconforming use or structure is found to constitute a public nuisance, appropriate action shall be taken by the City, in compliance with the Municipal Code. A violation of the Zoning Ordinance can be deemed to be evidence of a public nuisance.

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Chapter II - Appeals and Calls for Review

Sections:

- D7-8 - Purpose
- D7-9 - Right of Appeal
- D7-10 - Time Limits for Appeals and Calls for Review
- D7-11 - Initiation of Appeals and Calls for Review
- D7-12 - Procedures for Appeals and Calls for Review
- D7-13 - Effective Dates
- D7-14 - New Appeal

D7-8 - Purpose

- A. **Appeals.** To avoid results inconsistent with the purposes of this Zoning Ordinance, any decision made in compliance with this Zoning Ordinance:
 - 1. **Zoning Administrator.** Decisions made by the Zoning Administrator may be appealed to the Commission; and
 - 2. **Commission.** Decisions made by the Commission may be appealed to the Council.
- B. **Calls for Review.** As an additional safeguard to avoid results inconsistent with the purposes of this Zoning Ordinance, any decision of:
 - 1. **Zoning Administrator.** The Zoning Administrator may be called up for review by the Commission; and
 - 2. **Commission.** The Commission may be called up for review by the Council.

D7-9 - Right of Appeal

An appeal may be initiated by the applicant or any interested person.

D7-10 - Time Limits for Appeals and Calls for Review

- A. **Appeals by applicant or other interested parties.** An appeal of a decision by an applicant or other interested party shall be initiated within 10 calendar days of the date of the decision.
- B. **Time limits.** When the appeal period ends on a weekend or holiday, the time limits shall be extended to the next working day.
- C. **Calls for Review.** Calls for Review shall be initiated before the end of the appeal periods identified in Subsections A. and B., above, which is the effective date of the decision to be reviewed.

D7-11 - Initiation of Appeals and Calls for Review

- A. **Filing of an appeal.** An appeal accompanied by the fee identified in the City's Fee Schedule shall be filed with the City Clerk on a form provided and shall state specifically the following information:
 - 1. The specific determination or interpretation that is claimed to be not in compliance with the purposes of this Zoning Ordinance;
 - 2. The specific facts that are claimed to be in error or an abuse of discretion;
 - 3. The specific facts of the record which are claimed to be inaccurate; or
 - 4. The specific decision that is claimed to be unsupported by the record.
- B. **Calls for Review.** A Call for Review shall be filed by a member of the Commission or the Council with the Zoning Administrator stating the reasons for the review before the effective date of the decision to be reviewed in compliance with Section D7-8 (Purpose and Authorization for Appeals and Calls for Review), above.
- C. **Effect on decisions.** The timely filing of an appeal or a Call for Review shall cause a stay (e.g., shall temporarily vacate all proceedings associated with the matter subject to the appeal) in the effective date of the action or decision from which the appeal or a Call for Review has been taken until a final decision on the matter has been rendered by the appropriate review authority.

D7-12 - Procedures for Appeals and Calls for Review

- A. Hearing date.** An appeal or Call for Review shall be scheduled for a hearing before the appellate body within 60 calendar days of the City's receipt of an appeal unless both the applicant and appellant consent to a later date.

- B. Notice and public hearing.**
 - 1. An appeal or Call for Review hearing shall be a public hearing only if the decision being appealed or reviewed required a public hearing.
 - 2. Notice of the public hearing shall be given in the same manner required for the decision being appealed or reviewed in compliance with Division D7, Chapter IV (Public Hearings).

- C. Plans and materials.**
 - 1. At an appeal or Call for Review hearing, the appellate body shall conduct a hearing “de novo” and may consider new materials and testimony in addition to the same application, plans, and related project materials that were the subject of the original decision.
 - 2. The City Clerk shall advise the appellate body as to compliance with this provision.

- D. Hearing.** At the hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.

- E. Decision and notice.**
 - 1. After the hearing, the appellate body shall affirm, modify, or reverse the original decision.
 - 2. The appellate body’s decision shall be supported by the weight of the evidence presented at the hearing.
 - 3. Decisions on appeals or Calls for Review shall be rendered within 30 calendar days of the close of the hearing.
 - 4. The notice shall be mailed within five working days after the date of the decision to the applicant, the appellant, and any other party requesting notice.

- F. Failure to act.** Failure of the appellate body to act within the time limits identified in Subsections A. and E., above shall be deemed affirmation of the original decision.

D7-13 - Effective Dates

- A. Commission decision.** A decision by the Commission regarding an appeal or Call for Review shall become final 10 calendar days after the effective date of the decision, unless appealed to the Council in compliance with this Chapter.
- B. Council decision.** A decision by the Council regarding an appeal or Call for Review shall become final on the effective date of the decision.

D7-14 - New Appeal

Following disapproval of an appeal or certification of a decision called for review, any matter that is the same or substantially the same shall not be considered by the same appellate body within the following 12-month period, unless the disapproval or certification was made without prejudice, and so stated in the record.

Chapter III - Amendments

Sections:

- D7-15 - Purpose
- D7-16 - Initiation of Amendment
- D7-17 - Application Requirements
- D7-18 - Public Hearing Scope and Notice
- D7-19 - Duties of the Commission
- D7-20 - Duties of the Council
- D7-21 - Revisions of Proposed Amendments
- D7-22 - Post Decision Procedures

D7-15 - Purpose

This Chapter provides procedures for the amendment of the General Plan, the Zoning Map, or this Zoning Ordinance whenever it is determined public necessity and general welfare require an amendment.

- A. **General Plan.** A General Plan amendment may include revisions to text or diagrams.
- B. **Zoning Map.** A Zoning Map amendment has the effect of rezoning property from one zone to another.
- C. **Zoning Ordinance.** A Zoning Ordinance amendment may modify a standard, requirement, or procedure applicable to land use or development within the City.

D7-16 - Initiation of Amendment

- A. **General Plan or Zoning Map.**
 - 1. **Methods of initiation.** Amendments to the General Plan or Zoning Map shall be initiated in compliance with the following:
 - a. Motion of the Council;
 - b. Motion of the Commission;
 - c. Action of the Zoning Administrator; or
 - d. A petition of the owner or authorized agent of property for which the amendment is sought.
 - 2. **If under multiple ownership.** If property that is the subject of a petition is under more than one ownership, all of the owners or their authorized agents shall join in filing the petition.

B. Zoning Ordinance. Amendments to this Zoning Ordinance shall be initiated in compliance with the following:

1. Motion of the Council;
2. Motion of the Commission;
3. Action of the Zoning Administrator; or
4. A petition of any resident, property owner, or business owner in the City.

D7-17 - Application Requirements

A property owner or an authorized agent of the owner, initiated amendment application shall be filed in compliance with Chapter D6-1 (Permit Application Filing and Processing). The application shall be accompanied by the information identified in the Department handout for amendment applications. It is the responsibility of the applicant to provide evidence in support of the findings required by Section D7-19.B (Recommendation to Council), below.

D7-18 - Public Hearing Scope and Notice

A. Scope.

1. The Zoning Administrator shall set a date, time, and place for the public hearing and prepare a report to the Commission on an application of a property owner for a General Plan or Zoning Map amendment, or a petition for an amendment to this Zoning Ordinance. It should be noted that Amendments to the General Plan are governed by Measure G adopted by the voters of San Ramon on March 5, 2002.
2. The report shall describe the area or subject to be considered for change and, if warranted, proposing alternative amendments.

B. Notice of the hearing. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Division D7, Chapter IV (Public Hearings).

C. Multiple applications. The Commission may schedule a combined public hearing on multiple applications for General Plan, Zoning Map, or Zoning Ordinance amendments.

D7-19 - Duties of the Commission

- A. Public hearing.** At the time and place set for the public hearing, the Commission shall consider the report of the Zoning Administrator and shall hear evidence for and against the proposed amendment. The Commission may continue the public hearing to a definite date and time without additional notice. The Commission shall hold a minimum of three public hearings for each General Plan amendment. Pursuant to Measure G, for amendments to the General Plan, a recommendation to the City Council shall require a 4/5th vote of the Commission.
- B. Recommendation to Council.** Following its final public hearing, the Commission shall make specific findings as to whether the proposed zoning regulation or General Plan or Zoning Map amendment is consistent with the General Plan and this Zoning Ordinance, and shall recommend approval, conditional approval, or disapproval of the proposed amendment as submitted or in a modified form.

D7-20 - Duties of the Council

- A. Hearing date and notice.**
- 1. Council shall set a date and time.**
 - a. Zoning Map and Zoning Ordinance amendments.** Upon receipt of the Commission's recommendation for an amendment to the Zoning Map or this Zoning Ordinance, the Council shall set a date and time for a public hearing to consider the proposed amendment.
 - b. General Plan amendments.** Upon receipt of the Commission's recommendation for an amendment to the General Plan, the Council shall set dates and times for, and conduct a minimum of three public hearings for each General Plan amendment.
 - 2. Time for hearings.** The required hearings shall be held within 60 calendar days of the date of filing of the Commission's recommendation.
 - 3. Notice required.** Notice of the public hearings shall be provided, and the hearing shall be conducted in compliance with Division D7, Chapter IV (Public Hearings).
- B. Public hearing.** At the time and place set for the public hearing, the Council shall hear evidence for and against the proposed amendment. The Council may continue the public hearing to a definite date and time without additional notice.

C. Council decision.

1. **Council action on amendment.** After the public hearing the Council shall approve, modify, or reject the Commission recommendation; provided, a modification not previously considered by the Commission shall be referred to the Commission for a report before adoption of an ordinance approving the amendment.
2. **Failure of the Commission to report back to the Council.** Failure of the Commission to report within 40 calendar days after referral, or a longer period designated by the Council, shall be deemed recommending approval of the proposed modification.
3. **Required findings.** Pursuant to Measure G, amendments to the General Plan require a 4/5th vote of the Council substantially consistent with the 4/5th recommendation of the Commission. Before adoption of an ordinance (or resolution in the case of a General Plan amendment), the Council shall make findings that the proposed amendment is consistent with the policies of the General Plan and the notice and hearing provisions of this Zoning Ordinance.

D7-21 - Revisions of Proposed Amendments

At or after a public hearing, the Commission or the Council may determine that the public interest would be served by:

1. Revise General Plan or Zoning Map amendment. Revising the boundaries of an area proposed for a General Plan or Zoning Map amendment;
2. Consider other General Plan or Zoning Map designations. Considering General Plan or Zoning Map designations not originally presented in a motion, petition, or Commission recommendation; or
3. Consider other amendments to this Zoning Ordinance. Considering Zoning Ordinance amendments not originally presented in a motion, petition, or Commission consideration.

D7-22 - Post Decision Procedures

The procedures and requirements in Chapters D-64 (Permit Implementation, Time Limits, and Extensions) including resubmittals, and D-72 (Appeals and Calls for Review), and those in this Division shall apply following the decision on an application for an amendment to the General Plan, Zoning Map, or this Zoning Ordinance.

Chapter IV - Public Hearings

Sections:

- D7-23 - Purpose
- D7-24 - Notice of Hearing
- D7-25 - Scheduling of Hearing
- D7-26 - Hearing Procedures
- D7-27 - Review Authority Decision and Notice
- D7-28 - Recommendation by Commission
- D7-29 - Effective Date of Decision

D7-23 - Purpose

This Chapter establishes procedures for public hearings before the Zoning Administrator, Commission, and Council.

D7-24 - Notice of Hearing

When a land use permit, or other matter requires a public hearing, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090, 65091, 65094, and 66451.3, and Public Resources Code 21000 et seq., and as required by this Chapter.

- A. **Contents of notice.** Notice of a public hearing shall include:
1. **Hearing information.** The date, time, and place of the hearing and the name of the review authority; a brief description of the City's general procedure concerning the conduct of hearings and decisions (e.g., the public's right to appear and be heard); and the phone number and street address of the Department, where an interested person could call or visit to obtain additional information;
 2. **Project information.** The date of filing of the application and the name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; and a general description, in text and/or by diagram, of the location of the property that is the subject of the hearing; and

3. **Statement on environmental document.** If a proposed Negative Declaration or final Environmental Impact Report has been prepared for the project in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City' Environmental Guidelines, the hearing notice shall include a statement that the review authority will also consider approval of the proposed Negative Declaration or certification of the final Environmental Impact Report.

B. **Method of notice distribution.** Notice of a public hearing required by this Chapter for a land use permit, amendment, or appeal shall be given as follows, as required by State law (Government Code Sections 65090 and 65091).

1. **Mailed notice.**

a. **Who shall receive notice.** Notice shall be mailed or delivered at least 10 calendar days before the scheduled hearing to the following:

- (1) **Owners of proposed site.** The owners of the property being considered in the application, or the owners' agent, and the applicant.
- (2) **Local agencies.** Each local agency expected to provide schools, water, or other essential facilities or services to the project, whose ability to provide the facilities and services may be significantly affected.
- (3) **Property owners.** All owners of the real property shown on the latest equalized assessment roll within a radius of 300 feet of the exterior boundaries of the parcel that is the subject of the hearing.
- (4) **Persons requesting notice.** Any person who has filed a written request for notice with the Zoning Administrator and has paid the fee established by the City' Fee Schedule for the notice.

2. **Additional notice required.** If the notice is mailed as required in Subparagraph B.1, above, the notice shall also either be:

- a. **Published.** Published at least once in a newspaper of general circulation in the City at least 10 days before the scheduled hearing; **or**
- b. **Posted.** Posted at the Department and at two other public locations in the City at least 10 days before the scheduled hearing.

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

4. **Additional optional notice.** In addition to the types of notice required by this Subsection, the Zoning Administrator may provide additional notice with content or using a distribution method as the Zoning

Administrator determines is necessary or desirable (e.g., use of a greater radius for notice, use of the Internet, etc).

- C. Notice for continued public hearing items.** As determined by the Zoning Administrator, in combination with the sensitivity of the proposed project, notice for continued public hearing items may occur in the following manner:
1. **Announcement at previous public hearing.** Items continued to a date, time and location certain at the previous public hearing shall constitute the required notification for the future public hearing.
 2. **Mailed notice.** See subsection D7-24.B.1 above.
 3. **Posted notice.** Notice may also be provided in accordance with subsection D7-24.B.2 and B.3 above.

D7-25 - Scheduling of Hearing

After the completion of environmental documents required by the California Environmental Quality Act (CEQA) and the City's Environmental Guidelines, the matter shall be scheduled for public hearing on a Zoning Administrator, Commission, or Council agenda (as applicable).

D7-26 - Hearing Procedure

- A. Conduct of hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. Testimony.** The review authority shall hear testimony regarding the subject application from any interested party.
- C. Continuance.** A hearing may be continued from time-to-time without further notice; provided, the chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- D. Deferral of final decision.** The review authority may announce a tentative decision, and defer their action on a final decision until appropriate findings and/or conditions of approval have been prepared.

D7-27 - Review Authority Decision and Notice

- A. **Decision.** The review authority (Zoning Administrator, Commission, or Council, as applicable) shall announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting agenda in compliance with Section D7-26 (Hearing Procedures), above.
- B. **Action of Zoning Administrator.** The Zoning Administrator may take appropriate action or instead refer the matter to the Commission for a determination. A referral will require a new noticed hearing before the Commission in compliance with this Chapter.
- C. **Decision of Council is final.** The decision of the Council on any matter shall be final.
- D. **Notice of decision.**
 - 1. **Provision of notice.** Within 10 calendar days of a final decision on an application for a permit or other approval required by this Zoning Ordinance, the City shall provide notice of its final decision to the applicant and to any person who specifically requested notice of the City's final action.
 - 2. **Contents of notice.** The notice of the final decision shall contain applicable findings, conditions of approval, reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, or general welfare of the City, and the procedures for appeal.

D7-28 - Recommendation by Commission

- A. At the conclusion of a public hearing on an amendment (e.g., General Plan, Zoning Map, or Zoning Ordinance), a development agreement, or a specific plan, the Commission shall forward a written recommendation, including all required findings, to the Council for final action.
- B. Following the hearing, a copy of the Commission's recommendation shall be mailed to the applicant at the address shown on the application.

D7-29 - Effective Date of Decision

- A. **Zoning Administrator or Commission decision.** The decision of the Zoning Administrator or Commission is final and effective on the 11th calendar day following the date the decision is rendered, unless an appeal is filed in compliance with Division D7, Chapter II (Appeals and Calls for Review).

B. Council decision.

1. **Permit or appeal.** A permit application or appeal shall become effective immediately on the date the final decision is rendered by the Council.
2. **General Plan amendment.** A General Plan amendment shall become effective immediately upon the adoption of a resolution by the Council.
3. **Zoning Map or Zoning Ordinance amendment.** A Zoning Map or Zoning Ordinance amendment shall become effective on the 31st day following the adoption of an ordinance by the Council.

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Chapter V - Enforcement

Sections:

- D7-30 - Purpose
- D7-31 - Enforcement Responsibilities
- D7-32 - Revocation or Modification of Discretionary Permits
- D7-33 - Violations
- D7-34 - Penalties

D7-30 - Purpose

This Chapter establishes procedures for enforcement of the provisions of the Zoning Ordinance. These enforcement procedures are intended to assure due process of law in the abatement or correction of nuisances and violations of this Ordinance.

D7-31 - Enforcement Responsibilities

The Zoning Administrator shall enforce all provisions of this Ordinance related to discretionary permits and shall have responsibility for revocation of discretionary permits, as provided in Section D7-32. The Chief Building Official shall enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure. All other officers of the City shall enforce provisions related to their areas of responsibility.

D7-32 - Revocation or Modification of Discretionary Permits

- A. Duties of Zoning Administrator.** Upon determination by the Zoning Administrator that there are reasonable grounds for revocation or modification of any permit, variance, or other discretionary approval authorized by this Ordinance, a revocation hearing shall be set by the Zoning Administrator, the Planning Commission, or the City Council, whichever took final previous action on the permit, except for appeals.
- B. Notice and Public Hearing.** Notice shall be given in the same manner required for a public hearing to consider approval. If no notice is required for the permit, none shall be required for the revocation or modification hearing, provided that notice shall be mailed to the property owner and owner of the use or structure for which the permit was granted at least 10 calendar days prior to the hearing. Contents of any notice shall be as prescribed by Division D7, Chapter IV (Public Hearings).
- C. Public Hearing.** The person or body conducting the hearing shall hear testimony of City staff, property owner, and the owner of the use or structure for which the permit was granted, if present. At a public hearing, the testimony of any other interested person shall also be heard.

- D. Required Findings.** The person or body conducting the hearing shall revoke or modify the permit upon making one or more of the following findings:
1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
 2. That the terms or condition(s) of approval of the permit have been violated or that other laws or regulations have been violated;
 3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for three consecutive months;
 4. That the use is being conducted contrary to the public's health, safety, and welfare; and/or
 5. That circumstances or conditions related to the site or use have changed necessitating a modification to the permit.
- E. Decision and Notice.** Within 10 calendar days of the conclusion of the hearing, the person or body that conducted the hearing shall render a decision, and shall mail notice of the decision to the property owner and owner of the use or structure for which the permit was revoked and to any other person who has filed a written request for such notice.
- F. Effective Date: Appeals.** A decision to revoke a discretionary permit shall become final and effective on the 11th day following the date the decision is rendered, unless appealed.
- G. Cumulative Right.** The City's right to revoke a discretionary permit, as provided in this Chapter, shall be cumulative to any other remedy allowed by law.

D7-33 - Violations

Any person violating any other provision of this ordinance, including failure to secure a zoning permit or comply with any condition of approval, shall be guilty of an infraction, and each day or portion thereof that such violation is in existence shall be a new and separate offense. In these cases, the fourth and any additional violations within one year shall each constitute a misdemeanor. In addition, the City Attorney shall, upon order of the City Council, commence action or proceedings for the abatement, removal, and enjoinder of any violation in the manner provided by law.

D7-34 - Penalties

Any person who violates any provision of this ordinance and is convicted of an infraction shall be punished by fines as prescribed in Government Code Section 36900. Any person who violates any provision of this ordinance and who is convicted of a misdemeanor shall be punishable by fines as prescribed by Government Code 36900. Payment of any fine or penalty shall not relieve a person, firm or corporation from the responsibility of correcting the condition consisting of the violation.