

City of Newark  
ZONING ORDINANCE UPDATE

# Citywide and Administrative Provisions

Draft for Planning Commission Review

June 2017



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**DRAFT**

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# Introduction

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Zoning updates are significant undertakings for any community. Proceeding with discrete, digestible groups of specific sections make the project more approachable. To this end, this paper presents preliminary draft regulations for two major sections of the Zoning Ordinance—development standards that apply to all development citywide and provisions for the administration of the Zoning Ordinance.

The new Zoning Ordinance will be organized so that it will be easy to use and amend overtime. Generally, the most frequently consulted sections appear towards the beginning of the ordinance, while more specific and less frequently used parts, such as definitions, appear at the end. Administrative provisions combine permit requirements in one place for ease of reference by staff, the Planning Commission, and other ordinance-users. In all, the updated Title 17-Zoning will comprise five divisions, in the following order:

Division I – Introductory Provisions

Division II – Base and Overlay Districts

Division III – Citywide Regulations

Division IV – Administration and Permits

Division V – General Terms

Within each of these divisions, chapters and sections have been ordered to flow logically from one idea to the next. Typically, chapters begin with statements regarding their purpose and applicability, next list general provisions, and then move progressively to more specific provisions and related regulations.

This paper presents preliminary draft regulations for the majority of Division III – Citywide Regulations and for Division IV – Administration and Permits.

## **DIVISION III: CITYWIDE STANDARDS**

Zoning ordinances typically include regulations that apply to more than one or a few districts. In order to make the ordinance easier to use and administer as well as to reduce its length, regulations that apply to some or all districts are consolidated in one place in the updated ordinance. This paper includes the following Citywide Standards.

### **General Site Regulations**

There are a number of standards—such as regulations for fences, projections into setbacks, screening, and trash enclosures—that apply to development citywide. In the updated zoning ordinance, these citywide standards will be located together in one section titled General Site Regulations.

***Accessory Buildings and Structures.*** The draft regulations retain the bulk of Newark’s existing provisions for accessory buildings and structures with revisions for clarity. Applicability provisions have been expanded to clarify that the requirements are applicable only to detached structures,

including decks and trellises that are over a certain height. Attached structures are subject to regulations for the main building, or in the case of unroofed decks, building projections. Additional provisions related to the timing of construction are proposed.

***Development on Lots Divided by District Boundaries.*** This is a new section articulating the applicability of standards where a single lot is one or more zoning district.

***Development on Substandard Lots.*** This is a new section articulating the applicability of standards in regard to lots that were legally created but consist of less area, width, or depth than that required by the zoning district regulations. Provisions are included that treat adjoining vacant sites with continuous frontage, each having an area, width or frontage less than the minimum prescribed for the district in which the sites are located, in the same ownership, as a single parcel.

***Fences and Freestanding Walls.*** The draft regulations clarify and simplify existing provisions for fences and walls, currently located in Chapter 17.16.140. Additional provisions are proposed to prohibit hazardous fencing materials, limit chain link fencing and concrete block walls, and require fence maintenance. The updated ordinance will also include new rules for measuring the height of fences and walls that take into account the elevation of land on both sides of the structure.

***Heights and Height Exceptions.*** The existing ordinance includes a brief provision allowing projections that cover no more than 10% of the ground area covered by the structure to be erected to 25 feet above height limit. The draft regulations detail specifically what type of structures may exceed the height limit, coverage and location restrictions, and the maximum allowed projection.

***Lighting and Illumination.*** The proposed draft lighting and illumination regulations include minimum standards for lighting multi-unit residential development and nonresidential buildings, as well as maximum heights for lighting fixtures. Standards are included to minimize outdoor artificial light that may have a detrimental effect on the environment and enjoyment of the night sky. These provisions complement Building Code requirements intended to prohibit glare from unshielded fixtures and reduce the unnecessary illumination of adjacent properties and the use of energy.

***Outdoor Storage.*** Standards for the storage of goods, materials, machines, equipment and inoperable vehicles or parts outside of a building for more than 72 hours are established. Outdoor storage is only allowed in the IG and Resource Production Districts with locational and screening requirements.

***Parking and Vehicle Storage in Required Yards.*** Current provisions regarding parking and vehicle storage in required yards are carried forward with revisions for clarity.

***Projections into Required Yards and Required Building Separations.*** The draft regulations retain Newark's existing provisions for building encroachments into yards, with minor revisions adding greater specificity to distinguish between different types of projections.

***Screening.*** The draft regulations propose screening standards for mechanical equipment, outdoor storage, and the separation of residential and industrial uses.

***Swimming Pools and Spas.*** The draft regulations propose standards for fencing and location of swimming pools and spas and related equipment. In addition to safety concerns, proposed locational

standards address the potential visual and noise-related impacts of swimming pool and spa equipment and filtration systems. Swimming pool enclosure requirements are addressed in the Building Code.

**Trash and Refuse Collection Areas.** The draft regulations include standards to ensure that trash and refuse collection areas are visually compatible with development and accessible to residents and waste haulers. Proposed standards relate to the location, materials, construction, and design of trash and refuse collection areas.

**Underground Utilities.** The draft regulations require electrical, telephone, cable television, and similar distribution lines to be installed underground within the site. An exception is included if underground installation is infeasible.

### **Affordable Housing Program**

The provisions of Chapter 17.18, Affordable Housing Program, of the existing Ordinance have been carried forward, revised and reorganized so that their format is consistent with other chapters.

### **Density Bonus for Affordable Housing**

Regulations and permit procedures governing the density bonus incentive program in Chapter 17.17, State-Mandated Density Bonus, of the existing ordinance are reorganized, clarified, consolidated to improve usability, and reviewed to ensure consistency with State law.

### **Historical Resources**

The provisions of Chapter 17.39, Historical Resources, of the existing Ordinance have been carried forward, revised and reorganized so that their format is consistent with other chapters.

### **Landscaping**

This chapter includes landscaping provisions that apply to all new development and additions (other than to single-unit, duplex, or accessory dwelling unit development) that expand existing floor area by 10 percent or more. Water efficiency and irrigation requirements consistent with the State's Model Water Efficient Landscape Ordinance also have been incorporated.

The Water Conservation in Landscaping Act (AB 325) was signed into law on September 29, 1990. The statute directed the Department of Water Resources (DWR) to develop and adopt a Model Ordinance for water efficient landscaping. If by January 1, 1993 a local agency did not adopt a water efficient landscape ordinance, the Model Ordinance adopted by DWR took effect. The City of Newark did not adopt an ordinance and is therefore subject to the DWR Model Ordinance.

Common complaints of the DWR Model Ordinance is that it is difficult to implement, requiring calculations of the maximum applied water allowance (MAWA) and estimated applied water use (EAWU), and not responsive to local conditions. The proposed landscaping provisions provide straightforward options for simplified compliance with these water efficiency requirements. Water use calculations are not required if a high percentage of drought tolerant plant materials are used. However, if desired, just about type of noninvasive planting may be used as long as the estimated water use is less than the maximum allowed per State law.

The draft regulations establish general landscaping standards. They provide details on the type of materials that are to be used and what irrigation specifications are to be included. The regulations also prescribe what is to be in landscaping plans and include the option to create an Alternative Landscape Plan (ALP) for sites with unique characteristics that may find the standard landscaping requirements difficult to satisfy, or where site planning concepts could benefit from flexibility in landscape standards.

The purpose of the ALP is to allow development on such sites to meet or exceed the expectations of the City's landscaping regulations through innovative design in a way that would not otherwise be permitted. An ALP allows applicants more flexibility in preserving native vegetation, working with unique topographical features, and creating water-efficient irrigation systems, among other considerations.

### **Nonconforming Provisions**

The draft regulations give the City flexibility in treating nonconforming uses and structures by distinguishing between nonconforming uses that are detrimental to public health, safety, and general welfare and those uses that are economically productive and compatible with surrounding development despite being inconsistent with applicable regulations and requirements.

Draft regulations allow the City to distinguish among categories of nonconforming uses that should be regulated differently. Class I nonconforming uses are nonconforming uses that are considered benign and could remain, expand, or be substituted, as determined by the Planning Commission and subject to conditions or limitations, with provisions for revoking its Class I status if new nuisances arise.

Class II nonconforming uses are nonconforming uses that should be replaced at some time in the future, but are not detrimental because of health, safety, or substantial aesthetic impacts could remain indefinitely with restrictions on expansion or alteration. The Zoning Ordinance includes provisions requiring the removal of these nonconforming uses if they have been abandoned, destroyed, or substantially damaged. Class II uses may be substituted with Class I nonconforming uses subject to Conditional Use Permit approval, but may not be expanded.

Class III nonconforming uses are uses that create adverse impacts and are detrimental to health and safety pose a problem when market conditions do not support redevelopment in the near term. Amortization provisions are included which allow the City to require termination of the use within a certain time period. Amortization provisions allow the City to control how and when a nonconforming use terminates by allowing it to continue for a specific time frame calculated to accommodate the estimated useful economic life. Class III nonconforming uses are designated by the City Council following a public hearing and based on the finding that the use is a threat to public health and safety.

Consistent with existing provisions, the draft regulations include provisions for allowing the restoration of nonconforming structures when damaged by fire or other calamity to the extent of 50 percent or less. If a structure is damaged to the extent of 50 percent or more, the land and building are subject to all of the requirements of the ordinance unless, in the case of multi-unit residential development and nonresidential development, the Planning Commission approves a Conditional Use Permit allowing the structure to be rebuilt to the same size, extent, and configuration as previously existed. A single-unit dwelling may be rebuilt with a zoning clearance (a staff-level approval).

## **Parking and Loading**

The proposed parking and loading regulations apply to new buildings and uses, projects creating additional dwelling units, change or expansion in use, or expansion of floor area, consistent with the existing triggers for the provision of required parking. However, the specific number of parking spaces required is tailored to reflect the unique characteristics of various districts. Wherever possible, consistent parking requirements are used for individual use classifications within the same use type. This is intended to ease administration and provide flexibility with regard to re-use and changes of occupancy.

Several new regulations are proposed to allow flexibility in meeting parking requirements. These include parking exceptions in the Old Town area, parking reductions, and the ability of the City to establish an in-lieu fee so applicants could pay a fee in-lieu of providing parking. Parking reductions are available for locations near transit, provision of motorcycle parking, shared parking, and instances where the Planning Commission finds that conditions exist whereby parking demand generated by the project will be adequately served. These standards provide flexibility while still accommodating parking demand.

Draft regulations revise and expand the parking area design and development standards to address various aspects of parking area design, including parking space dimensions, maneuvering aisles, surfacing, striping, curbing, lighting, landscaping, separation from buildings, screening, circulation, alternative designs, and maintenance.

The draft regulations require 10 percent of the parking area to be landscaped and detail minimum requirements including minimum planter dimensions of 25 square feet, layout, landscaped islands every six stalls, landscaped buffers, trees every five spaces, protection of vegetation, and clearance. Requiring a larger percentage of landscaping will help improve the aesthetic appearance of parking lots, promote energy conservation through the creation of shade, reduce heat gain, and reduce noise and glare. Parking and loading provisions also address bicycle parking and on-site loading.

## **Performance Standards**

Draft provisions establish measurable standards for determining if a use or activity creates a nuisance on adjoining property. Existing performance standards that are currently applicable only to the certain industrial districts have been expanded to apply citywide. Standards address dust, fumes, electromagnetic interference, hazardous materials, glare, waste disposal, and vibration. Noise standards have been updated, consistent with the policies and thresholds in the General Plan.

## **Signage Standards**

The draft sign regulations reorganize, clarify, and consolidate the sign regulations and permit procedures in Chapter 17.52 of the existing code. Draft regulations include purpose statements that provide a defensible basis for regulations and are prepared to comply with the most current legal decisions by the U.S. Supreme Court and U.S. District Courts of Appeal. The list of exempted and prohibited signs has been significantly reorganized and revised to avoid content-based regulation.

The current sign provisions generally identify the number, size, and height for nameplates, special event signs, real estate signs, identification signs, and enterprise signs allowed in each zoning district. Signs are assumed to be either wall signs or freestanding signs; no specific standards address sign types such as projection, awning, or canopy signs.

The proposed sign regulations contain sign standards specific to individual sign types, including wall, freestanding, window, projecting, awning and canopy, and high-rise building identification signs. The specific types of signs allowed in each zoning district are identified, as well as the maximum aggregate sign area allowed per site.

The current sign provisions identify different allowances for a variety of temporary signs; including special event signs, real estate signs, and noncommercial signs. Recent court decisions essentially prohibit differential treatment of temporary signs. Therefore, standards are included that apply to all temporary signs in each zoning district.

To further strengthen the sign regulations, a message substitution provision is included. This provision provides that a protected noncommercial message of any type may be substituted for any permitted commercial or noncommercial message, without the need to secure a new permit, provided that the sign structure itself is legal.

Sign permits are required for all temporary or permanent signs. Design review is required for all signs 25 square feet or more in size. Provisions for a Master Sign Program are included to establish coordinated signage in projects with multiple tenants, multi-unit development of 50 or more units, and whenever five or more signs are proposed for a building or site. Modifications to the sign standards related to the height, area, and number of signs are allowed through a Master Sign Program with Planning Commission approval.

#### **DIVISION IV: ADMINISTRATION AND PERMITS**

Division IV contains provisions for administration of the Zoning Ordinance. The purpose of the administrative provisions is to convey who is responsible for making decisions on zoning applications and what criteria will be used to approve permits, and to explain the process for securing approvals. It is important that this part be understandable to both users and City staff and that it be “findings-based” and tied to the legal requirement that zoning and project approvals must be found to be consistent with General Plan land use designations, density/intensity standards and policies.

The administrative provisions are organized so that processes are streamlined and consolidated, wherever possible, and that the relevant responsibilities of those involved in review and decision-making are presented in the first chapter, followed by a chapter that sets forth procedures that are common to different types of approval. Procedures for specific approval processes then are listed in the following chapters. These include chapters for Zoning Clearance, Certificates of Occupancy, Design Review, Use Permits, Variances, Waivers, Amendments to the General Plan Map and Text, Amendments to the Zoning Map and Text, Development Agreements, and Enforcement and Abatement Procedures.

The proposed chapters incorporate many provisions included in Newark’s existing ordinance, but simplify the regulations by consolidating a number of the administrative provisions in a new and separate chapter that establishes administrative procedures related to filing and review of applications, noticing and hearings common to all or most approvals. Technical edits also are made to reflect “best practices.”

#### **Planning Authorities**

The first chapter of Division IV, Administration and Permits, lays out the basic roles and functions of the authorities that have a role in implementing the Zoning Ordinance, including the City Council, Planning Commission, Community Development Director, and Zoning Administrator. The Director may delegate

certain responsibilities to staff but is ultimately accountable to the City Manager and the Council for responsibilities assigned to him or her by the Ordinance, so good practice is not to assign any responsibilities or functions to “staff” in the Ordinance itself, but state that the Director may do so, but is ultimately accountable for the responsibilities the Director is given. The chapter also includes a table that identifies the authorities (e.g. Director, Planning Commission, and City Council) responsible for decisions and appeals.

### **Common Procedures**

The purpose of this chapter is to establish uniform procedures that are common to the application and processing of a variety of different permits, including Zoning Clearance, Design Review, Use Permits and Variances. Because this chapter will likely be the administrative chapter that users most frequently consult, it appears immediately following the chapter identifying various Planning Authorities.

### **Zoning Clearance**

This chapter codifies procedures for ensuring that all permits or licenses issued by the City conform to the provisions of the Zoning Ordinance. This ministerial process is distinguished from Use Permit and Variance procedures, which are discretionary. The Zoning Clearance process requires Staff review of applications for business licenses, building permits, and other entitlements to ensure that the proposed use or structure is permitted by right or conforms to the requirements and conditions of any discretionary approval granted under the Ordinance.

### **Certificate of Occupancy**

This chapter carries forward the provisions of Chapter 17.84, Certificate of Occupancy, of the current Ordinance, establishing procedures for ensuring that each new or expanded use of a structure or site complies with all applicable provisions of the Zoning Ordinance before any structure is occupied or used.

### **Design Review**

This chapter consolidates and augments the current provisions for joint staff committee, single family design, Special Civic District review, and architecture and site plan review, with changes intended to establish a streamlined review process and achieve high quality design. The chapter proposes a number of changes to existing review procedures to clarify review objectives and clearly define the respective roles of the Planning Commission and staff.

The Planning Commission would have design review authority for multi-unit development consisting of 10 or more units, nonresidential development or additions that result in more than 10,000 square feet of floor area, and all other projects requiring Planning Commission approval (such as Conditional Use Permits and Variances). The Director would have design review authority for all other projects and may refer items to the Planning Commission for review.

When a development project requires a Use Permit, Variance, or any other discretionary approval, design review is conducted concurrently with and subject to the same noticing requirements as the associated approval. Where no other discretionary approval is required, notice is provided to all property owners within a 100-foot radius of the subject property.

### **Use Permits**

This chapter includes a description of the purpose and processes for Conditional Use Permits which require Planning Commission review and a new type of use permit, Minor Use Permits, which require review by the Zoning Administrator. Public notice of an application for a Minor Use Permit is required but a public hearing is only held when requested by the applicant or other interested party. This chapter is organized so that action by the appropriate authority is listed first, followed by the application and public hearing provisions. The chapter includes cross-references to specific provisions in Chapter 17.22, Common Procedures, that describe specific requirements for appeals, expiration, extension, modification, and other procedures common to use permits as well as other approvals.

### **Variances**

This chapter expands upon the specific provisions applicable to variances that are in the current Ordinance to provide more clarity. Variances are intended to provide relief where strict conformance to ordinance requirements poses a hardship. The variance process is distinct from the procedure for granting a waiver of dimensional standards in that the approval of a variance is intended to apply only to those circumstances where an owner is denied equitable use of property due to physical conditions or lot configurations that are unique to the subject property or a small area.

### **Waivers**

This chapter proposes new provisions that are intended to provide an alternate means of granting relief from the Ordinance's requirements, treated as variances in the current Ordinance. The proposed provisions also establish procedures to make it easier to ensure compliance with State and Federal law, including the Americans with Disabilities Act, the Federal Fair Housing Act and the Federal Religious Land Use and Institutionalized Persons Act, which require that the Ordinance provide a process for approving reasonable accommodations of certain protected groups and uses.

The proposed provisions authorize the Director, or the decision maker of another approval associated with the project for which the waiver is requested, to grant minor waivers or modifications to dimensional requirements of property development standards (yard, height, lot coverage, landscaping, transparency and other development standards) when so doing is consistent with the purposes of the Ordinance and with the General Plan. The waiver may not exceed 10 percent of the requirement. The waivers and modifications that this chapter authorizes would not apply to lot area, width or depth; or residential density.

### **General Plan, Zoning Ordinance, and Zoning Map Amendments**

These chapters include provisions for zoning map, zoning text, and general plan amendments that incorporate the State Government Code's specific procedures governing these legislative decisions. Chapter 17.30, Amendments to General Plan Map and Text, emphasizes the supremacy of the General Plan as the underlying basis for all land use and development policies and regulations. It also sets forth the procedures that Newark is required to use to adopt and amend its General Plan consistent with the requirements of Government Code Section 65350 et seq.

Chapter 17.31, Amendments to Zoning Map and Text, prescribes the procedures the City will follow when considering changes to the text of the zoning ordinance and the zoning map. The Government Code specifies basic requirements for zoning amendments, including minimum standards for notification. To



ensure compliance with case law, the procedures specify that the public notice for the City Council hearing must include a description of the Planning Commission recommendation.

### **Development Agreements**

The proposed provisions in this chapter refine the existing regulations in Chapter 17.73, Development Agreements, and establishes streamlined procedures to enable the City to implement Government Code Sections 65864-65869.5 authorizing government entities to enter into legally binding agreements with private parties. The minimum site area requirement of 30 acres for a development agreement is proposed to be removed, giving the City flexibility in evaluating the merits of a project on a case-by-case basis to determine whether a development agreement is appropriate.

### **Enforcement and Abatement Procedures**

This chapter specifies provisions governing enforcement of the zoning title. The proposed changes include a more specific definition of nuisance and inclusion of nuisance abatement procedures. If compliance is not had with an order to correct violations, the City Manager may record a notice of violation with the County Recorder. Some jurisdictions also have had good success with getting violations corrected when the violation is recorded, although this does impose an additional administrative burden. Whenever the corrections ordered have been completed, a notice is recorded certifying that all required corrections have been made so that there is no longer a violation.

## Division III: Citywide Regulations

### Chapter 17.12 General Site Regulations

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#### 17.12.010 Purpose and Applicability

The purpose of this Chapter is to prescribe development and site regulations that apply, except where specifically stated, to development in all districts. These standards shall be used in conjunction with the standards for each zoning district established in Article II, Base and Overlay District Regulations. In any case of conflict, the standards specific to the zoning district shall override these regulations.

#### 17.12.020 Accessory Buildings and Structures

##### A. Applicability.

1. The provisions of this Section apply to roofed structures, including but not limited to garages, carports, sheds, workshops, gazebos, and covered patios, that are detached from and accessory to the main building on the site. These provisions also apply to open, unroofed structures such as play equipment, decks and trellises, that are over 18 inches in height and that are detached from and accessory to the main building on the site.
2. When an accessory building or structure is attached to the main building, it shall be made structurally a part of and have a common wall or roof with the main building and shall comply in all respects with the requirements of this Ordinance applicable to the main building. Allowed building projections into yards and required building separations are stated in Section TBD, Projections into Yards and Required Building Separations.
3. Where an Accessory Dwelling Unit is located over a detached garage, the entire structure shall be considered a main building, subject to the base district standards for main buildings. No portion of this building shall be closer to any lot line than is permitted for any other main building.

B. **Relation to Existing Structures.** A detached accessory building may only be constructed on a lot on which there is a permitted main building to which the accessory building is related or on an adjacent lot under the same ownership. However, an accessory building may be constructed prior to a permitted main building and used for not more than one year in connection with the construction of the main building provided that a building permit is obtained for the entire project, including the accessory building, prior to the start of any construction.

C. **Height.** The maximum allowable height of accessory structures is 12 feet.

##### D. Location.

###### 1. All Districts.

- a. *Front and Street-Side Setbacks.* Accessory structures shall not be located within any required front or street-side setback area.

- b. *Interior-Side and Rear Setbacks.* Accessory structures greater than six feet six inches in height or more than 120 square feet in size shall be setback a minimum of three feet from interior side and rear property lines.
- 2. **Additional Limitation, RS District.** In the RS District, accessory structures shall be located in the rear half of the lot.
- E. **Maximum Number, RS District.** In the RS District, the maximum allowable number of accessory structures is two accessory structures per lot, exclusive of an Accessory Dwelling Unit.
- F. **Rear Yard Area Limitation, RS District.** In the RS District, accessory structures shall not occupy more than 30 percent of the required rear yard area.
- G. **Separation from Main Buildings.** Detached accessory structures shall be located a minimum of six feet from the main building, inclusive of roof covering.
- H. **Plumbing.** A detached accessory structure may have plumbing for a washer, dryer, and/or utility sink provided that it has an open floor plan without interior partitions.

#### 17.12.030 Development on Lots Divided by District Boundaries

- A. **Generally.** Where a lot is divided by a zoning district boundary, the regulations applicable to each district will be applied to the area within the district, and no use, other than parking serving a principal use on the site, can be located in a district in which it is not a permitted or conditionally permitted use.
- B. **Access.** All access to parking serving a use must be from a street abutting that portion of the lot where the use is allowed. Pedestrian or vehicular access from a street to a nonresidential use shall not traverse a Residential District in which the nonresidential use is not permitted or conditionally permitted.
- C. **Exceptions.** If more than 60 percent of a lot is located in one zoning district, modifications to the provisions of this Section may be granted through Planning Commission approval of a Conditional Use Permit.

#### 17.12.040 Development on Substandard Lots

- A. Any lot or parcel of land that was legally created through a recorded deed may be used as a building site even when consisting of less area, width, or depth than that required by the regulations for the district in which it is located except as provided below.
  - 1. **Two or More Adjoining Vacant Sites.** Two or more adjoining vacant sites with continuous frontage, each having an area, width or frontage less than the minimum prescribed for the district in which the sites are located, in the same ownership as of the date of adoption of this Section or subsequent thereto, is subject to all regulations for the district in which the sites are located, including minimum area, width and frontage requirements, as if the sites constituted a single parcel of real property.
- B. No substandard lot can be further reduced in area, width, or depth, unless such reduction is required as part of a public improvement.
- C. A substandard lot will be subject to the same yard setback and density requirements as a standard lot.

### 17.12.050 Fences and Freestanding Walls

Fences, walls, dense hedges, and similar structures shall comply with the standards of this Section.

A. **Maximum Height.** Fences, walls, dense hedges, and related structures are limited to a maximum of six feet except as follows: three feet high when located within required front yards or within four feet of a street side lot line, eight feet adjacent to four or more lane arterials for residential uses.

1. **Additional Height.**

a. *Director Approval.* The Director may approve additional fence height in compliance with the following.

i. Maximum Height.

(1) Front Yards and within Four Feet of a Street Lot Line. Fences within the front yard and fences within four feet of a street lot line on a lot adjacent to a nonresidential use may be up to six feet in height.

(2) Outside Front Yards and More than Four Feet from a Street Lot Line. Fences located outside of a required front yard and more than four feet from a street lot line may be up to eight feet in height.

ii. Materials. The Director may only approve additional fence height for fences made of masonry block, precast concrete, wood, or metal wrought iron.

(1) Combinations of different materials are not permitted except for trim.

(2) Vertical or horizontal extensions to an existing fence or wall shall be of the same material and design as the existing fence or wall.

iii. Review and Required Findings. In approving additional fence height, the Director shall make the following findings.

(1) The additional fence height will not impair the provision of adequate light, air, circulation, and visual openness around adjacent residential structures.

(2) The additional fence height will not detract from the overall appearance of the neighborhood.

(3) The additional fence height is not detrimental to the health, safety, and welfare of people living in the neighborhood.

b. *Planning Commission Approval.* The Planning Commission may approve additional height allowances where the Planning Commission finds such fencing is necessary for security purposes.

2. **Hedges.** Where the base of the main trunk is further than four feet from the street side lot line and within five feet of a permitted structure, a hedge may be of any height.

3. **Recreational Fencing.** Fencing located around tennis courts, badminton courts, basketball or volleyball courts and similar areas up to 12 feet in height may be allowed with Director approval, providing that all parts of the fence over six feet are made of open-wire construction or other corrosion-resistant materials.
4. **Decorative Features.** One entry gateway, trellis, or other entry structure is permitted in the required front or street-facing side yard of each lot, provided that the maximum height or width of the structure does not exceed eight feet and the maximum depth does not exceed five feet.
5. **Intersection and Driveway Visibility.** Notwithstanding other provisions of this Section, fences, walls, and related structures shall comply with Chapter 10.36, Visibility Requirements, of the Newark Municipal Code.

**B. Materials.**

1. **Prohibition on Hazardous Fencing Materials.** The use of barbed wire, razor wire, ultra-barrier, electrified, and other hazardous fencing is not permitted unless such fencing is required by any law or regulation of the City, the State of California, Federal Government, or other public agency.
  - a. *Exception.* The Planning Commission may approve an exception to this standard for sites in Employment Districts, provided the hazardous fencing materials are located at the top portion of a fence which is at least six feet in height where the Planning Commission finds such fencing is necessary for security purposes.
2. **Limitation on Chain-Link Fencing.**
  - a. *Residential Districts.* Chain-link fencing is prohibited in Residential Districts.
  - b. *Nonresidential Districts.* In Nonresidential Districts, chain-link fencing shall not be visible from the street, a State highway, or adjacent Residential Districts.
3. **Limitation on Concrete Block.** Plain, concrete block is not permitted as a fencing material. Concrete block must be finished with stucco (or decorative split-faced block) and capped with a decorative cap.

**17.12.060 Height and Height Exceptions**

The structures listed in the following table may exceed the maximum permitted building height for the district in which they are located, subject to the limitations stated and further provided that no portion of a structure in excess of the building height limit may contain habitable areas or advertising. Additional height, above this limit, may be approved with a Conditional Use Permit, pursuant to the provisions of Chapter TBD, Use Permits.

<b>TABLE TBD: ALLOWED PROJECTIONS ABOVE HEIGHT LIMITS</b>		
<i>Structures Allowed Above the Height Limit</i>	<i>Maximum Vertical Projection Above the Height Limit</i>	<i>Maximum Coverage and Locational Limitations</i>
Skylights	1 foot	None
Chimneys	8 feet	None

<b>TABLE TBD: ALLOWED PROJECTIONS ABOVE HEIGHT LIMITS</b>		
<i>Structures Allowed Above the Height Limit</i>	<i>Maximum Vertical Projection Above the Height Limit</i>	<i>Maximum Coverage and Locational Limitations</i>
Decorative features such as spires, cupolas, bell towers, domes, obelisks, and monuments Rooftop open space features such as sun decks, sunshade and windscreen devices, open trellises, and landscaping	10 feet	Limited to a total of 20% of roof area, inclusive of all structures Must be setback from the exterior wall one foot for every foot of projection above the height limit
Elevator and stair towers (for multi-unit and nonresidential buildings only)	16 feet	Limited to a total of 10% of roof area Must be setback from the exterior wall one foot for every foot of projection above the height limit
Mechanical equipment penthouses	10 feet	Limited to 60% of roof area Must be setback from the exterior wall one foot for every foot of projection above the height limit
Mechanical equipment	5 feet	Must be setback from the exterior wall one foot for every foot of projection above the height limit
Fire escapes, catwalks, and open railings required by law	No restriction	None
- Telecommunications facilities, antennas, and microwave equipment - Radio towers	Subject to provisions of Section TBD, Telecommunications Facilities.	
Solar Panels	Subject to provisions of Section TBD, Solar Energy Systems	

**17.12.070 Lighting and Illumination**

- A. **Applicability.** The standards of this Section apply to all new development and to exterior alterations and additions that involve replacement light fixtures or systems, except as provided below.
  - 1. **Exemptions.** The following lighting is exempt from the provisions of this Section.
    - a. *Public and Private Street Lighting.*
    - b. *Athletic Field Lights.* Athletic field lights used within a school campus or public or private park.
    - c. *Safety and Security Lighting.* Safety and security lighting for public facilities.
    - d. *Construction and Emergency Lighting.* All construction or emergency lighting fixtures, provided they are temporary and are discontinued immediately upon completion of the construction work or abatement of the emergency.
    - e. *Seasonal Lighting.* Seasonal lighting displays related to cultural or religious celebrations.

- B. **Prohibitions.** The following types of exterior lighting are prohibited.
1. **Searchlights.** The operation of searchlights for advertising purposes.
  2. **Mercury Vapor.** Mercury vapor lights.
  3. **Other Light Types.** Laser lights or any other lighting that flashes, blinks, alternates, or moves.
- C. **General Requirements.** Outdoor lighting shall be designed to be an integral part of the built environment, reflecting a balance for the lighting needs with the contextual ambient light level and surrounding nighttime characteristics of the community. Lighting for commercial installations adjacent to or near residential uses shall be compatible with and not directly illuminate nearby residential uses.
1. **Maximum Height.**
    - a. *Within 100 feet of a Residential District:* 16 feet.
    - b. *Other Locations:* 25 feet.
    - c. *Exceptions:* The Planning Commission may allow additional height for activities, uses, or development with unique lighting needs; accentuating historic architectural features of a building; accentuating signage and/or landscape features; or for security purposes.
  2. **Design of Fixtures.** Fixtures shall be appropriate to the style and scale of the architecture. Fixtures on buildings shall be attached only to walls or eaves, and the top of the fixture shall not exceed the height of the parapet or roof or eave of roof.
  3. **Timing Controls.** All outdoor lighting in nonresidential development shall be on a time clock or photo-sensor system and turned off during daylight hours and during hours when the building or, in the case of shopping centers, all buildings, are not in use and the lighting is not required for security.
  4. **Trespass.** All lights shall be directed, oriented, and shielded to prevent light trespass or glare onto adjacent properties. The light level at property lines shall not exceed 0.3 foot-candles.
- D. **Supplemental Requirements**
1. **Multi-Unit Residential Buildings.**
    - a. Lighting in parking areas, garage areas, and carport areas shall be maintained with a minimum of one foot-candle of illumination at the ground level during the hours of darkness.
    - b. Aisles, passageways, and recesses related to and within the building complex shall be illuminated with an intensity of at least 0.25 foot-candles at the ground level during the hours of darkness.
  2. **Nonresidential Buildings.** All exterior doors, during the hours of darkness, shall be illuminated with a minimum of 0.5 foot-candle of light.

**17.12.080 Outdoor Storage**

Storage of goods, materials, machines, equipment, and inoperable vehicles or parts outside of a building for more than 72 hours shall conform to the standards in Table TBD, Outdoor Storage Regulations. The regulations of this Section do not apply to temporary storage of construction materials reasonably required for construction work on the premises pursuant to a valid building permit or to the parking and storage of recreational vehicles or trailers pursuant to Section TBD, Recreational Vehicles and Trailers.

<b>TABLE TBD: OUTDOOR STORAGE REGULATIONS</b>	
<i>Base Districts</i>	<i>Permissibility of Outdoor Storage</i>
Residential, Commercial and Mixed-Use, Public and Semi-Public, OP, BTP, and IL Districts	Not permitted. (All storage must be within an enclosed building).
IG District	Permitted as an accessory use outside of required yards, parking and circulation areas, and required landscaped areas subject to the standards of Section TBD, Screening.
Resource Production District	Permitted as a principal use outside of required front and street side yards, parking and circulation areas, and required landscaped areas subject to the standards of Section TBD, Screening.

**17.12.090 Parking and Vehicle Storage in Required Yards**

Noncommercial passenger vehicles, with a manufacturer's gross vehicle weight 10,000 pounds or less, recreation-type vehicles such as travel trailers, tent trailers, completely enclosed campers and boats on trailers may be parked or stored in required yards, provided, that they are not subject to Chapter 10.52, Abatement of Abandoned, Wrecked, Dismantled or Inoperative Vehicles, of the Newark Municipal Code, subject to the following provisions.

- A. Vehicles and equipment shall be parked on a driveway. "Driveway" shall include a permanently surfaced extension of the original driveway, located immediately adjacent and parallel to the original driveway. Such extension shall not exceed 10 feet in width and shall not be used for the parking or storage of more than one passenger or recreation-type vehicle at any one time.
  - 1. For properties that front on four lane arterials or high speed two lane collector streets in Residential Districts, two permanently surfaced extensions of the original driveway, located immediately adjacent and parallel to the original driveway, allowing for a maximum of four vehicles in the front yard, all of which must be operable, are allowed subject to design review by the Director.
- B. Vehicles or equipment shall not encroach into the public right-of-way.
- C. Campers which have been removed from the transporting vehicle and which are stored on driveways shall be situated as close to the ground as is practicable and shall not present a hazard to persons entering the driveway or passing by in the public right-of-way.
- D. Parked or stored vehicles, campers, or equipment shall not be occupied.



- E. Vehicles or equipment visible from adjacent property or public right-of-way shall not be used for the accumulation or storage of trash, debris, garbage, garden trimmings or other discarded materials.

**17.12.100 Projections into Yards and Required Building Separations**

Building projections may extend into required yards or spaces between structures, according to the standards of Table TBD, Allowed Projections into Required Yards and Building Separations, subject to all applicable requirements of the Building Code. The “Limitations” column states any dimensional, area, or other limitations that apply to such structures where they project into required yards.

<b>TABLE TBD: ALLOWED PROJECTIONS INTO REQUIRED YARDS AND BUILDING SEPARATIONS</b>					
<i>Projection</i>	<i>Front or Street Side Yard</i>	<i>Interior Side Yard</i>	<i>Rear Yard</i>	<i>Required Building Separation</i>	<i>Limitations</i>
All projections	Notwithstanding any other Subsection of this Section, no projection may extend closer than three feet to an interior lot line or into a public utility easement. Where any setback of this Ordinance conflicts with the Building Code, the more restrictive shall apply.				
Cornices, canopies, eaves, and similar architectural features; chimneys	3 feet	2 feet	3 feet	2 feet	
Bay windows	3 feet	2 feet	3 feet	2 feet	Shall not occupy more than one-third of the length of the building wall on which they are located or one-half of the length of a single room.
Fire escapes required by law or public agency regulation	3 feet	3 feet	3 feet	3 feet	
Uncovered stairs, ramps, stoops, landings, decks, porches, balconies, and platforms					
<i>All elements less than four feet above ground elevation</i>	6 feet	3 feet	8 feet	3 feet	Must be open on at least three sides and no closer than 7 ft of a street-facing lot line or 3 ft of an interior lot line.
<i>Any element four feet or more above ground elevation</i>	3 feet	3 feet	3 feet	3 feet	
Ramps and similar structures that provide access for persons with disabilities	Reasonable accommodation will be made, consistent with the Americans with Disabilities Act; see Chapter TBD, Waivers.				

**17.12.110 Screening**

- A. **Screening of Mechanical and Electrical Equipment.** All exterior mechanical and electrical equipment shall be screened or incorporated into the design of buildings so as not to be visible from public rights-of-way or adjacent Residential Districts. Equipment to be screened includes, but is not limited to, all roof-mounted equipment, air conditioners, heaters, utility meters, cable equipment, telephone entry boxes, backflow preventions, irrigation control valves, electrical

transformers, pull boxes, and all ducting for air conditioning, heating, and blower systems. Screening materials shall be consistent with the exterior colors and materials of the building. Exceptions may be granted by the Director where screening is infeasible due to health and safety or utility requirements.

- B. **Common Property Lines.** A screening wall six feet in height shall be provided on the interior lot lines of any lot that contains any use in the Industrial Use Classification or any use in the Transportation, Communication, and Utilities Use Classification (except Communications Facilities and Minor Utilities) and abuts a Residential District.
1. **Timing.** The screening wall shall be provided at the time of new construction or expansion of buildings, or changes from one use classification to another nonresidential use classification.
  2. **Location.** Screening walls shall follow the lot line of the lot to be screened, or shall be so arranged within the boundaries of the lot so as to substantially hide from adjoining lots the building, facility, or activity required to be screened.
  3. **Materials.** Industrial uses must provide a solid screening wall of stucco, decorative block, or concrete panel. Screening walls for other uses may be constructed of stucco, decorative block, concrete panel, wood, or other substantially equivalent material.
- C. **Outdoor Storage Areas.** Outdoor storage areas shall be screened from view from any public street or freeway; existing or planned residential area; or publicly accessible open space area, parking area, access driveway, or similar thoroughfare.
1. **Height.** Screening walls and fences shall be at least six feet in height and no materials or equipment shall be stored to a height greater than that of the wall or fence. Fences and walls must not exceed the maximum allowable fence heights unless allowed pursuant to Minor Use Permit approval.
  2. **Materials.** The screening wall or fence shall be constructed of stucco, decorative block, concrete panel, wood or other substantially equivalent material.
- D. **Other Outdoor Use Areas.** Any use not conducted entirely within an enclosed structure shall be screened from view from any public street or freeway; existing or planned residential area; or publicly accessible open space area, parking area, access driveway, or similar thoroughfare where the Director finds that the use without screening would have a detrimental effect on adjacent properties.
- E. **Berms.** An earth berm may be used instead of or in combination with the above types of screening walls.
- F. **Maintenance.** Screening walls shall be maintained in good repair, including painting, if required, and shall be kept free of litter or advertising. Where hedges are used as screening, trimming or pruning shall be employed as necessary to maintain the maximum allowed height.

### 17.12.120 Swimming Pools and Spas

Swimming pools, spas, and any body of water having a depth of more than 18 inches shall comply with the following standards:

- A. The swimming pool or spa, or the entire lot on which it is located, shall be walled or fenced from the street or from adjacent lots.
  - 1. Swimming pools and spas located within 50 feet of any lot line shall be screened from view from the street and adjoining properties with a structure or a solid fence or wall at least five feet in height. Swimming pools and spas located less than 30 feet to any lot line shall be screened by a masonry wall or solid fence not less than six feet in height on the side facing such lot line.
- B. The outside wall of the water-containing portion of any swimming pool or spa shall not be located within the required front or street side setback and shall be located at least five feet from all interior side and rear lot lines.

### 17.12.130 Trash and Recycling Collection Areas

This Section establishes design and locational criteria for the construction of refuse, solid waste, recycling, compost, and green waste container storage areas. Refuse, solid waste, recycling, compost, and green waste are collectively referred to as “waste and recycling.”

- A. **General Requirements.** All waste and recycling shall be placed in an appropriate receptacle. All garbage cans, mobile trash bins, receptacles, and all recycling materials and containers for such recycling materials shall be maintained and stored in accord with this Section.
- B. **Containment.** All development shall provide either individual waste and recycling containers or waste and recycling enclosures consistent with the following:
  - 1. **Individual Waste and Recycling Containers.** Individual waste and recycling containers for each unit or tenant may be provided as follows:
    - a. *Development Type.* Individual waste and recycling containers may be provided for:
      - i. Single-unit development.
      - ii. Multi-unit development.
      - iii. Nonresidential development where the Director finds that the nature of the proposed development is such that the development will be adequately served with individual waste and recycling containers.
    - b. *Location.* The waste and recycling containers shall not be located within any required front setback, street side setback, any required parking and landscaped areas, or any other area required by this Ordinance to be constructed or maintained unencumbered, according to fire and other applicable building and public safety codes.
      - i. IG and IL Districts. In the IG and IL Districts, waste and recycling containers shall also be setback a minimum of five feet from any property line and a minimum of 10 feet from any Residential or Open Space District boundary.
    - c. *Visibility.* The waste and recycling containers shall not be visible from a public right-of-way.

2. **Waste and Recycling Container Enclosures.** Waste and recycling container enclosures are required for all new nonresidential development except where the Director finds the development will be adequately served with individual waste and recycling containers pursuant to Subparagraph (B)(1)(a) above.
  - a. *Size.* Waste and recycling-container enclosures shall be sized to accommodate all trash, garbage, recyclables, and green waste until such items are picked up by the City or its contracted waste and recycling collector.
  - b. *Location.* The waste and recycling storage area shall not be located within any required front setback, street side setback, any required parking and landscaped areas, or any other area required by this Ordinance to be constructed or maintained unencumbered, according to fire and other applicable building and public safety codes.
  - c. *Accessibility.* Waste and recycling storage areas shall be accessible so that trucks and equipment used by the contracted waste and recycling collector have sufficient maneuvering areas and, if feasible, so that the collection equipment can avoid backing up.
  - d. *Screening.* Waste and recycling storage areas located outside or on the exterior of any building shall be screened with a solid enclosure at least six feet high and include a roof structure.
  - e. *Enclosure Material.* Enclosure material shall be wood, solid masonry, or concrete tilt-up with decorated exterior-surface finish. The trash enclosure shall match and complement the color scheme and architecture of the associated development.
  - f. *Gate Material.* Latching, view-obscuring gates shall be provided to screen trash enclosure openings.
  - g. *Enclosure Pad.* Pads shall be a minimum of four-inch-thick concrete.
  - h. *Bumpers.* Bumpers shall be two inches by six inches thick and made of concrete, steel, or other suitable material, and shall be anchored to the concrete pad.
  - i. *Clear Zone.* The area in front of and surrounding all enclosure types shall be kept clear of obstructions, and shall be painted, striped, and marked "No Parking."
  - j. *Drainage.* The floor of the enclosure shall have a drain that connects to the sanitary sewer system.
  - k. *Travelways and Area in Front of Enclosure.* The travelways and area in front of the enclosure shall have an adequate base to support a truck weight of at least 62,000 pounds.

#### **17.12.140 Underground Utilities**

All electrical, telephone, cable television, and similar distribution lines providing direct service to a project shall be installed underground within the site. This requirement may be waived by the Director upon determining that underground installation is infeasible.

## Chapter 17.13 Affordable Housing Program

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### 17.13.010 Purpose

The provision of safe and stable housing for households at all income levels is essential for the public welfare of the City. Housing in the City has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households.

As provided in the Housing Element of the General Plan, the City wishes to retain an economically balanced community with housing available to households of all income levels, which is only possible if some of the housing built within the City is affordable to households with limited incomes.

Because new housing contributes to the demand for goods and services, it increases local employment and attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, increasing the demand for and exacerbating the shortage of housing available for people at these income levels. Further, new housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. In addition, because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential development projects similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels.

This Chapter therefore imposes a residential and nonresidential development housing impact fee to provide a means whereby developers of residential and nonresidential development projects contribute to the supply of housing for households with very low, low, and moderate incomes. It also implements Program 8 in the City's 2007-2014 Housing Element, which called for amendments to the City's inclusionary housing program if problems were found due to market conditions. Because no affordable housing was produced by the City's former program, the City has adopted a housing impact fee to create a more effective affordable housing program.

### 17.13.020 Housing Impact Fee

- A. **Application.** A housing impact fee is hereby imposed on all developers of residential and nonresidential development projects.
- B. **Calculation of Housing Impact Fee.** The housing impact fee for residential and nonresidential development projects shall be charged on a per square foot basis for new floor area, excluding additions to existing residential dwellings. The amount and calculation of each such fee shall be established by resolution of the City Council. The City Council may review the fees from time to time at its sole discretion and may, based on that review, adjust the fee amount. Housing impact fees shall not exceed the cost of mitigating the impact of the nonresidential and residential projects on the need for affordable housing in the City.
- C. **Time of Payment.** Payment of the residential and nonresidential development housing impact fee shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.
- D. **Processing Requirements.** No application for a building permit for any project subject to this Section shall be deemed complete unless the application contains the items listed below. The

Director may require similar information for completeness of other City permits or licenses as necessary or convenient to implement this Section:

1. A statement of the new square feet in a residential or nonresidential development project to be constructed, added, or placed that are subject to the requirements of this Section, together with documentation sufficient to support the application;
2. The intended use or uses for the residential or nonresidential development project by new square feet; and
3. A statement of any exemptions applicable to the project.

New square footage shall be calculated on either a gross square foot or net square foot basis, as specified in the fee schedule adopted by resolution of the City Council.

### **17.13.030 Exemptions from Payment of Housing Impact Fee**

This fee shall not apply to developers of residential or nonresidential development projects which fall within one or more of the following categories:

- A. **Emergency Food and Shelter Services.** Development projects to be operated by nonprofit organizations and which will provide food storage, meal service, and/or temporary shelter to the homeless.
- B. **Specific Uses.** Projects for any of the following uses:
  1. Colleges and Trade Schools
  2. Community Assembly
  3. Community Garden
  4. Cultural Institutions
  5. Day Care Centers providing care for eight or fewer persons
  6. Emergency Shelter
  7. Park and Recreation Facilities
  8. Public Works and Utilities
  9. Schools
  10. Social Service Facilities
  11. Temporary uses.
- C. **Government Property.** Residential or nonresidential development projects located on property owned by the State of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.
- D. **Damaged Property.** Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, and construction of the replacement building begins within one year.

- E. **Vested Rights.** Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of housing impact fees pursuant to state law including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the City from requiring payment of the housing impact fee.
- F. **Prior Application.** Residential or nonresidential uses as set forth in an application for a Building Permit, Use Permit, rezoning or similar discretionary approval accepted as complete by the City prior to the effective date of this Ordinance; however, any extension or modification of such approval or permit after such date shall not be exempt.
- G. **Affordable Housing.** Housing for very low, low, or moderate income households that fully mitigates the development's impacts on the need for affordable housing.

#### **17.13.040 Discretionary Exemption by City Council**

The City Council may elect to waive the payment of the impact fee if a developer of a residential or nonresidential development project includes the provision of community benefits in excess of those required by the impacts of the project, and if the City Council finds that the proposed benefits to the community exceed those that would be provided by the payment of the housing impact fee. Such community benefits may include the provision of senior housing, the generation of significant sales taxes, or the elimination of nuisances. If the City Council elects to waive housing impact fees pursuant to this provision, the community benefits shall be guaranteed by a binding document in a form that is acceptable to the City Attorney.

#### **17.13.050 Alternatives to Payment of Housing Impact Fee**

- A. **Mitigation of Housing Impacts.** The City Council may adopt by resolution the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential projects on the need for affordable housing.
- B. **Residential Projects.**
  - 1. As an alternative to paying the housing impact fee, a developer of residential property may provide on-site affordable rental or for-sale residential units or an alternative housing program. Any affordable rental or for-sale units proposed as an alternative to the payment of the housing impact fee shall be subject to the requirements described in Section TBD, Standards for Alternatives to Payment of Housing Impact Fee. The program shall be guaranteed by a binding and recorded document, such as a development agreement, in a form that is acceptable to the City Attorney.
  - 2. A developer who proposes the provision of affordable units that are rental must submit an affidavit to the City stating that any rental affordable units proposed by the developer are not subject to Civil Code Section 1954.52(a) nor any other provision of the Costa Hawkins Rental Housing Act (Civil Code Sections 1954.51 et seq.) inconsistent with controls on rents, because, pursuant to Civil Code Sections 1954.52(b) and 1954.53(a)(2), prior to approval of the residential project, the developer will enter into a contract with the City or another public agency agreeing to the limitations on rents contained in Section TBD, Standards for Alternatives to Payment of Housing Impact Fee, in consideration for a

direct financial contribution or any form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division I of Title 7 of the Government Code. The developer may request that the City waive the affordable housing impact fee as a direct financial contribution to the rental residential project.

- C. **Nonresidential Development Projects.** A developer of nonresidential development projects may propose an alternative affordable housing program to mitigate the impact of the development on the need for affordable housing. Any affordable rental or for-sale units proposed as an alternative to the payment of the housing impact fee shall be subject to the requirements described in Section TBD, Standards for Alternatives to Payment of Housing Impact Fee. The program shall be guaranteed by a binding and recorded document, such as a development agreement, in a form that is acceptable to the City Attorney.
- D. **Planning Commission.** The alternative means of compliance shall be brought to the Planning Commission for its consideration. The Planning Commission shall consider the alternative and recommend approval, conditional approval or denial to the City Council. The Commission shall only recommend approval or conditional approval of the alternative means of compliance if it is able to make all of the findings set forth below:
  - 1. The proposed alternative means of compliance fulfills the purposes of this Chapter as set forth in Section TBD, Purpose;
  - 2. The proposed alternative means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section TBD, Housing Impact Fee, and will fully mitigate the impact of the project on the need for affordable housing;
  - 3. The proposed alternative means of compliance would better address the City's needs than compliance with the requirements of Section TBD, Housing Impact Fee; and
  - 4. The proposed alternative means of compliance will not unduly concentrate affordable housing in one geographic area so as to result in housing segregation.
- E. **City Council.** After consideration of the Planning Commission's recommendation, the City Council may approve, conditionally approve, or deny the alternative means of compliance. The Council shall only approve or conditionally approve the alternative means of compliance if it is able to make all of the findings described in Subsection D above.

#### **17.13.060 Standards for Alternatives to Payment of Housing Impact Fee**

- A. The for-sale and rental affordable units developed as an alternative to the payment of the housing impact fee shall be subject to a resale restriction, deed of trust, and/or regulatory agreement recorded against the property as applicable. These agreements shall have a term of 55 years for rental affordable units and a term of 30 years for for-sale units and shall require the affordable units to be rented to very low or low-income households at an affordable rent, or to be sold to very low, low or moderate income households at an affordable ownership cost.
- B. Affordable units shall be comparable to the market rate units in a residential development as follows:
  - 1. The affordable units shall have the same proportion of units of different bedroom sizes as provided in the residential development project as a whole;



2. The exterior appearance of the affordable units shall be indistinguishable from that of market rate units;
3. The affordable units shall be dispersed throughout the residential development project;
4. The affordable units shall be provided or have access to the same amenities as the market rate units, including air conditioning, covered garages, recreation facilities and laundry facilities; and
5. All affordable units in a residential development project or phase of a project shall be constructed concurrently with the market rate units.

### **17.13.070 Housing Fund**

There is hereby established in the City of Newark the affordable housing fund. Separate accounts within such housing fund may be created from time to time to avoid co-mingling as required by law or as deemed appropriate to further the purposes of the fund.

- A. **Administration.** The housing fund shall be administered by the Director, who shall have the authority to govern the housing fund consistent with this Chapter and to prescribe procedures for said purpose, subject to approval by the City Council.
- B. **Advisory Committee.** The Community Development Advisory Committee shall review the status of the fund annually. As appropriate, the Committee may define and prioritize recommended uses of the monies in the housing fund, subject to approval by the City Council.
- C. **Purpose and Use of Funds.**
  1. Monies deposited in the housing fund, along with any interest earnings on such monies, shall be used solely to increase and preserve the supply of housing affordable to households of very low, low, and moderate incomes; including, but not limited to, acquisition of property and property rights, cost of construction, including costs associated with planning, administration, and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing; and reimbursement to the City for such costs if funds were advanced by the City from other sources. To the maximum extent possible, all monies should be used to provide for additional affordable housing. Monies may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the housing fund and reasonable expenses for administering the process of calculating, collecting, and accounting for housing fees authorized by this Section.
  2. Monies in the housing fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the Director and City Council determine is appropriate to accomplish the purposes of the housing fund. The housing fund monies may be extended for the benefit of rental or owner occupied housing or housing services.
  3. Expenditures by the Director from the housing fund shall be controlled, authorized, and paid in accordance with general City budgetary policies. Execution of contracts related to

the use or administration of housing fund monies shall be in accordance with standard City policy.

**17.13.080 Administrative Relief**

- A. As part of an application for the first approval of a residential or nonresidential development project, a developer or applicant may request that the requirements of this Chapter be waived or modified, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. Any request for a waiver or modification shall be submitted concurrently with the project application. Failure to do so shall constitute a failure to exhaust administrative remedies. The developer or applicant shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application.
- B. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

**17.13.090 Enforcement.**

- A. **Housing Impact Fee.** Payment of the housing impact fee is the joint and several obligations of the applicant and the property owner for the subject residential or nonresidential development project. In the event of administrative error, the City shall provide the applicant with a written notice, and the applicant shall be required to pay the fees within 30 days. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. **Violations.** No person shall sell or rent an affordable unit built as an alternative to the payment of the housing impact fee at a price or rent exceeding the maximum allowed under this Chapter, or to a household not qualified under this Chapter. Said sale or rental shall constitute a public nuisance and shall be punishable as a misdemeanor. Each month that such unit is occupied in violation of this Chapter shall constitute a separate violation.
- C. **Enforcement.** The City Attorney shall be authorized to enforce the provisions of this Chapter and all regulatory agreements and resale controls placed on affordable units by administrative or civil action or any other proceeding or method permitted by law. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant, developer, or owner from the requirements of this Chapter.

## Chapter 17.14 Density Bonus for Affordable Housing

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### 17.14.010 Purpose

This Chapter is intended to provide a local ordinance for implementation of the state-mandated density bonus set forth in California Government Code Section 65915 et seq.

### 17.14.020 Density Bonus Applicability and Amount

Density bonuses pursuant to California Government Code Section 65915 et seq are available for the following projects. The total density bonus for a project shall not exceed 35 percent.

#### A. Housing Development.

1. **Criteria.** A density bonus shall be granted to housing developments that meet all of the following criteria:
  - a. The development will include five or more dwelling units;
  - b. The development will provide at least the amount of housing designated for very low or low income households, or moderate income households in a common interest development, set forth in Government Code Section 65915(b), or the development is a senior citizen housing development; and
  - c. The affordability of the housing designated for very low, low or moderate income households shall be protected in accordance with Government Code Section 65915(c).
2. **Amount.** The amount of the density bonus to which the developer is entitled shall be determined in accordance with Government Code Section 65915(f).

#### B. Land Donation. An applicant for a tentative subdivision map, parcel map or other residential development approval may receive a density bonus for a donation of land if the land meets all of the following criteria:

1. The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application;
2. The developable acreage and zoning district classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development;
3. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the required density, and is or will be served by adequate public facilities and infrastructure;
4. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application.

5. The developer shall record a deed restriction approved by the City Attorney for the transferred land and the density bonus units to restrict affordability with the requirements set forth in this Chapter;
  6. The land shall be transferred to the City or to a housing developer approved by the City prior to approval;
  7. The transferred land must be within the boundary of the proposed development. Alternatively, the City Council may approve a site within one-quarter mile of the project site; and
  8. A proposed source of funding for the very low income units shall be identified to the satisfaction of the City Council not later than the date of approval of the final subdivision map, parcel map, or residential development or application.
- C. **Childcare Facility.** A development which meets the requirements of Subsection A or Subsection B above and also includes a child care facility shall receive an additional density bonus or an additional incentive or concession.
1. To qualify, the child care facility must:
    - a. Be located on the premises of, be a part of, or be adjacent to the housing development;
    - b. Agree to remain in operation for at least as long as the density bonus units are required to remain affordable; and
    - c. Maintain percentages of children from very low income, low income, and moderate income households equal to the percentages of dwelling units required for each income level.
  2. The amount of the additional density bonus shall be determined per Government Code Section 65917.5(a)(2)(A) and (B).
  3. Application for an additional incentive or concession shall be made as described in Section TBD, Incentives and Concessions.
  4. A request for a child care bonus or incentive may be denied if the City Council finds, based on substantial evidence, that the community has adequate child care facilities.
  5. If the space allocated for a child care facility under this Section is used for purposes other than a child care facility, or if developer fails to allocate space for the child care facility within three years of the issuance of the first temporary certificate of occupancy, the City Council may levy and collect an assessment based on the square footage of the project.

#### **17.14.030 Incentives and Concessions**

- A. Applicants for a density bonus may also request incentives or concessions. The number of incentives or concessions will be determined based on Government Code Section 65915(d).
- B. Incentives or concessions may include the following:
  1. Allowing tandem or uncovered parking;
  2. Reduced parking standards;

3. Reduced setbacks;
  4. Allowing mixed-use when compatible with neighboring properties and when mixed-use would reduce the cost of the housing development; or
  5. Other incentives or concessions that would result in identifiable, financially sufficient, and actual cost reductions.
- C. The City Council may deny an application for an incentive or concession if it makes at least one of the following findings:
1. The incentive or concession is not required to provide for affordable housing costs or rents;
  2. The incentive or concession would have a specific adverse impact that cannot be mitigated upon health, safety or the physical environment, including historical resources; or
  3. The incentive or concession would be contrary to state or federal law.

#### **17.14.040 Waivers or Modifications of Development Standards**

- A. Applicants for a density bonus may also request waivers or modifications of development standards.
- B. If a development standard would have the effect of physically precluding the construction of a development with a density bonus under this Section, the City Council will waive or modify the standard unless it makes one of the following findings:
1. The waiver or modification would have a specific adverse impact that cannot be mitigated upon health, safety, or the physical environment;
  2. The waiver or modification would have an adverse impact on real property listed in the California Register of Historical Resources; or
  3. The waiver or modification would be contrary to state or federal law.

#### **17.14.050 Application Requirements and Process**

- A. **Timing.** Applicants shall submit applications for a density bonus, incentive or concession, and waivers or modifications as part of a project application.
- B. **Materials Required.**
1. ***Application for a Density Bonus.***
    - a. Total number of units in the development;
    - b. Number of units that will be limited by income or to seniors;
    - c. Income limits that will be applied to each unit; and
    - d. Amount of density bonus requested.
  2. ***Application for an Incentive or Concession.***
    - a. Description of incentives or concessions requested; and

- b. Financial information describing how each incentive or concession requested is necessary to provide for affordable housing costs or rents.
- 3. ***Application for a Waiver or Reduction of Development Standards.***
  - a. Description of development standards requested for waiver or reduction;
  - b. If a reduction is requested, the level to which the standards are proposed to be reduced; and
  - c. An explanation of how the development standard would physically preclude the construction of a development that meets the criteria of Government Code Section 65915(b).
- C. **Processing.**
  - 1. If the project is subject to any discretionary approvals, the request for a density bonus, incentive or concession, and/or waiver or reduction of development standards shall be considered concurrently with the discretionary approval.
  - 2. For all other projects, the applications for a density bonus, incentive or concession, and/or waiver or reduction shall go through the following process:
    - a. The Planning Commission shall consider the application and, based on due consideration of state requirements and all information presented, shall make a recommendation to the City Council concerning the application.
    - b. The City Council shall approve or deny the application based on the requirements of state law, the provisions of this Chapter, and the information presented in the application and at the meeting.

#### **17.14.060 Density Bonus Housing Agreement**

- A. All requirements and provisions related to the density bonus, any incentives or concessions, or any waivers or reductions in development standards, shall be set forth in a density bonus housing agreement in a form acceptable to the City Attorney.
- B. The density bonus housing agreement shall be executed by the developer and the City Manager and recorded at the County Recorder's Office.
- C. For any development that includes moderate income units which are used to qualify for a density bonus, incentive or concession, and/or waiver or modification of development standards, the developer shall provide draft legal documents for the equity sharing provisions that are set forth in Government Code Section 65915(c)(2).

#### **17.14.070 Conflicts with State Law**

In any instance where this density bonus ordinance conflicts with California state law, the state law shall govern.

## Chapter 17.15 Historical Resources

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### 17.15.010 Purpose

- A. Historical resources within a community enrich it by providing it with a distinct identity and a link with the past, and by serving as a source of ideas for contemporary buildings, designers and other artisans. The number of irreplaceable historical resources within the community is limited and declining and the preservation of such resources is essential to the general welfare of the public. The purpose of this Chapter is to encourage the preservation of historical resources, and to require that the actions to remove or demolish landmarks be subject to City Council review, to enhance the preservation and relocation of such landmarks by interested persons and organizations.
- B. This Chapter is adopted pursuant to Section 37361 of the California Government Code, which authorizes the adoption of special regulations for the protection, enhancement, perpetuation or use of places, buildings, structures and other objects having a special character or special historical or aesthetic interest or value.

### 17.15.020 Procedure for Designation

- A. The City Council shall undertake and complete one or more historical resources surveys. Upon completion of the survey(s) the City Council shall form and cause to be maintained a City historical resources list.
- B. The designation of historical resources, and the removal of such designation, shall be accomplished by the adoption of a resolution to add, or to delete, the historical resource from the historical resources list.
- C. Applications to designate historical resources or remove such designation may be initiated by the City Council, the Planning Commission, the Director, the owner of the subject real property or the authorized agent of the owner.
- D. Consideration of the designation of an historical resource by the City Council shall be in accordance with the resolutions and procedural rules and regulations of the City Council.
- E. The list of historical resources and any additions or deletions shall be maintained, distributed and recorded in the office of the City Clerk.

### 17.15.030 Criteria

Historical resources shall meet one or more of the following criteria:

- A. Historical and cultural considerations:
  - 1. One associated with the life or activities of a person significant in the development of institutions, activities or industries of Newark or Washington Township;
  - 2. One associated with a major group or organization in the history of Newark or Washington Township;
  - 3. One associated with a significant historic event of Newark or Washington Township;

4. One associated with a major recurring event in the history of Newark or Washington Township such as an annual celebration;
  5. One associated with a past or continuing institution which has contributed substantially to the life of the City;
- B. Architectural and aesthetic considerations:
1. One of the few of its decade remaining in the City (one of six) and is unique or one of a few remaining examples in the City of a particular architectural style or period;
  2. The work of a regionally or nationally famous architect;
  3. An architectural curiosity or picturesque work of particular artistic merit;
  4. Contains original materials and/or workmanship of merit. Has architectural, structural, or artistic merit. An important or scarce example (one of six), associated with the architectural and aesthetic character of Newark or of an architecturally and aesthetically distinct or unique neighborhood;
- C. Modifying conditions:
1. The owner of a property shall have the right to veto its placement on the list of historical resources;
  2. If the historical resource is found to be in, or to have, several of the following conditions, consideration as a historical resource shall be suspended until a detailed report of its significance can be made:
    - a. Has conditions which will or are suspected to further destroy its quality or use,
    - b. Is not in, or is unadaptable to, productive use,
    - c. Cannot be restored to its original use or preserved in its present use,
    - d. The integrity of the original design is essentially altered,
    - e. Cannot be adapted to a new use without harm to those historic and cultural or architectural and aesthetic elements which contribute to its significance,
    - f. Is not free from known threats of demolition or obliteration by public or private action,
    - g. Is not accessible, not served by utilities, not capable of providing adequate parking space, not covered by fire and police protection, or is economically unfeasible to preserve or adapt it for contemporary use,
    - h. Preservation or restoration and continued maintenance is economically unfeasible,
    - i. Is less than 90 years old,
    - j. Is not compatible with the program developed for Ardenwood and the criteria of the regional park district.



#### **17.15.040 Maintenance and Alteration of Historical Resources**

- A. Routine maintenance or replacement of deteriorated parts of a landmark are exempt from City Council review.
- B. The Director may, when requested in writing by an owner of a landmark, advise appropriate remodelings necessary to protect the historic merit of the historic resource. Compliance of the property owner with the recommendations shall be voluntary, not mandatory.

#### **17.15.050 Demolition or Removal of Historical Resources**

- A. **Inspection.** The Director shall have an inspection made of the physical condition of the landmark by the Building Official in the case of a building or structure, or the Landscape Parks Supervisor if it is a tree or plant life. The inspection shall be made upon the filing of a permit application for any of the following:
  - 1. An application for a permit for the demolition of a landmark;
  - 2. A notice of intention to move, or remove a landmark; or
  - 3. An application for a development project on any landmark site, or land on which a landmark is located.
- B. **Report.** The Inspection Official shall report to the Director as to the physical condition of the landmark.
- C. **Review.**
  - 1. If the report does not cite conditions hazardous to public health and safety, the Director shall refer the permit application to the Planning Commission. The Planning Commission shall forward its recommendation to the City Council for review.
    - a. The Planning Commission shall review applications for the development of a landmark site in accordance with the requirements of this Ordinance and forward its recommendation to the City Council for review.
  - 2. If the Director finds that the removal, demolition, or destruction of the landmark must be undertaken promptly to adequately protect the public health and safety due to a hazardous condition of the landmark, the Director shall do one of the following:
    - a. Advise the City Council immediately of hazardous conditions. The City Council shall determine whether to call for a special meeting, or hold the hearing at their next regular meeting.
    - b. If the Director finds that the danger to the public health and safety is so immediate that no delay in undertaking the removal, demolition or destruction should take place, the permit may be issued, if such is required, for the removal, demolition or destruction in conformance with other applicable requirements of this Chapter, to the extent necessary to eliminate the hazardous condition, without referral of the matter to the City Council.
  - 3. The City Council, upon review of the application for a permit for removal or demolition of a landmark, may:

- a. Authorize the Building Official to issue the permit by finding that taking into account the current market value, the value of transferable development rights, and the costs of rehabilitation to meet the requirements of the Building Code or other City, State or federal laws, the property retains no reasonable economic use; or
  - b. Authorize the Building Official to issue the permit by finding that moving, removal, or demolition of the building will not have a significant effect on the achievement of the purposes of this Chapter;
  - c. Impose a 90-day moratorium, starting with the application date, on the issuance of the permit. During this period the City may indicate an interest in purchasing or relocating the historical resource; or
  - d. Impose a 30-day moratorium, beginning with either the permit application date or the date of receipt of a letter of intent to apply for a permit. The letter of intent must be submitted by the property owner, via registered mail, to the Director. The 30-day period shall apply only to primary landmarks (those historic resources meeting at least three criteria) that are not on the City of Newark Historical Resources List. During this period the City may indicate an interest in purchasing or relocating the historical resource.
- D. **Acquisition.** The City shall have the right to acquire the landmark only at the time the landmark is proposed to be moved or demolished.

#### **17.15.060 Notice of Hearing to Interested Organizations**

The Director shall maintain a list of nonprofit corporations chartered by the state who have filed a written request for notice of meeting on dispositions of historical resources. The Director shall transmit by mail to each person, group or organization on the list a notice of each meeting of the Planning Commission and the City Council, other than special meetings, or immediate danger findings, at which a hearing will be conducted regarding the designation of any historical resource; or the removal of any historical resource from its designation as such; or regarding any proposal for the removal, relocation, destruction or demolition of a landmark.

## Chapter 17.16 Landscaping

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### 17.16.010 Purpose

The purpose of the landscaping regulations is to:

- A. Improve the appearance of the community by requiring permanently maintained landscaping;
- B. Aid in energy conservation by providing shade from the sun and shelter from the wind;
- C. Soften the appearance of parking lots and other development and minimize or eliminate conflicts between potentially incompatible uses through landscaping;
- D. Promote conservation and efficient use of water; and
- E. Implement the Water Conservation in Landscaping Act.

### 17.16.020 Applicability

The provisions of this Chapter shall apply to the following:

- A. All new development.
- B. Additions to Multi-Unit and nonresidential development that expand existing floor area by 10 percent or more.
- C. All new and rehabilitated landscaping projects that include new irrigated landscaping over 500 square feet.
- D. **Exceptions.** The provisions of this Chapter do not apply to the following:
  - 1. Farming, agriculture, and crop production including vegetable gardens, vineyards, and small orchards.
  - 2. Public recreational areas (designated for active play, recreation, interpretation or public assembly).
  - 3. Registered local, state or federal historical sites.
  - 4. Habitat restoration projects that do not require a permanent irrigation system.
  - 5. Mined-land reclamation projects that do not require a permanent irrigation system.
  - 6. Existing plant collections, as part of botanical gardens and arboretums open to the public.

### 17.16.030 Areas to be Landscaped

The following areas shall be landscaped, and may count toward the total area of the site required to be landscaped by the zoning district regulations.

- A. **Required Setbacks.** All required front and street-facing side setbacks, except for areas used for exit and entry, shall be landscaped.
- B. **Interior Property Lines Abutting Residential Districts.** Whenever a nonresidential use is located adjacent to a Residential District or use, a landscape buffer planted with a mix of trees and shrubs

shall be provided along interior property lines. At least one tree of at least 15-gallon size shall be planted per 20 linear feet or as appropriate to create a tree canopy over the buffer yard. In addition, at least three shrubs shall be planted per 20 linear feet.

1. **Commercial or Industrial Use.** Ten foot wide landscaped buffer yard.
  2. **Other Nonresidential Uses.** Six foot wide landscaped buffer yard.
- C. **Building Perimeters.** The portions of a nonresidential building that front a public street shall have one or more landscape planters installed along a minimum 20 percent of that building face. The minimum width of the planter shall be three feet. This standard does not apply where a building is located on the front or corner side property line.
- D. **Parking Areas.** Parking areas as required by Chapter TBD, Parking and Loading.
- E. **Unused Areas.** All areas of a project site not intended for a specific use, including areas planned for future phases of a phased development, shall be landscaped or hydroseeded. The Director may waive this required for areas planned for future development.

#### 17.16.040 Landscape Plan

A landscape plan showing compliance with the standards of this Chapter shall be submitted with the permit application for all projects for which landscaping is required.

- A. Proposed plant locations, species, sizes, and plant factor. Plants with similar water needs shall be grouped together on the landscape plan. The plant factor, established in the California Department of Water Resources study, Water Use Classification of Landscape Species (WUCOLS), shall be identified for all landscaped areas on a site. All water features shall be identified as high water use, and temporarily irrigated areas shall be identified as low water use.
- B. Location of any existing trees over six inches in diameter, as measured at 48 inches above natural grade, and whether each such tree is proposed for retention or removal.
- C. **Alternative Landscape Plan.** An applicant may demonstrate that the intent of the landscape requirements of this Section can be achieved through an Alternative Landscape Plan. The Alternative Landscape Plan shall be prepared in accordance with the principles and design criteria set forth in this Section and shall clearly detail the modifications being requested from the provision of this Section and how they reflect the evaluation criteria listed below.
1. Innovative use of plant materials and design techniques in response to unique characteristics of the site or the proposed use.
  2. Preservation or incorporation of existing native vegetation.
  3. Incorporation of naturalistic design principles, such as variations in topography, meandering or curvilinear plantings, and grouping of dominant plant materials (trees, large shrubs) in a manner consistent with existing native vegetation.
  4. Integration of landscaping and pedestrian facilities in a manner that improves access or incorporates pedestrian-friendly design, this may include reduced ground-level planting along the front setback if canopy shade trees along sidewalks are provided.
  5. Use of additional shade trees to create a greater canopy effect.

6. A greater degree of compatibility with surrounding uses than a standard landscape plan would offer.
- D. **Preparation by Qualified Person.** Landscaping for commercial projects, industrial projects, institutional projects, and residential projects consisting of more than 12 units shall be prepared by a California Registered Landscape Architect.

### 17.16.050 General Requirements

#### A. **Materials.**

1. **General.**
  - a. Required landscaped areas shall be planted with a combination of ground covers, shrubs, vines, and trees. 50 percent of all trees shall be evergreen species.
  - b. Landscaping may also include incidental features such as stepping stones, benches, fountains, sculptures, decorative stones, or other ornamental features, placed within a landscaped setting.
  - c. Landscaped areas may include paved or graveled surfaces, provided they do not cover more than 30 percent of the area required to be landscaped.
  - d. Garden areas and other areas dedicated to edible plants are considered landscaped areas and count toward required landscaping.
2. **Required Water Efficient Plants.** Plants shall be one of the following options shall be chosen to ensure that the landscape project meets water efficiency requirements.
  - a. *Option A: All Low Water Plants.* Exclusive of garden areas, all plants and trees shall be low or very low water use (average California Department of Water Resources study, Water Use Classification of Landscape Species (WUCOLS) plant factor of 0.3). Option A is available for all residential and nonresidential areas.
  - b. *Option B: Primarily Low Water Plants.* Exclusive of garden areas, at least 85 percent of the landscape area shall contain low or very low water use plants (average WUCOLS plant factor of 0.3). Option B is only available for residential areas.
  - c. *Option C: Water Use Calculation.* The estimated total water use (ETWU) of the landscaping shall not exceed the maximum applied water allowance (MAWA), calculated pursuant to the State Model Water Efficient Landscape Ordinance (MWELo). Option C is available for all residential and nonresidential areas.
    - i. Department of Water Resources Model Water Efficient Landscape Ordinance Compliance Required. Where Option C is selected, all requirements of the Department of Water Resources Model Water Efficient Landscape Ordinance shall apply.
3. **Size and Spacing.** Plant materials shall be grouped in hydrozones in accordance with their respective water, cultural (soil, climate, sun and light) and maintenance needs. Plants shall be of the following size and spacing at the time of installation:

- a. **Ground Covers.** Ground cover plants other than grasses must be at least the four-inch pot size. Areas planted in ground cover plants other than grass seed or sod must be planted at a rate of one per twelve inches on center.
  - b. **Shrubs.** Shrubs shall be a minimum size of one gallon. When planted to serve as a hedge or screen, shrubs shall be planted with two to four feet of spacing, depending on the plant species.
  - c. **Trees.** 15 percent of all trees shall be 24-inch box or greater in size. All other trees shall be a minimum 15-gallon size.
    - i. Tree trunks shall be placed at least 5-feet from utilities.
    - ii. Tree trunks shall be placed at least 15-feet from light poles.
4. **Turf.** Turf is prohibited in nonresidential landscape areas. In residential areas, the following limitations apply.
- a. No more than 25 percent of the landscaped area may be turf.
  - b. The installation of turf on slopes greater than 25 percent is prohibited.
  - c. Turf is prohibited in locations that are less than 10 feet wide.
  - d. Turf is not permitted in nonresidential landscapes or parkways.
5. **Invasive Plants Prohibited.** Plant species that are listed by CAL-IPC as invasive are prohibited. Existing invasive plants and noxious weeds shall be removed.
6. **Mulch.** A minimum three-inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated.
7. **Compost.** Compost at a rate of at least four cubic yards per 1,000 square feet to a depth of six inches into landscape area (unless contra-indicated by a soil test) shall be incorporated.
- B. **Water Features.** Recirculating water shall be used for all decorative water features.
- C. **Dimension of Landscaped Areas.** No landscaped area smaller than three feet in any horizontal dimension shall count toward required landscaping.
- D. **Prescribed Heights.** The prescribed heights of landscaping shall indicate the height to be attained within three years after planting.
- E. **Maintenance.** All planting and other landscape elements shall be maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning, fertilizing, and regular watering. Wherever necessary, plantings shall be replaced with other plant materials to insure continued compliance with applicable landscaping requirements.

#### 17.16.060 Irrigation Specifications

An irrigation system shall be installed that meets the following standards.

- A. **General Requirements.**

1. All irrigation equipment must meet American National Standards Institute (ANSI), American Society of Agricultural and Biological Engineers/ International Code Council (ASABE/ ICC)802-2014. "Landscape Irrigation Sprinkler and Emitter Standard".
  2. The following areas shall be irrigated with subsurface irrigation or other means that produces no runoff or overspray.
    - a. Slopes exceeding 25 percent.
    - b. Areas less than 10 feet wide in any direction.
  3. The irrigation system shall be designed to prevent runoff, low head drainage, overspray, or other similar conditions where irrigation water flows onto non-targeted areas such as adjacent property or hardscapes.
    - a. Irrigation systems shall be designed for zero run-off onto paved surfaces unless that surface drains to another landscape area.
    - b. Spray irrigation must be placed two-feet away from impervious surfaces unless that surface drains to another landscape area.
    - c. Proper irrigation equipment and schedules, including features such as repeated cycles, shall be used to closely match application rates to infiltration rates therefore minimizing runoff.
    - d. Slopes greater than 25 percent shall not be irrigated with an irrigation system with an application rate exceeding 0.75 inches per hour, and check valves shall be utilized.
- B. **Sprinkler Heads.** Where used, sprinkler heads shall be selected for proper area coverage, application rate, operating pressure, adjustment capability, and ease of maintenance.
1. All sprinkler heads installed in the landscape must document a distribution uniformity low quarter of .65 or higher using the protocol defined in ASABE/ICC 802-2014.
  2. Sprinkler heads and other emission devices shall have matched precipitation rates, unless otherwise directed by the manufacturer's recommendations.
- C. **Water Meters.** A dedicated meter for irrigation is required for nonresidential projects with landscape areas of 1,000 square feet or more.
- D. **Pressure Regulating Equipment.** Pressure regulating valves or assemblies shall be installed to ensure that the dynamic pressure at each emission device is within the manufacturer's recommended pressure range for optimal performance.
- E. **Flow Sensors.** Flow sensors are required to detect high flow conditions created by system damage on all nonresidential projects 1,000 square feet and greater and residential projects 5,000 square feet and greater.
- F. **Controllers.** Automatic control systems shall be required for all irrigation systems and must be able to accommodate all aspects of the design.
1. Automatic irrigation controllers shall utilize either evapotranspiration or soil moisture sensor data, or rain sensing override devices.

2. Irrigation controllers shall be of a type which does not lose programming data in the event the primary power source is interrupted.
- G. **Control Valves.** Plants which require different amounts of water should be irrigated by separate valves.
- H. **Check Valves.** Where required on steep slopes, check valves shall be installed to prevent low-head drainage.
- I. **Master Shut-off, Gate or Ball Valves.** Locate valves as close as possible to the point of connection of the water supply, and place where needed to minimize water loss in case of an emergency (such as a main line break) or routine repair.

#### **17.16.070 Installation and Completion**

- A. **Consistency with Approved Plans.** All landscaping shall be installed consistent with approved plans and specifications, in a manner designed to promote and maintain healthy plant growth.
- B. **Timing of Installation.** Required landscaping shall be installed prior to the issuance of a certificate of occupancy for the project.
- C. **Exception—Assurance of Landscaping Completion.** The Director may permit the required landscaping to be installed within 120 days after the issuance of a certificate of occupancy in special circumstances related to weather conditions or plant availability. A surety in the amount equal to 150 percent of the estimated cost of landscaping, including materials and labor, as well as an agreement that the required landscaping will be installed within 120 days, must be filed with the City to assure completion of landscaping installation within such time. The surety may take the form of cash deposit, irrevocable letter of credit or bond; and together with the agreement, would provide for payment to the City of any costs incurred in contracting for completion of the required landscaping.
- D. **Certification of Completion.** Upon completion of the installation of the landscaping and irrigation system, a field observation shall be completed by the licensed project contractor. A certificate of completion shall be submitted to the City by the licensed project contractor. The certificate shall specifically indicate that the plants were installed as specified and that the irrigation system was installed as designed, along with a list of any deficiencies.
  1. Where Required Water Efficient Plan Option C: Water Use Calculation, was installed, the applicant shall submit a Certificate of Completion pursuant to the Department of Water Resources Model Water Efficient Landscape Ordinance.



## Chapter 17.17 Nonconforming Provisions

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### 17.17.010 Purpose

This Chapter is intended to permit continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with the standards and requirements of this Ordinance and are operated in a manner that does not conflict with the General Plan. To that end, the chapter establishes the circumstances under which a nonconforming use or structure may be continued or changed and provides for the removal of nonconforming uses and structures when their continuation conflicts with the General Plan and public health, safety, and general welfare.

### 17.17.020 Applicability

The provisions of this Chapter apply to structures and uses that have become nonconforming by adoption of this Ordinance as well as structures and uses that become nonconforming due to subsequent amendments to its text or to the Zoning Map.

### 17.17.030 Nonconformities, Generally

Any lawfully established use or structure that is in existence on the effective date of this Ordinance or any subsequent amendment thereto but does not comply with the standards and requirements of this Ordinance shall be considered nonconforming.

- A. A non-conformity may result from any inconsistency with the requirements of this Ordinance including, but not limited to, use, location, density, floor area, height, yard, usable open space, buffering, performance standards, or the lack of an approved Use Permit or other required authorization.
- B. A use or structure shall not be deemed nonconforming solely because it does not conform with parking and loading space requirements, landscape planting area, or screening regulations of the district in which it is located.

### 17.17.040 Classification of Nonconforming Uses

Nonconforming uses are classified as follows for the purpose of determining whether to permit substitution or expansion subject to the requirements of the following sections, or to require the elimination of the nonconforming use.

- A. **Class I Nonconforming Use.** Class I Nonconforming Uses are those that do not meet the current standards and requirements of this Ordinance but are compatible with the uses of the surrounding properties, as determined by the Planning Commission. Class I Nonconforming Uses are generally treated like conforming uses and may expand and remain indefinitely, subject to the limitations of this Chapter.
  - 1. **Residential Uses.** Any nonconforming residential use shall be classified as Class I Nonconforming Use.
  - 2. **Nonresidential Uses.** Class I nonresidential nonconforming classification status shall only occur upon approval of the Planning Commission. The classification of a nonconforming nonresidential use by Planning Commission as a Class I Nonconforming Use shall be

optional and shall be based on written application by the property owner or his/her designee, which shall include evidence that the use was legally established and information related to the findings required herein.

- a. *Designation.* Class I Nonconforming Uses are designated by the Planning Commission following a public hearing, with notice as required by Chapter TBD, Common Procedures, and based on the following findings. The Planning Commission's decision on the designation of a Class I Nonconforming Use may be made concurrent with the Planning Commission's decision on an application for an expansion or substitution of the use. The required findings for Class I Nonconforming Use designation/expansion/substitution are:
  - i. The nonconforming use was legally established;
  - ii. The continuation, proposed expansion, or substitution of the nonconforming use would not be detrimental to public health, safety, or general welfare; and
  - iii. With the exception of the nonconforming use, the continuation, proposed expansion, or substitution would not be inconsistent with the General Plan and would not preclude or interfere with implementation of any applicable City Specific Plan.
- b. *Considerations.* In making the required findings, the Planning Commission shall consider the following factors as they relate to the nonconforming use:
  - i. Noise;
  - ii. Traffic generation;
  - iii. Hours of operation;
  - iv. Noxious or annoying emissions of odor, smoke, waste water or other matters;
  - v. Proximity of the use to conforming uses;
  - vi. Extent and severity of nonconformity;
  - vii. Effect of the nonconforming use on surrounding conforming uses;
  - viii. Character of the surrounding neighborhood, including the number and proportion of nonconforming uses;
  - ix. Access to the nonconforming use;
  - x. Maintenance of the nonconforming use; and
  - xi. Any other factors the Planning Commission deems relevant given the purposes of this Chapter.
- c. *Conditions.* When making its decision on an application for an expansion or substitution of a Class I Nonconforming Use, the Planning Commission may establish conditions that are necessary to accomplish the purposes of this Chapter, including, but not limited to:

- i. Required improvement of, or modifications to existing improvements on, the property;
  - ii. Limitations on hours of operations;
  - iii. Limitations on the nature of operations; and
  - iv. A specified term of years for which the expanded or substituted nonconforming use shall be allowed.
- B. **Class II Nonconforming Use.** Class II Nonconforming Uses are those that should be replaced at some time in the future in order to implement the General Plan's and any applicable Specific Plan's long term objectives, but are not detrimental to surrounding properties due to health, safety, or substantial aesthetic impacts. Class II Nonconforming Uses include any nonconforming nonresidential use that has not been designated as a Class I or Class III Nonconforming Use.
  1. Class II Nonconforming Uses may remain in operation but are subject to restrictions on expansion as set forth in Subsection TBD(A), Expansion and on substitution of uses as set forth in Subsection TBD(E), Substitutions.
  2. The City Council may establish amortization periods for specific Class II Nonconforming Uses on a case-by-case basis pursuant to Section TBD, Establishment of Amortization Periods.
  3. Class II Nonconforming Uses may not be reestablished or resume business if the Class II Nonconforming Use has been destroyed or damaged at a level equal to or greater than 50 percent of the value of the nonconforming use business. The determination of the appraised value shall be made by a professional appraiser selected by the City, whose fee shall be paid by the business owner.
- C. **Class III Nonconforming Use.** Class III Nonconforming Uses are those designated as a public nuisance by the City Council following a public hearing, with notice as required by Chapter TBD, Common Procedures. Prior to City Council consideration of the matter, the Planning Commission shall conduct a noticed public hearing and provide a recommendation on the designation to the City Council. The Class III Nonconforming Use designation shall be based on a finding that the use is detrimental to public health, safety, or general welfare, or materially injurious to properties or improvements in the vicinity.
  1. The City Council shall establish an amortization period for each Class III Nonconforming Use pursuant to Section TBD, Establishment of Amortization Periods.

#### **17.17.050 Right to Continue**

Any use or structure that was lawfully established prior to the effective date of this Ordinance or of any subsequent amendments to its text or to the Zoning Map may only be continued and maintained provided there is no alteration, enlargement, addition, or other change to any building or structure or use therein; or no substitution, expansion, or other change including an increase in occupant load or any enlargement of the area, space, or volume occupied by or devoted to such use, except as otherwise provided in this Chapter.

- A. The right to continue a nonconforming use or structure shall attach to the land and shall not be affected by a change in ownership.

- B. The right to continue a nonconforming use or structure shall not apply to uses or structures determined by the Planning Commission or City Council as described in this Chapter to be a public nuisance arising from conditions that constitute a threat to public health, safety or general welfare.
- C. The right to continue a nonconforming use or re-occupy a nonconforming structure shall terminate if the nonconforming use has been abandoned or the nonconforming structure has been vacated for a period of six months as described in Section TBD, Abandonment of Nonconforming Uses.

#### **17.17.060 Changes to and Substitutions of Nonconforming Uses**

Nonconforming uses shall not be expanded, modified, or substituted for another classification of a nonconforming use except as provided below.

- A. **Expansion.** A Class I or Class II Nonconforming Use may expand the area it occupies, including floor area of the occupied structure, all or part of another structure, and area of the subject lot, subject to Planning Commission approval of a Conditional Use Permit in accord with Chapter TBD, Use Permits.
- B. **Change in Tenancy, Ownership, or Management.** A Class I or Class II Nonconforming Use may change ownership, tenancy, or management provided the nonconforming use does not change.
- C. **Change of Nonconforming Use to Another Nonconforming Use in the Same Use Classification.** A Class I nonconforming use may change to another nonconforming use where the new use is of the same use classification as the previous use, as defined in Chapter TBD, Use Classifications. A Class II nonconforming use may change to another nonconforming use where the new use is of the same use classification as the previous use, subject to Minor Conditional Use Permit approval.
- D. **Absence of Permit.** Any use that is nonconforming solely by reason of the absence of a Conditional Use Permit may be changed to a conforming use by obtaining the appropriate Conditional Use Permit pursuant to the requirements in Chapter TBD, Use Permits.
- E. **Substitutions.** The Planning Commission may allow substitution of a nonconforming use with a Class I Nonconforming Use, subject to approval of a Conditional Use Permit. In addition to any other findings required by this Ordinance, the Planning Commission must find that the proposed new use will be no less compatible with the purposes of the district and surrounding uses that comply with the requirements of this Ordinance than the nonconforming use it replaces.

#### **17.17.070 Maintenance of and Additions and Enlargements to Nonconforming Structures**

Nonconforming structures may be continued and maintained in compliance with the following provisions.

- A. **Maintenance and Repairs.** Structural and non-structural maintenance, repair, and interior alterations to a nonconforming structure are permitted if the changes and improvements do not enlarge the structure, change the building footprint, or increase building height or roof pitch.
- B. **Additions.** Additions to and/or enlargements of nonconforming structures are allowed if the addition or enlargement complies with all applicable laws and requirements of this Ordinance, the use of the addition/enlarged area of the property is authorized by this Ordinance, and there

is no increase in the discrepancy between existing conditions and the requirements of this Ordinance, except as provided below.

1. **Nonconforming Setbacks, Residential Districts.** In Residential Districts, a nonconforming interior side or rear yard may be maintained and extended, and shall not be considered an increase in the discrepancy, provided that:
  - a. A new encroachment into any other required yard is not created;
  - b. The height of the portion of the structure that is within the required setback is not increased; and
  - c. Any residential additions above the first floor shall conform to the setbacks in effect at the time the application for the addition is submitted.

#### **17.17.080 Repair and Replacement of Damaged or Destroyed Nonconforming Structures**

A nonconforming structure that is damaged or partially destroyed by fire, explosion, earthquake, or natural disaster which is not caused by an act or deliberate omission of a property owner, their agent, or person acting on their behalf or in concert with them, may be restored or rebuilt subject to the following provisions.

- A. **Restoration When Damage is 50 Percent or Less of Value.** If the cost of repair or reconstruction is less than or equal to 50 percent of the appraised value of the structure, replacement of the damaged portions of the structure is allowed by right provided that the replaced portions are the same size, extent, and configuration as previously existed. The determination of the appraised value shall be made by a professional appraiser selected by the City, whose fee shall be paid by the building owner.
- B. **Restoration When Damage Exceeds 50 Percent of Value.** If the cost of repair or reconstruction exceeds 50 percent of the appraised value of the structure, as determined pursuant to Subsection A above, the land and building shall be subject to all of the requirements of this Ordinance, except as provided below.
  1. **Non-Residential Structures.** Any nonconforming use must permanently cease. The Planning Commission may approve a Conditional Use Permit for the structure to be rebuilt to the same size, extent, and configuration as previously existed provided that the use of the structure is permitted or conditionally permitted in the zone. In such cases any expansion or change to the previous use must conform to the requirements of this Chapter.
  2. **Residential Structures.** Any nonconforming residential structure may be reconstructed, restored, or rebuilt up to the size and number of dwelling units prior to the damage and the nonconforming use, if any, may be resumed subject to a Zoning Clearance in the case of single-unit dwellings or a Conditional Use Permit approval in the case of other residential uses, unless the review authority finds that the reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety, or general welfare of persons residing or working in the neighborhood.
- C. **Timing.** Building permits must be obtained within two years of the date of the damage or destruction and construction shall be diligently pursued to completion unless another time period

is specified through Conditional Use Permit approval. Building permits must be maintained valid through the completion of the project.

### **17.17.090 Elimination of Nonconforming Uses, Structures and Signs**

#### **A. Elimination of Nonconforming Uses.**

1. ***Nonconforming Uses Not Occupying a Structure or Occupying a Structure with Valuation Less Than \$2,500.*** The following nonconforming uses shall be discontinued and removed from their sites within three year(s) from the effective date of this Ordinance:
  - a. A nonconforming use which does not occupy a structure; or
  - b. A nonconforming use occupying a structure having an appraised valuation of less than 2,500 dollars.
2. ***Class II Nonconforming Uses.*** The City Council may require Class II Nonconforming Uses to be discontinued and removed from their sites within a period determined pursuant to the process set forth in Section TBD, Establishment of Amortization Periods.
3. ***Class III Nonconforming Uses.***
  - a. Class III nonconforming uses shall be discontinued and removed from their sites within a period to be determined by the City Council, pursuant to the process set forth in Section TBD, Establishment of Amortization Periods.
  - b. Class III nonconforming uses may also, upon order from the City or a court order, be subject to immediate cessation of the nonconforming use.

#### **B. Elimination of Nonconforming Signs or Structures.**

1. ***Nonconforming Sign with Valuation Less Than \$5,000.*** A nonconforming sign or outdoor advertising structure valued at less than 5,000 dollars shall be removed within two years from the time the sign or outdoor advertising structure becomes nonconforming unless it was nonconforming for at least three years at the time this Ordinance was adopted, in which case it shall be removed within five years from adoption of this Ordinance.
2. ***Nonconforming Structure with Valuation Less Than \$5,000.*** A structure having an appraised valuation of less than 5,000 dollars, which does not comply with the Ordinance standards for lot coverage, setbacks, height, distances between structures or usable open space shall be removed from its site within three years from the effective date of this Ordinance, except that if the structure is altered to comply with such standards, this provision shall not apply.
3. ***Other Nonconforming Structures.*** Nonconforming structures, excluding those structures referenced in paragraphs 1 and 2 above, may continue except that the City Council may establish amortization periods for specific structures pursuant to Section TBD, Establishment of Amortization Periods.

- #### **C. Time for Elimination When Use, Structure, or Sign Becomes Nonconforming.**
- Whenever a use, structure, or sign becomes nonconforming, the period of time prescribed in this Chapter for the elimination of the use or the removal of the structure or sign is computed from the effective date of the change that results in the nonconforming status of the use, structure or sign.

- D. **Burden of Proof.** The burden of proof as to the nonconforming status of any use, structure, or sign shall rest with the property owner and/or resident.

#### **17.17.100 Establishment of Amortization Periods**

Where a period during which a nonconforming use or structure is to be discontinued and removed from their site is to be established, such period shall be established as follows.

- A. The Community Development Director shall submit the nonconforming use or structure and a recommended amortization period, based on the criteria in Section (C)(1) herein, to the Planning Commission for review;
- B. The Planning Commission shall hold a public hearing, noticed pursuant to Chapter TBD, Common Procedures, to consider the recommended amortization period. Following the public hearing, the Planning Commission shall make a recommendation on the proposed amortization period to the City Council.
- C. After receiving the recommendation from the Planning Commission, the City Council shall hold a public hearing, noticed pursuant to Chapter TBD, Common Procedures, to consider the recommended amortization period.
1. The City Council may establish a maximum time for which the nonconforming use shall be permitted to continue after considering the following in relation to the use, structure or sign:
    - a. The amount of investment or original cost of the use, structure, or sign;
    - b. The present actual or depreciated value of the use, structure, or sign;
    - c. The remaining useful life of the use, structure or sign;
    - d. The remaining term of the lease;
    - e. The date or dates of construction;
    - f. Amortization of the business or structure for tax purposes;
    - g. The salvage value;
    - h. The threat to the public health, safety, and welfare posed by the continuance of the nonconforming use; and
    - i. Other factors as appropriate.
  2. The time period established by the City Council shall be no less than three years in length.

#### **17.17.110 Abandonment of Nonconforming Uses**

No nonconforming use may be resumed, reestablished, reopened, or replaced by any other nonconforming use after the nonconforming use has been abandoned or vacated for a period of six months.

- A. **Abandonment.** The six-month period shall commence when the use ceases to operate and any one of the following occurs:

1. The site is vacated;
2. Utilities are terminated; or
3. The applicable lease is terminated.

**17.17.120 Abatement**

The provisions of this Chapter are in addition to existing state law authority to declare and abate a public nuisance pursuant to California law and other applicable provisions of the Municipal Code. In the event that a legal nonconforming structure or use is found to constitute a public nuisance, appropriate action may be taken by the City pursuant to the Municipal Code and Chapter TBD, Enforcement and Abatement Procedures.



## Chapter 17.18 Parking and Loading

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### 17.18.010 Purpose

The specific purposes of the on-site parking and loading regulations are to:

- A. Ensure that adequate off-street parking and loading facilities are provided for new land uses and major alterations to existing uses;
- B. Minimize the negative environmental and urban design impacts that can result from parking lots, driveways, and drive aisles within parking lots;
- C. Insure that adequate off-street bicycle parking facilities are provided and promote parking lot designs that offer safe and attractive pedestrian routes;
- D. Establish standards and regulations for safe and well-designed parking, unloading, and vehicle circulation areas that minimize conflicts between pedestrian and vehicles within parking lots and, where appropriate, create buffers from surrounding land uses;
- E. Offer flexible means of minimizing the amount of area devoted to parking by allowing reductions in the number of required spaces in transit-served locations, shared parking facilities, and other situations expected to have lower vehicle parking demand; and
- F. Reduce urban run-off and heat island effect.

### 17.18.020 Applicability

The requirements of this Chapter apply to the establishment, alteration, expansion, or change in any use or structure, as provided in this Section.

- A. **All New Buildings and Land Uses.** On-site parking and loading in accordance with this Chapter shall be provided at the time any main building or structure is erected or any new land use is established.
- B. **Existing Non-Residential Buildings.**
  - 1. When a change in use, expansion of a use, or expansion of floor area creates an increase of 10 percent or more in the number of required on-site parking or loading spaces, additional on-site parking and loading shall be provided for such addition, enlargement, or change in use and not for the entire building or site.
  - 2. The existing parking and loading shall be maintained.
  - 3. If the number of existing parking or loading spaces is greater than the requirements for such use, the number of spaces in excess of the prescribed minimum may be counted toward meeting the parking and loading requirements for the addition, enlargement, or change in use.
  - 4. A change in occupancy is not considered a change in use unless the new occupant is in a different use classification than the former occupant.
  - 5. Additional parking and loading spaces are not required for the reconstruction of an existing building when there is no increase in floor area.

- C. **Existing Residential Buildings.** On-site parking in accordance with this Chapter shall be provided where there is an expansion of existing floor area of 30 percent or more or where additional dwelling units are created through the alteration of an existing building or construction of an additional structure or structures.
- D. **When Constructed.** On-site parking and loading facilities required by this Chapter shall be constructed or installed prior to the issuance of a Certificate of Occupancy for the uses that they serve.

**17.18.030 General Provisions**

- A. **Existing Parking and Loading to be Maintained.** No existing parking and/or loading serving any use may be reduced in amount or changed in design, location or maintenance below the requirements for such use, unless equivalent substitute facilities are provided.
- B. **Nonconforming Parking or Loading.** An existing use of land or structure shall not be deemed to be nonconforming solely because of a lack of on-site parking and/or loading facilities required by this Chapter, provided that facilities used for on-site parking and/or loading as of the date of adoption of this Ordinance are not reduced in number to less than what this Chapter requires.
- C. **Accessibility.** Parking and loading areas must be accessible for its intended purpose during all hours of operation.
- D. **Stacked Parking.** Stacked or valet parking is allowed if an attendant is present or an automated system is in place to move vehicles. If stacked parking managed by an attendant is used for required parking spaces, an acceptable form of guarantee must be filed with the Director ensuring that an attendant will be present while the lot is in operation.

**17.18.040 Required Parking Spaces**

- A. **Minimum Number of Spaces Required.** Each land use shall be provided at least the number of on-site parking spaces stated in Table TBD, Required On-Site Parking Spaces. The parking requirement for any use not listed in Table TBD shall be determined by the Director based upon the requirements for the most similar comparable use, the particular characteristics of the proposed use, and any other relevant data regarding parking demand.

<b>TABLE TBD: REQUIRED NUMBER OF ON-SITE PARKING SPACES</b>		
<i>Land Use Classification</i>	<i>Required Parking Spaces</i>	
<b>Residential Uses</b>	<b>As specified below</b>	
Residential Housing Types		
<i>Single-Unit Dwelling, Attached or Detached</i>	2 per unit	Must be within a garage
<i>Two-Unit Dwelling</i>	1.5 per studio or one-bedroom unit 2 per unit with two or more bedrooms	One space per unit must be within a garage
<i>Multi-Unit House</i>		

<b>TABLE TBD: REQUIRED NUMBER OF ON-SITE PARKING SPACES</b>		
<i>Land Use Classification</i>	<i>Required Parking Spaces</i>	
<i>Multi-Unit Building</i>	1.5 per studio or one-bedroom unit 2 per unit with two or more bedrooms Guest parking: 1 plus 1 for every four units	Ten or fewer dwelling units: One space per unit must be within a garage More than ten dwelling units: One space per unit must be covered Guest parking shall be clearly marked as reserved for guests and available with unrestricted access
<i>Accessory Dwelling Unit</i>	1 per unit	
Caretaker Unit	1 per unit	
Family Day Care		
<i>Small</i>	None beyond what is required for the Residential Housing Type	
<i>Large</i>	1 for each nonresident employee plus an area for loading and unloading children plus parking required for the residential use	
Group Residential	1 for each employee plus 1 for each guest room or every two beds, whichever is greater	
Residential Care Facilities		
<i>Small</i>	None beyond what is required for the Residential Housing Type	
<i>Large</i>	1 for every 3 beds	
Residential Facility, Assisted Living	1 for every 3 beds	
Single Room Occupancy	0.5 per unit	
Supportive Housing	None beyond what is required for the Residential Housing Type	
Transitional Housing	None beyond what is required for the Residential Housing Type	
<b>Public/Semi Public Uses</b>	<b>1 for each employee plus as determined by the Director, except as specified below</b>	
Colleges and Trade Schools	1 for each employee plus 1 for every 2 students	
Community Assembly	1 for each 4 permanent seats or 1 for every 40 square feet of assembly area where no seats or where temporary or moveable seats are provided	
Day Care Centers	1 per each employee plus an area for loading and unloading children	
Emergency Shelter	1 per family room, 0.35 per individual bed, plus 1 for each employee	
Hospital and Clinics		
<i>Hospitals</i>	1 for every 2 beds	
<i>Clinic</i>	1 per 250 square feet of floor area	
<i>Skilled Nursing Facility</i>	1 for every 3 beds	
Instructional Services	1 for each employee plus 1 for every 2 students	
Parking Lots and Structures	None	
Social Service Facilities	1 per 250 square feet of floor area	

<b>TABLE TBD: REQUIRED NUMBER OF ON-SITE PARKING SPACES</b>	
<i>Land Use Classification</i>	<i>Required Parking Spaces</i>
Tutoring Facilities	1 per 250 square feet of floor area
<b>Commercial Uses</b>	<b>1 per 250 square feet of floor area, except as specified below</b>
Adult-Oriented Business	1 per 150 square feet of floor area
Animal Care, Sales, and Services	
<i>Boarding/Kennels</i>	1 for each employee plus an area for loading and unloading animals
Automobile/Vehicle Sales and Services	1 per 300 square feet of office or retail area and 1 per service bay
Commercial Entertainment and Recreation	1 for each 4 permanent seats or 1 for every 40 square feet of assembly area where no seats or where temporary or moveable seats are provided Bowling alleys: 5 for each lane Other Commercial Entertainment and Recreation uses: As determined by the Director
Eating and Drinking Establishments	1 per 150 square feet of floor area plus 1 per 150 square feet of outdoor dining and seating area over 350 square feet.
Farmer's Markets	None
Food Preparation	1 per 500 square feet of floor area
Funeral Parlors and Interment Services	1 for each 4 permanent seats or 1 for every 40 square feet of assembly area where no seats or where temporary or moveable seats are provided
Hookah Lounge	1 per 150 square feet of floor area
Live/Work Units	1 per 1,000 square feet of nonresidential area plus 1 space for each residential unit
Lodging - Hotels and Motels	1 for each guest room or every two beds, whichever is greater. The director may require additional parking for ancillary uses, such as restaurants.
Maintenance and Repair Services	1 per 500 square feet of floor area
Market Garden	As determined by the Director
Mobile Food Vendor	None
Nurseries and Garden Center	1 per 500 square feet of floor area; 1 per 1,000 square feet of outdoor display area
Offices	
<i>Business, Professional, and Technology</i>	1 per 300 square feet of floor area
<i>Walk-In Clientele</i>	1 per 300 square feet of floor area
Retail Sales	
<i>Building Materials Sales and Services</i>	1 per 500 square feet of floor area; 1 per 1,000 square feet of outdoor display area

<b>TABLE TBD: REQUIRED NUMBER OF ON-SITE PARKING SPACES</b>	
<i>Land Use Classification</i>	<i>Required Parking Spaces</i>
<b>Industrial Uses</b>	<b>1 per 1,000 square feet of floor area plus 1 for each 5,000 square feet of outdoor use area, except as specified below</b>
Custom Manufacturing	1 per 500 square feet of floor area
Personal Storage	1 space per 75 storage units, plus 1 space per 300 square feet of office area. A minimum of 5 spaces shall be provided.
<b>Transportation, Communication, and Utility Uses</b>	<b>1 per 300 square feet of office area plus one for each fleet vehicle</b>

- B. **Calculation of Required Spaces.** The number of required parking spaces shall be calculated according to the following rules:
1. **Floor Area.** Where an on-site parking or loading requirement is stated as a ratio of parking spaces to floor area, the floor area is assumed to be gross floor area, unless otherwise stated.
  2. **Employees.** Where an on-site parking or loading requirement is stated as a ratio of parking spaces to employees, the number of employees shall be based on the largest shift that occurs in a typical week.
  3. **Bedrooms.** Where an on-site parking requirement is stated as a ratio of parking spaces to bedrooms, any rooms having the potential of being a bedroom and meeting the standards of the Building Code as a sleeping room shall be counted as a bedroom.
  4. **Students.** Where a parking or loading requirement is stated as a ratio of parking spaces to students (including children in day care), the number is assumed to be the number of students at the state-certified capacity or at Building Code Occupancy where no state-certification is required.
  5. **Seats.** Where parking requirements are stated as a ratio of parking spaces to seats, each 80 inches of bench-type seating at maximum seating capacity is counted as one seat.
- C. **Sites with Multiple Uses.** If more than one use is located on a site, the number of required on-site parking spaces and loading spaces shall be equal to the sum of the requirements calculated separately for each use unless a reduction is approved pursuant to Section TBD, Parking Reductions.
- D. **CMU District.** In the CMU District, no on-site parking is required for the first 5,000 square feet of ground floor nonresidential use. Ground floor nonresidential uses greater than 5,000 square feet in size shall provide parking in accordance with Table TBD, Required Number of On-Site Parking Spaces, for the floor area in excess of 5,000 square feet. In addition, the following applies in the Old Town Area.
1. **Old Town Area.** The following apply in the Old Town Area as shown on Figure TBD, Old Town Area Parking Calculations.

- a. On-street parking along a lot's corresponding frontage lines shall be counted toward the parking requirement.
- b. Where a use with a legal nonconforming parking deficiency is replaced, the new use shall receive a parking credit equal to the number of required automobile parking spaces unmet by the previous use.

#### **17.18.050 Parking Reductions**

The number of on-site parking spaces required by Section TBD, Required Parking Spaces, may be reduced as follows.

- A. **Transit Accessibility.** For any land use except residential Single-Unit and Two-Unit development, if any portion of the lot is located within one-quarter mile of a transit stop with regular, scheduled service during the weekday hours of 7:00 a.m. to 9:00 a.m. and 5:00 p.m. and 7:00 p.m., the number of required parking spaces may be reduced by 20 percent of the normally required number of spaces.
- B. **Motorcycle Parking.** Motorcycle parking may substitute for up to five percent of required automobile parking. Each motorcycle space must be at least four feet wide and seven feet deep.
- C. **Shared Parking.** Where a shared parking facility serving more than one use will be provided, the total number of required parking spaces may be reduced up to 40 percent with Community Development Director approval of a Minor Use Permit, if the Director finds that:
  1. The peak hours of use will not overlap or coincide to the degree that peak demand for parking spaces from all uses will be greater than the total supply of spaces;
  2. The proposed shared parking provided will be adequate to serve each use;
  3. A parking demand study prepared by an independent traffic engineering professional approved by the City supports the proposed reduction; and
  4. In the case of a shared parking facility that serves more than one property, a parking agreement has been prepared consistent with the provisions of Section TBD, Off-Site Parking Facilities.
- D. **Other Parking Reductions.** Required parking for any use may be reduced through Community Development Director approval of a Minor Use Permit as follows.
  1. **Criteria for Approval.** The Director may only approve a Conditional Use Permit for reduced parking if it finds that:
    - a. Special conditions—including, but not limited to, the nature of the proposed operation; proximity to frequent transit service; transportation characteristics of persons residing, working, or visiting the site; or because the applicant has undertaken a transportation demand management program—exist that will reduce parking demand at the site;
    - b. The use will adequately be served by the proposed on-site parking; and
    - c. Parking demand generated by the project will not exceed the capacity of or have a significant impact on the supply of on-street parking in the surrounding area.

2. **Parking Demand Study.** In order to evaluate a proposed project's compliance with the above criteria, submittal of a parking demand study that substantiates the basis for granting a reduced number of spaces may be required.

#### 17.18.060 Parking In-Lieu Fee

If a parking assessment district has been established, a fee may be paid to the City in lieu of providing required parking within the district.

- A. **In-lieu Fee Amount.** The amount of the in-lieu fee shall be calculated and paid as set forth in a resolution of the City Council.
- B. **Use of Funds.** In-lieu fees shall be used for programs to reduce parking impacts including, but not limited to, the costs of any of the following:
  1. Off-street parking facilities, including acquisition, development, and maintenance of parking facilities located in the parking assessment district;
  2. Bicycle and pedestrian infrastructure serving the area in which the building for which the payments are made is located;
  3. Mass transit equipment, including stock and attendant facilities serving the area in which the buildings for which the payments are made are located;
  4. Transit or paratransit passes, coupons, and tickets to be made available at a discount to employees and customers and to promote and support incentives for employee ride-sharing and transit use; or
  5. Transportation system management projects.

#### 17.18.070 Location of Required Parking

- A. **Residential Uses.** Required parking for residential uses shall be on the same lot as the dwelling or use they serve or in an off-site facility as provided in Subsection TBD(C), Off-Site Parking Facilities. Parking shall not be located within a required front or street-facing side yard.
- B. **Nonresidential Uses.** Required parking spaces serving nonresidential uses shall be located on the same lot as the use they serve, or in an off-site parking facility as provided in Subsection C.
- C. **Off-Site Parking Facilities.** Parking facilities for uses other than Single-Unit Dwellings, Two-Unit Dwellings, and Second Units may be provided off-site with Director approval of a Minor Use Permit provided the following conditions are met.
  1. **Location.**
    - a. *Residential Uses.* Any off-site parking facility must be located within 200 feet, along a pedestrian route, of the unit or use served.
    - b. *Nonresidential Uses.* Any off-site parking facility must be located within 600 feet, along a pedestrian route, of the principal entrance containing the use(s) for which the parking is required.

2. **Parking Agreement.** A written agreement between the landowner and the City in a form satisfactory to the City Attorney shall be executed and recorded in the Office of the County Recorder. The agreement shall include:
  - a. A guarantee among the landowner for access to and use of the parking facility; and
  - b. A guarantee that the spaces to be provided will be maintained and reserved for the uses served for as long as such uses are in operation.

### 17.18.080 Bicycle Parking

- A. **Short-Term Bicycle Parking.** Short-term bicycle parking shall be provided in order to serve shoppers, customers, messengers, guests and other visitors to a site who generally stay for a short time.
  1. **Parking Spaces Required.** For the following uses, the number of short-term bicycle parking spaces shall be at least five percent of the number of required automobile parking spaces, with a minimum of four parking spaces provided per establishment.
    - a. Multi-unit Buildings, Group Residential, and Single Room Occupancy with five or more units.
    - b. All uses in the Public and Semi-Public Use Classification except Cemeteries and Community Gardens.
    - c. All uses in the Commercial Use Classification.
  2. **Location.** Short-term bicycle parking must be located outside of the public right of way and pedestrian walkways and within 50 feet of a main entrance to the building it serves. Where the bicycle parking area is not visible from the main entrance of the building, signs located at the main entrance of the building shall identify the location of bicycle parking.
  3. **Anchoring and Security.** For each short-term bicycle parking space required, a stationary, securely anchored object shall be provided to which a bicycle frame and one wheel (two points of contact) can be secured with a high-security U-shaped shackle lock if both wheels are left on the bicycle. One such object may serve multiple bicycle parking spaces.
  4. **Size and Accessibility.** Each short-term bicycle parking space shall be a minimum of two feet in width and six feet in length and shall be accessible without moving another bicycle. Two feet of clearance shall be provided between bicycle parking spaces and adjacent walls, poles, landscaping, street furniture, drive aisles, and pedestrian ways and at least five feet from vehicle parking spaces.
- B. **Long-Term Bicycle Parking.** Long-term bicycle parking shall be provided in order to serve employees, students, residents, commuters, and others who generally stay at a site for four hours or longer.
  1. **Parking Spaces Required.**
    - a. *Residential Uses.* A minimum of one long-term bicycle parking space shall be provided for every five units for Multi-unit Buildings, Group Residential, and Single Room Occupancy.



- b. **Other Uses.** Any establishment with 25 or more full time equivalent employees shall provide long-term bicycle parking at a minimum ratio of one space per 30 vehicle spaces.
    - c. **Parking Structures.** Long-term bicycle parking shall be provided at a minimum ratio of one space per 50 vehicle spaces.
  2. **Location.** Long-term bicycle parking must be located on the same lot as the use it serves and near the facility entrance. In parking garages, long-term bicycle parking must be located near an entrance to the facility. Where the bicycle parking area is not visible from the entrance of the building, signs located at the entrance or in an entry lobby of the building shall identify the location of bicycle parking.
  3. **Covered Spaces.** 100 percent of required bicycle parking for multi-unit development shall be inside buildings or garages or in bike lockers. At least 60 percent of other required long-term bicycle parking must be covered. Covered parking can be provided inside buildings, under roof overhangs or awnings, in bicycle lockers, or within or under other structures.
  4. **Security.** Long-term bicycle parking must be in:
    - a. An enclosed bicycle locker;
    - b. A fenced, covered, locked or guarded bicycle storage area;
    - c. A rack or stand inside a building that is within view of an attendant or security guard or visible from employee work areas or within secure/restricted bicycle storage room; or
    - d. Other secure area approved by the Director.
  5. **Size and Accessibility.** Each bicycle parking space shall be a minimum of two feet in width and six feet in length and shall be accessible without moving another bicycle. Two feet of clearance shall be provided between bicycle parking spaces and adjacent walls, poles, landscaping, street furniture, drive aisles, and pedestrian ways and at least five feet from vehicle parking spaces.

#### 17.18.090 On-Site Loading

##### A. Loading Spaces Required.

1. **Uses with Moderate Loading Demand.** The following land uses shall provide loading spaces in accordance with Table TBD, Required Loading Spaces-Moderate Loading Demand.
  - a. Banks and Financial Institutions
  - b. Banquet Hall
  - c. Cinema/Theaters
  - d. Clinics
  - e. Colleges and Trade Schools
  - f. Community Assembly

- g. Cultural Institution
- h. Custom Manufacturing
- i. Emergency Shelter
- j. Government Offices
- k. Hospitals
- l. Hotels
- m. Indoor Sports and Recreation
- n. Maintenance and Repair Services
- o. Motels
- p. Offices
- q. Public Safety Facilities
- r. Residential Care Facilities
- s. Residential Facility, Assisted Living
- t. Schools
- u. Skilled Nursing Facilities
- v. Veterinary Services

<b>TABLE TBD: REQUIRED LOADING SPACES-MODERATE LOADING DEMAND</b>	
<i>Gross Floor Area (square feet)</i>	<i>Required Loading Spaces</i>
0-5,000	1 if located in a Residential District, 0 otherwise
5,001-50,000	1
50,001-150,000	2
150,001+	2 plus 1 per each additional 150,000 square feet over 150,000

2. **Uses with High Loading Demand.** The following land uses shall provide loading spaces in accordance with Table TBD, Required Loading Spaces.
- a. Animal Sales and Grooming
  - b. Automobile/Vehicle Sales and Services
  - c. Eating and Drinking Establishments
  - d. Food Preparation
  - e. Nurseries and Garden Centers
  - f. Retail Sales
  - g. Construction and Material Yards
  - h. Food and Beverage Manufacturing

- i. General Industrial
- j. Light Industrial
- k. Research and Development
- l. Warehousing and Storage
- m. Wholesaling and Distribution

<b>TABLE TBD: REQUIRED LOADING SPACES-HIGH LOADING DEMAND</b>	
<i>Gross Floor Area (square feet)</i>	<i>Required Loading Spaces</i>
0-5,000	0
5,001-12,500	1
12,501-20,000	2
20,001-30,000	3
30,001-50,000	4
50,001-75,000	5
75,001+	5 plus 1 per each additional 75,000 square feet over 75,000

- 3. **Transportation Uses.** Three loading spaces plus additional spaces as determined by the Director to be necessary shall be provided for the following uses.
  - a. Airports and Heliports
  - b. Freight/Trucking Terminals
- 4. **Other Uses.** One loading space plus additional spaces as determined by the Director to be necessary shall be provided for the following uses.
  - a. Business Services
  - b. Funeral Parlors and Interment Services
  - c. Public Works and Utilities
  - d. Recycling Facilities
  - e. Transportation Passenger Terminals
  - f. Any other use similarly requiring the receipt or distribution by vehicles or trucks of material or merchandise.

**B. Adjustments to Loading Space Requirements.**

- 1. **Multi-Tenant Buildings.** The gross floor area of the entire building shall be used in determining spaces for multi-tenant buildings. A common loading area may be required, if each tenant space is not provided a loading area. Drive-in roll-up doors for multi-tenant industrial projects may be substituted for required loading areas.

2. **Reduction in Number of Loading Spaces Required.** The loading space requirement may be waived if the Director finds that the applicant has satisfactorily demonstrated that due to the nature of the proposed use, such loading space will not be needed.
  3. **Additional Loading Spaces Required.** The required number of loading spaces may be increased to ensure that trucks will not be loaded, unloaded, or stored on public streets. Such requirement shall be based on the anticipated frequency of truck pickups and deliveries and of the truck storage requirements of the use for which the on-site loading spaces are required.
- C. **Location.** All required loading berths shall be located on the same site as the use served. No loading berth for vehicles over two-ton capacity shall be closer than 50 feet to any property in a Residential district unless completely enclosed by building walls, or a uniformly solid fence or wall, or any combination thereof, not less than six feet in height. No permitted or required loading berth shall be located within 25 feet of the nearest point of any street intersection.
- D. **Minimum Size.** Each on-site loading space required by this Chapter shall not be less than 12 feet wide, 45 feet long, and 14 feet high, exclusive of driveways for ingress and egress, maneuvering areas and setbacks. The minimum size requirement may be modified if the Director finds that the applicant has satisfactorily demonstrated that due to the nature of the proposed use, such size will not be needed.
- E. **Driveways for Ingress and Egress and Maneuvering Areas.** Each on-site loading space required by this Section shall be provided with driveways for ingress and egress and maneuvering space of the same type and meeting the same criteria required for on-site parking spaces. Truck-maneuvering areas shall not encroach into required parking areas, travelways, or street rights-of-way. This requirement may be modified if the Director finds that sufficient space is provided so that truck-maneuvering areas will not interfere with traffic and pedestrian circulation.
- F. **Surfacing.** All loading areas shall be paved and improved, and all sites shall be properly drained, consistent with applicable stormwater runoff regulations and subject to the approval of the Public Works Director.
1. **Pavement Standards.** Pavement shall be either asphalt or concrete paving consistent with the following standards or comparable material approved by the Public Works Director.
    - a. *Asphalt.* Two inches of asphaltic concrete on four inches of aggregate base material.
    - b. *Concrete.* Four inches of portland cement concrete on three inches of aggregate base material.

#### **17.18.100 Parking Area Design and Development Standards**

All parking areas except those used exclusively for stacked or valet parking, shall be designed and developed consistent with the following standards. Parking areas used exclusively for stacked or valet parking are subject only to Subsections I through M. Stacked or valet parking areas which will allow parking at some times without attendants must be striped in conformance with the layout requirements of this Section.

- A. **Tandem Parking.** Tandem parking is not permitted to satisfy the off-street parking requirement.
- B. **Shopping Cart Storage.** When there are businesses that utilize shopping carts, adequate temporary shopping cart storage areas shall be provided throughout the parking lots. No temporary storage of shopping carts is allowed on walkways outside of buildings. Shopping cart storage shall not occur in required parking spaces.
- C. **Parking Access**
  - 1. **Distance from Intersection.** Access for parking facilities with 10 or more spaces shall be located a minimum of 50 feet from the intersection of any two streets.
  - 2. **Access Width.** The width of curb cuts for parking access is limited as follows.
    - a. The width of a curb cut serving one travel lane is limited to a maximum of 12 feet, excluding splays.
    - b. The width of a curb cut serving two travel lanes is limited to a maximum of 24 feet, excluding splays, except parking lots with more than 100 spaces where the curb cut may be up to 30 feet wide, excluding splays.
  - 3. **Shared Access.** Nonresidential projects are encouraged to provide shared vehicle and pedestrian access to adjacent nonresidential properties for convenience, safety, and efficient circulation. A joint access agreement guaranteeing the continued availability of the shared access between the properties approved by the Director shall be recorded in the County's Recorders Office, in a form satisfactory to the City Attorney.
  - 4. **Forward Entry.** Parking areas of four or more spaces shall be provided with suitable maneuvering room so that all vehicles therein may enter an abutting street in a forward direction.
  - 5. **Driveway Length.** Driveways providing direct access from a public street to a garage or carport shall be at least 20 feet in depth.
  - 6. **Driveway Width.** The minimum width of a driveway is as follows:
    - a. 10 feet for any driveway serving one residence.
    - b. 10 feet for a one-way driveway.
    - c. 20 feet for a two-way driveway serving any use other than one residence.
- D. **Size of Parking Spaces and Maneuvering Aisles.** Parking spaces and maneuvering aisles shall meet the minimum dimensions required by this Subsection. Screening walls, roof support posts, columns, or other structural members shall not intrude into the required dimensions for parking spaces.
  - 1. **Standard Parking Spaces and Drive Aisles.** The minimum basic dimension for standard parking spaces is nine feet by 20 feet, with a minimum vertical clearance of seven feet. Table TBD provides the dimensions of spaces (stalls) and aisles according to angle of parking spaces. The required aisle width may be modified if the Public Works Director finds that sufficient space is provided, so that maneuvering areas will not interfere with traffic and pedestrian circulation.

TABLE TBD: STANDARD PARKING SPACE AND AISLE DIMENSIONS		
Angle of Parking	Aisle Width (ft)	Stall Depth (ft)
90°	25	20
60°	18	22
45°	12	20
30°	10	18
Parallel	9	16
Other	As determined by the Public Works Director	

2. **Compact Parking Spaces.** Up to 25 percent of assigned spaces may be reduced to eight feet by 18 feet and labeled “compact.”
3. **Parking Spaces Abutting Wall or Fence.** Each parking space adjoining a wall, fence, column, or other obstruction higher than 0.5 feet in the vicinity of where a vehicle door may be located shall be increased to accommodate access to the vehicle through the door.
4. **Minimum Dimensions for Residential Garages and Carports.** Garages and carports serving residential uses shall be constructed to meet the following minimum inside dimensions and related requirements.
  - a. A single car garage or carport: 10 feet in width by 20 feet in length.
  - b. A two-car garage or carport: 20 feet in width by 20 feet in length.
  - c. A garage or carport containing three or more spaces: 10 feet in width by 20 feet in length per space.
  - d. The vertical clearance for garage or carport parking spaces shall not be less than seven feet.
  - e. Stairs may encroach into the parking area of a garage provided that the front end of a standard size automobile can fit under the stair projection. The bottom of the stairwell (including exterior finish) shall be a minimum of five feet above the garage floor.
- E. **Parking Lot Striping.** All parking stalls shall be clearly outlined with striping, and all aisles, approach lanes, and turning areas shall be clearly marked with directional arrows and lines as necessary to provide for safe traffic movement.
- F. **Wheel Stops.** Parking areas designed to accommodate 10 or more vehicles shall provide concrete bumper guards or wheel stops for all unenclosed parking spaces. A six-inch high concrete curb surrounding a landscape area at least six feet wide may be used as a wheel stop, provided that the overhang will not damage or interfere with plant growth or its irrigation. A concrete sidewalk may be used as a wheel stop if the overhang will not reduce the minimum required walkway width.

- G. **Surfacing.** All parking areas shall be paved and improved, and all sites shall be properly drained, consistent with applicable stormwater runoff regulations and subject to the approval of the Public Works Director. No unpaved area shall be used for parking.
1. **Pavement Standards.** Parking areas shall be paved consistent with the following materials or comparable material approved by the Public Works Director.
    - a. *Asphalt.* Two inches of asphaltic concrete on four inches of aggregate base material.
    - b. *Concrete.* Four inches of portland cement concrete on three inches of aggregate base material.
    - c. *Pavers or Permeable Pavement Systems.* Pavers or permeable pavement systems with strength equivalent to a. or b above.
  2. **Landscaping Alternative.** Up to two feet of the front of a parking space as measured from a line parallel to the direction of the bumper of a vehicle using the space may be landscaped with ground cover plants instead of paving.
- H. **Perimeter Curbing.** Parking areas designed to accommodate 10 or more vehicles shall provide a six-inch wide and six-inch high concrete curb along the outer edge of the parking facility pavement, except where said pavement abuts a fence or wall. Curbs separating landscaped areas from parking areas shall be designed to allow stormwater runoff to pass through.
- I. **Heat Island Reduction.** In order to reduce ambient surface temperatures in parking areas, at least 50 percent of the areas not landscaped shall be shaded, of light colored materials with a Solar Reflectance Index of at least 29, or a combination of shading and light colored materials.
1. Shade may be provided by canopies, shade structures, trees, or other equivalent mechanism. If shade is provided by trees, the amount of required shading is to be reached within 15 years.
  2. Trees shall be selected from a list maintained by the Planning Division.
- J. **Lighting.** Parking areas designed to accommodate 10 or more vehicles shall be provided with a minimum of one-half foot-candle and a maximum of 3.0 foot-candles of light over of the parking surface during the hours of use from one-half hour before dusk until one-half hour after dawn.
1. Lighting design shall be coordinated with the landscape plan to ensure that vegetation growth will not substantially impair the intended illumination.
  2. Parking lot lighting shall, to the maximum extent feasible, be designed and installed so that light and glare is not directed onto residential use areas or adjacent public rights-of-way, consistent with Chapter TBD, Performance Standards.
- K. **Separation From On-Site Buildings.** Parking areas designed to accommodate five or more vehicles must be separated from the front and side exterior walls of on-site buildings by walkways a minimum of three feet in width. Commercial buildings with 25,000 square feet or more of gross floor area must be separated from on-site parking on all sides by a walkway a minimum of five feet in width, as well as a planter area at least three feet in width.

- L. **Landscaping.** Parking areas designed to accommodate five or more vehicles must be landscaped according to the general standards of Chapter TBD, Landscaping, as well as the standards of this Subsection.
1. **Landscape Area Required.** A minimum of 10 percent of the parking lot area shall be landscaped.
  2. **Minimum Planter Dimension.** No landscape planter that is to be counted toward the required landscape area shall be smaller than 25 square feet in area, or four feet in any horizontal dimension, excluding curbing.
  3. **Layout.** Landscaped areas shall be well-distributed throughout the parking lot area. Parking lot landscaping may be provided in any combination of:
    - a. Landscaped planting strips at least four feet wide between rows of parking stalls;
    - b. Landscaped planting strips between parking areas and adjacent buildings or internal pedestrian walkways;
    - c. Landscaped islands located between parking stalls or at the ends of rows of parking stalls; and
    - d. On-site landscaping at the parking lot perimeter.
  4. **Required Landscaped Islands.** A landscaped island at least six feet in all interior dimensions and containing at least one 24 inch box tree shall be provided at each end of each interior row of parking stalls and between every six consecutive parking stalls.
  5. **Landscaped Buffer Adjacent to Right-of-Way.** A landscaped area at least five feet wide shall be provided between any surface parking area and any property line adjacent to a public street, unless a different dimension is specified in the zoning district standards applicable to a site.
  6. **Landscaped Buffer Abutting Interior Lot Line.**
    - a. *Adjacent to a Residential, Park, or Open Space District.* A landscaped area at least five feet wide shall be provided between any surface parking area and any adjacent lot in a Residential, Park, or Open Space District for the length of the parking area.
    - b. *Adjacent to Any Other District.* A landscaped area at least three feet wide shall be provided between any surface parking area and any adjacent lot in any district other than Residential, Park, or Open Space for the length of the parking area.
  7. **Trees.**
    - a. *Number Required.* One for each five parking spaces.
    - b. *Distribution.* Trees shall be distributed relatively evenly throughout the parking area.
    - c. *Species.* Tree species shall be selected from a list maintained by the Planning Division.
    - d. *Size.* All trees shall be a minimum 15-gallon size with a one-inch diameter at 48 inches above natural grade.



- e. *Minimum Planter Size.* Any planting area for a tree must have a minimum interior horizontal dimension of five feet. Additional space may be required for some tree species.

8. **Protection of Vegetation.**

- a. *Clearance from Vehicles.* All required landscaped areas shall be designed so that plant materials, at maturity, are protected from vehicle damage by providing a minimum two-foot clearance of low-growing plants where a vehicle overhang is permitted, or by wheel stops set a minimum of two feet from the back of the curb.
- b. *Planters.* All required parking lot landscaping shall be within planters bounded by a concrete curb at least six inches wide and six inches high. Curbs separating landscaped areas from parking areas shall be designed to allow stormwater runoff to pass through.

- 9. **Visibility and Clearance.** Landscaping in planters at the end of parking aisles shall not obstruct driver's vision of vehicular and pedestrian cross-traffic. Mature trees shall have a foliage clearance maintained at eight feet from the surface of the parking area. Other plant materials located in the interior of a parking lot shall not exceed 30 inches in height.

M. **Screening.** Parking areas designed to accommodate five or more vehicles shall be screened from view from public streets and adjacent lots in a more restrictive zoning district, according to the following standards.

- 1. **Height.** Screening of parking lots from adjacent public streets shall be 42 inches in height. Screening of parking lots along interior lot lines that abut Residential Districts shall be six feet in height, except within the required front setback of the applicable zoning district, where screening shall be three feet in height.
- 2. **Materials.** Screening may consist of one or any combination of the methods listed below.
  - a. *Walls.* Low-profile walls consisting of brick, stone, stucco, or other quality durable material approved by the Director, and including a decorative cap or top finish as well as edge detail at wall ends. Plain concrete blocks are not allowed as a screening wall material unless capped and finished with stucco or other material approved by the Director.
  - b. *Fences.* An open fence of wrought iron or similar material combined with plant materials to form an opaque screen. Use of chain-link or vinyl fencing for screening purposes is prohibited.
  - c. *Planting.* Plant materials consisting of compact evergreen plants that form an opaque screen. Such plant materials must achieve a minimum height of two feet within 18 months after initial installation and must be permanently maintained.
  - d. *Berms.* Berms planted with grass, ground cover, or other low-growing plant materials.

N. **Circulation and Safety.**

1. Visibility shall be assured for pedestrians, bicyclists, and motorists entering individual parking spaces, circulating within a parking facility, and entering or leaving a parking facility.
  2. Off-street parking areas of four or more spaces shall be provided with sufficient maneuvering room so that all vehicles can enter and exit from a public street by forward motion only.
  3. Parking lots shall be designed so that sanitation, emergency, and other public service vehicles can provide service without backing up unreasonable distances or making other dangerous or hazardous turning movements.
  4. Separate vehicular and pedestrian circulation systems shall be provided where possible. Multi-unit residential developments of five or more units must provide pedestrian access that is separate and distinct from driveways. Parking areas for commercial and mixed-use developments that are 80 feet or more in depth and/or include 25 or more parking spaces must have distinct and dedicated pedestrian access from the commercial use to parking areas and public sidewalks, according to the following standards:
    - a. *Connection to Public Sidewalk.* An on-site walkway shall connect the main building entry to a public sidewalk on each street frontage. Such walkway shall be the shortest practical distance between the main building entry and sidewalk, generally no more than 125 percent of the straight-line distance.
    - b. *Materials and Width.* Walkways shall provide at least five feet of unobstructed width and be hard-surfaced.
    - c. *Identification.* Pedestrian walkways shall be clearly differentiated from driveways, parking aisles, and parking and loading spaces through the use of elevation changes, a different paving material, or similar method.
    - d. *Separation.* Where a pedestrian walkway is parallel and adjacent to an auto travel lane, it must be raised and separated from the auto travel lane by a raised curb at least four inches high, bollards, or other physical barrier.
- O. **Alternative Parking Area Designs.** Where an applicant can demonstrate to the satisfaction of the Director that variations in the requirements of this Section are warranted in order to achieve environmental design and green building objectives, including but not limited to achieving certification under the LEED™ Green Building Rating System or equivalent, an alternative parking area design may be approved.
- P. **Maintenance.** Parking lots, including landscaped areas, driveways, and loading areas, shall be maintained free of refuse, debris, or other accumulated matter and shall be kept in good repair at all times.

## Chapter 17.19 Performance Standards

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### 17.19.010 Purpose

The purposes of this Chapter are to:

- A. Establish permissible limits and permit objective measurement of nuisances, hazards, and objectionable conditions;
- B. Ensure that all uses will provide necessary control measures to protect the community from nuisances, hazards, and objectionable conditions; and
- C. Protect industry from arbitrary exclusion from areas of the City.

### 17.19.020 General Standard

Land or buildings shall not be used or occupied in a manner creating any dangerous, injurious, or noxious fire, explosive or other hazard that would adversely affect the surrounding area.

### 17.19.030 Measurement of Impacts

Measurements necessary for determining compliance with the standards of this Chapter shall be taken at the lot line of the establishment or use that is the source of a potentially objectionable condition, hazard, or nuisance.

### 17.19.040 Dust and Fumes

Uses, activities, and processes shall not operate in a manner that emits excessive dust, fumes, smoke, or particulate matter, unless authorized under federal, State, or local law. Sources of air emissions shall comply with all rules established by the Environmental Protection Agency (Code of Federal Regulations, Title 40), the California Air Resources Board, and the Bay Area Air Quality Management District.

### 17.19.050 Electromagnetic Interference

No use, activity or process shall cause electromagnetic interference with normal radio and television reception, or with the function of other electronic equipment beyond the lot line of the site in which it is situated. All uses, activities and processes shall comply with applicable Federal Communications Commission regulations.

### 17.19.060 Fire and Explosive Hazards

All activities, processes and uses involving the use of, or storage of, flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Firefighting and fire suppression equipment and devices standard in industry shall be approved by the Fire Department. All incineration is prohibited with the exception of those substances such as, but not limited to, chemicals, insecticides, hospital materials and waste products, required by law to be disposed of by burning, and those instances wherein the Fire Department deems it a practical necessity.

#### **17.19.070 Glare**

No use shall be operated such that significant, direct glare, incidental to the operation of the use is visible beyond the boundaries of the lot where the use is located.

#### **17.19.080 Hazardous and Extremely Hazardous Materials**

The use, handling, storage and transportation of hazardous and extremely hazardous materials shall comply with the provisions of the California Hazardous Materials Regulations and the California Fire and Building Codes, as well as the laws and regulations of the California Department of Toxic Substances Control and the County Environmental Health Agency. Activities, processes, and uses shall not generate or emit any fissionable or radioactive materials into the atmosphere, a sewage system or onto the ground.

#### **17.19.090 Heat and Humidity**

Uses, activities, and processes shall not produce any emissions of heat or humidity that cause distress, physical discomfort, or injury to a reasonable person, or interfere with ability to perform work tasks or conduct other customary activities. In no case shall heat emitted by a use cause a temperature increase in excess of five degrees Fahrenheit on another property.

#### **17.19.100 Noise**

- A. **Acoustic Study.** An acoustic study shall be required for any proposed project which could create or be subject to a noise exposure greater than that deemed “normally acceptable” by the General Plan.
- B. **Noise Attenuation Measures.** Any project subject to the acoustic study requirements of Subsection TBD(A), Acoustic Study, may be required as a condition of approval to incorporate noise attenuation measures deemed necessary to ensure that noise standards are not exceeded.
  - 1. New noise-sensitive uses (e.g., schools, hospitals, churches, and residences) shall incorporate noise attenuation measures to achieve and maintain an interior noise level of 45 dBA.
  - 2. Noise attenuation measures identified in an acoustic study shall be incorporated into the project to reduce noise impacts to satisfactory levels.
  - 3. Emphasis shall be placed upon site planning and project design measures. The use of noise barriers shall be considered and may be required only after all feasible design-related noise measures have been incorporated into the project.

#### **17.19.110 Waste Disposal**

- A. **Discharges to Water or Sewers.** Liquids and solids of any kind shall not be discharged, either directly or indirectly, into a public or private body of water, sewage system, watercourse, or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board.
- B. **Containment.** Wastes shall be handled and stored so as to prevent nuisances, health, safety and fire hazards, and to facilitate recycling. Closed containers shall be provided and used for the storage of any materials which by their nature are combustible, volatile, dust, or odor producing or edible or attractive to rodents, vermin, or insects.

- C. **Incineration.** There shall be no rubbish or refuse incineration on the premises.

**17.19.120 Vibration**

No vibration shall be produced that is transmitted through the ground and is discernible without the aid of instruments by a reasonable person at the lot lines of the site. Vibrations from temporary construction, demolition, and vehicles that enter and leave the subject parcel (e.g., construction equipment, trains, trucks, etc.) are exempt from this standard.

- A. **Development Near Railroads.** An acoustic study shall be required for any proposed development within 200 feet of a railroad track. Measures may be required to ensure that vibration impacts remain below acceptable levels.

## Chapter 17.20 Signage Standards

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### 17.20.010 Purpose

The purpose of this Chapter is to promote the public health, safety, and welfare through a comprehensive system of reasonable, effective, consistent, content-neutral, and nondiscriminatory sign standards and requirements. More specifically, this Chapter is intended to:

- A. Balance public and private objectives by allowing adequate avenues for both commercial and non-commercial messages.
- B. Allow signs to serve as an effective channel of communication while preventing visual clutter that will detract from the aesthetic character of the City;
- C. Protect and improve the local economy and quality of life by preserving and enhancing the appearance of the streetscape.
- D. Maintain and enhance the City's appearance by regulating the location, number, type, quality of materials, size, illumination, and maintenance of signs;
- E. Restrict signs that may create a nuisance to nearby properties, violate privacy, or create hazards or unreasonable distractions for pedestrians or drivers;
- F. Provide clear and unambiguous sign standards that enable fair and consistent enforcement; and
- G. Ensure that the constitutionally guaranteed right of free speech is protected.

### 17.20.020 Applicability

The provisions of this Chapter apply to all signs in all zoning districts, unless otherwise specified, constructed or physically altered on or after the effective date of this Ordinance.

- A. Nothing in this Chapter shall be construed to prohibit a person from holding a sign while picketing or protesting on public property that has been determined to be a traditional or designated public forum, so long as the person holding the sign does not block ingress and egress from buildings, create a safety hazard by impeding travel on sidewalks, in bike or vehicle lanes, or on trails, or violate any other reasonable time, place, and manner restrictions adopted by the City.
- B. The provisions of this Chapter shall not require alteration of the display of any registered mark, or any trademark, service mark, trade name, or corporate name that may be associated with or incorporated into a registered mark, where such alteration would require the registered mark to be displayed in a manner differing from the mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office. It is the responsibility of the applicant to establish that a proposed sign includes a registered mark.

### 17.20.030 Exempt Signs

The following signs are exempt from the permit requirements of this Chapter, and they do not count toward the total sign area limit for a site, provided that they conform to the specified standards.

- A. **Address Signs.** Required address identification signs that are in conformance with the Building Code.
- B. **Commercial Displays on Vehicles.** Displays on vehicles related to the goods or services provided by the vehicle owner or operator and public transit/public carrier graphics on properly licensed buses, taxicabs, and similar vehicles for hire that legally pass through the City.
- C. **Commercial Mascot Signs.** Commercial signs held or attended by a person serving as commercial mascots.
  - 1. **Location.** Limited to Commercial and Mixed-Use Districts.
  - 2. **Number.** No more than two commercial mascot signs per business.
  - 3. **Maximum Size.** The area of each sign held or attended by a person shall not exceed six square feet.
  - 4. **Timing of Display.** Commercial Mascot signs shall not be displayed during hours when the business establishment related to the specific commercial mascot sign is not open to the public.
- D. **Directional Signs.** Directional and/or informational signs not more than six square feet in area for the direction or convenience of the public such as outlining/assisting vehicle and pedestrian circulation within a site, egress, ingress, and any public facilities such as restrooms, telephones, walkways, and other similar features.
- E. **Open House Directional Signs.** Up to four off-site signs directing the public to "open house" events for the viewing of lots, premises, dwellings or structures that are for sale, lease, or rent, are permitted on private land, provided they comply with the following standards:
  - 1. No sign or signs exceeds four square feet in area, or three feet in height from finished grade.
  - 2. The sign or signs may not be placed more than two hours before the start or remain more than two hours after the conclusion of the open house event.
- F. **Flags.** Flags erected and located in accordance with the following standards:
  - 1. **Location.** Flagpoles shall not be located within any required setback.
  - 2. **Height.** The maximum flagpole height is 30 feet.
  - 3. **Number.** No more than two flags per lot in Residential Districts, no more than three flags per lot in all other districts.
  - 4. **Maximum Size.** The maximum individual flag size is 32 square feet.
- G. **Government Signs.** Official notices issued by a court, public body, or office and posted in the performance of a public duty; notices posted by a utility or other quasi-public agency; signs erected by a governmental body to direct or regulate pedestrian or vehicular traffic; non-commercial bus stop signs erected by a public transit agency, or other signs required or authorized by law.
- H. **Historic Plaques and Commemorative Signs.** Historic plaques, memorial signs or tablets, or commemorative signs indicating names of buildings and dates of building erection, either

attached to or cut into the surfaces of buildings, provided that no such sign exceeds four square feet in area.

- I. **Interior Signs.** Signs that are located in interior areas of a building or site not visible from the public right-of-way, and at least three feet from a window, door, or other exterior wall opening.
- J. **Mobile Vendor Signs.** Signs fixed to mobile vending vehicles that identify or advertise the name, product, or service provided by the vendor. Each mobile vending vehicle is limited to a maximum sign area of eight square feet.
- K. **Nameplate.** One nameplate for each tenant or occupancy not to exceed two square feet in area indicating the name of the occupant or tenant.
- L. **Off-Site Signs.** Off-premise signs no more than six square feet in size.

#### **17.20.040 Prohibited Signs**

Unless otherwise permitted by a specific provision of this Chapter, the following sign types are prohibited:

- A. **Animated or Moving Signs.** Animated, flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind, unless expressly permitted by another section of this Chapter. This provision does not apply to signs using digital display technology, such as LED (light emitting diodes) or functionally equivalent display methods, which are permitted, subject to the regulations of this Chapter.
- B. **Balloons, Inflatable Signs, Streamers, Pennants and Other Attention-Getting Devices.** Balloons, inflatable signs, streamers, pennants, and other attention-getting devices, made of light-weight fabric or similar material, designed to rotate or move with the wind, that direct, promote, or that are otherwise designed to attract attention are prohibited except when used in conjunction with outdoor automobile sales.
- C. **Cabinet or Can Signs.** Internally lit cabinet and can signs.
- D. **General Advertising.** Temporary signs that publicize or promote other businesses or causes using methods of advertising (in contrast to self-promotion, on-site sales, or on-site advertising). General advertising is also known as advertising for hire.
- E. **Mobile Billboards.** Any sign carried or conveyed by a vehicle for the primary purpose of general advertising for hire. The purpose of this prohibition is to eliminate mobile billboard advertising within the City in order to reduce traffic congestion, promote the safe movement of vehicular traffic, to reduce air pollution, and improve the aesthetic appearance of the City. This prohibition does not apply to displays on vehicles related to the goods or services provided by the vehicle owner or operator and public transit/public carrier graphics on properly licensed buses, taxicabs, and similar vehicles for hire that legally pass through the City.
- F. **Roof Signs.**
  - 1. Attached signs that extend above the roofline or parapet (whichever is higher) of a building with a flat roof.
  - 2. Attached signs that extend above the deck line of a mansard roof.
  - 3. Signs on rooftop structures, such as penthouse walls or mechanical enclosures.



- G. **Search Lights and Klieg Lights.** Search and Klieg lights when used as attention-attracting devices for commercial uses.
- H. **Signs Located in the Public Right-of-Way or on Public Property.** Other than official government signs or warning signs required by law, no inanimate sign can be placed in or project into the public right-of-way or on public property unless authorized by an encroachment permit.
- I. **Signs Affixed to Trees.** Signs affixed to or cut into any tree or other living vegetation.
- J. **Signs on Terrain.** Signs cut, burned, marked, or displayed in any manner on a street, sidewalk, cliff or hillside.
- K. **Signs of Certain Materials.** Signs made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.
- L. **Signs Creating Traffic Hazards or Affecting Pedestrian Safety.** Signs must not be placed or located in such a manner as to constitute a safety hazard or to impede the public use of the public right-of-way.
  - 1. Signs placed, mounted, erected, or installed in any manner that obstructs use of any door, window or fire escape.
  - 2. Signs mounted or displayed in such a manner that blocks or impedes the normal pedestrian use or public sidewalks. A minimum unobstructed width of four feet must be maintained on sidewalks at all times.
  - 3. Signs located in such a manner as to constitute a traffic hazard or obstruct the view of traffic, any authorized traffic sign, or signal device.
  - 4. Signs that may create confusion with any authorized traffic sign, signal, or device because their color, location, or wording, or use of any phrase, symbol, or character interferes with, misleads, or confuses vehicular drivers in their use of roads or conflicts with any traffic control sign or device.
  - 5. Signs at or near any street intersection that will obstruct the free and clear vision of drivers and pedestrians. Other than traffic control signals, no sign can be installed in the visibility triangle at intersections, extending horizontally 15 feet from the corner of the intersection and vertically, from a height of three feet to a height of eight feet.
- M. **Signs for Prohibited Uses.** A sign displaying a commercial message promoting a business that is a prohibited use and has not been established as a legal nonconforming use.
- N. **Signs that Produce Noise or Emissions.** Signs that produce visible smoke, vapor, particles, odor, noise, or sounds that can be heard at the property line, excluding voice units at menu boards and devices for servicing customers from their vehicles, such as drive-up windows at banks.

#### 17.20.050 Sign Measurement

- A. **Measuring Sign Area.** The area of a sign face includes the entire area within a single continuous perimeter composed of squares and rectangles that enclose the extreme limits of all sign elements, including, without limitation, sign structures or borders, written copy, logos, symbols, illustrations, and color. Supporting structures, such as sign bases and columns, are not included in sign area provided that they contain no lettering or graphics except for addresses or required tags. The area of an individual sign shall be calculated as follows.

1. **Single-Faced Signs.** The sign area of a sign with a single face area is the area of the sign face.
  2. **Double-Faced Signs.** Where two faces of a double-faced sign are located two feet or less from one another at all points, or located at an interior angle of 45 degrees or less from one another, the sign area of double-faced signs is computed as the area of one face. Where the two faces are not equal in size, the larger sign face will be used. Where two faces of a double-faced sign are located more than two feet or greater than 45 degrees from one another, both sign faces are counted toward sign area.
  3. **Multi-Faced Signs.** On a three-faced sign, where at least one interior angle is 45 degrees or less, the area of two faces (the largest and smallest face) must be summed to determine sign area. In all other situations involving a sign with three or more sides, sign area will be calculated as the sum of all faces.
  4. **Three-Dimensional Signs.** Signs that consist of, or have attached to them, one or more three-dimensional objects (i.e., balls, cubes, clusters of objects, sculpture, or statue-like trademarks), may have a sign area that is the sum of all areas using the four vertical sides of the smallest rectangular prism that will encompass the sign.
- B. **Measuring Sign Height.** The height of a sign is the vertical distance from the uppermost point used to measure sign area to the existing grade immediately below the sign.
1. **Height of Freestanding Signs.** The height of freestanding signs shall be measured as the vertical distance from grade at the edge of the right-of-way along which a sign is placed to the highest point of the sign, including any structural or architectural components of the sign. When the grade at the edge of the right-of-way is higher than the site on which the sign is placed, that portion of the sign below the grade at the edge of the right-of-way shall not be included in determining the sign's overall height. Signs oriented towards a freeway shall be measured from the project site grade or pad, whichever is lower.
- C. **Measuring Sign Clearance.** Sign clearance shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other embellishments.
- D. **Building Frontage.** A building's frontage is considered continuous if projections or recesses in a building wall do not exceed 10 feet in any direction. For buildings with two or more frontages, the length of the wall and allowable sign area shall be calculated separately for each building frontage.
- E. **Street Frontage.** The length of street frontage is measured along the property line adjacent to the public right-of-way.

#### 17.20.060 General Provisions

This Section establishes general standards that apply to all sign types and in all districts.

- A. **Applicable Codes.** In addition to complying with the provisions of this Section, all signs must be constructed in accordance with the Uniform Building Code, the Uniform Sign Code, the Electrical Code, and all other applicable laws, rules, regulations, and policies.
- B. **Changes to Copy of Approved Signs.** Changes to the copy of approved signs that were legally established and have not been modified so as to become illegal are exempt from permitting

pursuant to this Ordinance. Changes to copy do not include changes to the type or level of illumination of an approved sign.

- C. **Noncommercial Signs.** Non-commercial signs are allowed wherever commercial signage is permitted and are subject to the same standards and total maximum allowances per site or building of each sign type specified in this Chapter. For purposes of this Chapter, all non-commercial speech messages will be deemed to be “on-site,” regardless of location.
- D. **Message Substitution.** A non-commercial message of any type may be substituted, in whole or in part, for any duly permitted commercial message, any non-commercial message may be substituted for any other non-commercial message, and any on-site commercial message may be substituted, in whole or in part, for any other on-site commercial message.
  - 1. **No Additional Approval.** Such substitution of message may be made without any additional approval, permitting, registration, or notice to the City. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other noncommercial message.
  - 2. **Limitations.** This message substitution provision does not: 1) create a right to increase the total amount of signage on a parcel, lot or land use; 2) affect the requirement that a sign structure or mounting device be properly permitted; 3) allow a change in the physical structure of a sign or its mounting device; or 4) authorize the substitution of an off-site commercial message in place of an on-site commercial message or in place of a non-commercial message.
- E. **Changeable Copy.**
  - 1. **Manual Changeable Copy.** Manually changeable copy shall represent no more than 30 percent of the sign area.
  - 2. **Automatic Changeable Copy and Electronic Message Center Signs.** Electronic Message Center (EMC) signs and automatic changeable copy in which copy can be changed or altered by electric, electro-mechanical, electronic, or any other artificial energy means, are allowed subject to the following standards.
    - a. **Permit Required.** All automatic changeable copy and electronic message center signs require Conditional Use Permit approval, except service and gas station price signs and time and temperature signs.
    - b. **Display Duration.** The display shall change no more frequently than once every eight seconds and must have an unlighted interval between copy displays of 0.3 second or more.
    - c. **Static Message.** Displays shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination, or the flashing, scintillating or varying of light intensity
    - d. **Light Intensity.** 0.3 foot-candles over ambient lighting conditions when measured at a distance equal to the square root of 100 times the area of the sign in square feet. All electronic copy must be equipped with a sensor or other device that

automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 foot-candle measurements.

- e. **Automatic Controls.** All electronic message displays shall be equipped with automatic controls to allow for adjustment of brightness based on ambient lighting conditions.
- F. **Illumination.** Illuminated channel letters and neon signs are allowed. However, internally illuminated signs and bare bulbs are prohibited. Lighting fixtures used to illuminate an outdoor sign shall be mounted on the top of the sign structure, unless approved with a Minor Use Permit.
- G. **Encroachment Permits.** Signs mounted on private property may project into or above public property or the public right-of-way only with approval by the Public Works Director of an encroachment permit.
- H. **Materials.** Signs shall be made of sturdy, durable materials. Paper, cardboard and other materials subject to rapid deterioration shall be limited to temporary signs. Fabric signs are limited to awnings, canopies, flags, and temporary signs.

**17.20.070 Allowed Signs by District**

This Section establishes the types and size of signs allowed per zoning district. These signs are also subject to the regulations in “General Provisions for All Sign Types” and “Standards for Specific Sign Types”.

- A. **Types of Signs Allowed.** Table TBD establishes the types of signs allowed per zoning district.

TABLE TBD: ALLOWED SIGNS BY DISTRICT							
✓ Allowed (subject to compliance with this Chapter)				- Not Allowed			
District	Sign Type						
	A-frame	Awning and Canopy	Freestanding	Projecting and Shingle	Window	Wall	High Rise Building Identification
<b>All Districts</b>							
See Section TBD, Signage Allowances for Specific Uses and Development and Section TBD, Temporary Signs.							
<b>Commercial and Mixed Use Districts</b>							
NC	✓	✓	✓	✓	✓	✓	-
CMU	✓	✓	✓	✓	✓	✓	-
CR	✓	✓	✓	✓	✓	✓	-
CC	✓	✓	✓	✓	✓	✓	✓
RC	✓	✓	✓	✓	✓	✓	✓
<b>Employment Districts</b>							
OP	-	✓	✓	✓	✓	✓	✓
BTP	-	✓	✓	✓	✓	✓	✓
IL	-	✓	✓	✓	✓	✓	✓

TABLE TBD: ALLOWED SIGNS BY DISTRICT							
✓ Allowed (subject to compliance with this Chapter)				- Not Allowed			
District	Sign Type						
	A-frame	Awning and Canopy	Freestanding	Projecting and Shingle	Window	Wall	High Rise Building Identification
IG	-	✓	✓	✓	✓	✓	✓
<b>Public and Semi-Public Districts</b>							
PF	-	-	✓	-	✓	✓	-
TS	-	✓	✓	✓	✓	✓	-
PK	-	-	✓	-	-	✓	-
OS	-	-	✓	-	-	✓	-
<b>Resource Production District</b>							
RP	-	-	✓	-	-	✓	-

- B. **Allowed Sign Area.** Table TBD establishes the maximum aggregate sign area allowed per zoning district.
1. **Sign Area Included in Calculation of Aggregate Sign Area.** The sign area of awning and canopy signs, projecting and shingle signs, and wall signs is included in the calculation of aggregate sign area.
  2. **Sign Area Excluded from the Calculation of Aggregate Sign Area.** The sign area of exempt signs, signage allowances for specific uses and development, freestanding signs, a-frame signs, window signs, temporary signs, and high-rise building identification signs are not included in the calculation of aggregate sign area.

TABLE TBD: MAXIMUM ALLOWABLE AGGREGATE SIGN AREA	
District	Maximum Allowable Aggregate Sign Area
Residential Districts	Allowable sign area is determined by the specific sign allowances in Section TBD, Signage Allowances for Specific Uses and Development
NC, CMU, and CR Districts	2 square feet per linear foot of building frontage or width of tenant space Plus 1 square foot per 4 lineal feet of street frontage for developments with two or more tenants
CC District	3 square feet per linear foot of building frontage or width of tenant space Plus 1 square foot per 2 lineal feet of street frontage for developments with two or more tenants
RC District	3 square feet per linear foot of building frontage or width of tenant space Plus 1 square foot per 2 lineal feet of street frontage for developments with two or more tenants See also Section TBD, Additional Freestanding Signs in the RC District
OP District	1 square foot per linear foot of building frontage or width of tenant space

<b>TABLE TBD: MAXIMUM ALLOWABLE AGGREGATE SIGN AREA</b>	
<i>District</i>	<i>Maximum Allowable Aggregate Sign Area</i>
	Plus 1 square foot per 4 lineal feet of street frontage for developments with two or more tenants
BTP District	See Section TBD, Standards for Specific Sign Types
IL and IG Districts	1 square foot per linear foot of building frontage or width of tenant space Plus 1 square foot per 4 lineal feet of street frontage for developments with two or more tenants
Public and Semi-Public and Resource Production Districts	1 square foot per 2 linear feet of building frontage or width of tenant space Plus 1 square foot per 4 lineal feet of street frontage for developments with two or more tenants

### **17.20.080 Signage Allowances for Specific Uses and Development**

This Section establishes signage allowances for specific uses and development. These signs are allowed in addition to the signs allowed by district in Section TBD, Signs Allowed by District, and are not included in the calculation of aggregate sign area. These signs are also subject to the regulations in “Standards for Specific Sign Types” unless otherwise stated.

- A. **Residential Developments.** Residential developments of two or more units or lots are allowed freestanding signs and wall signs with a total aggregate sign area of one square foot per two dwelling units, subject to the following standards.
  - 1. **Maximum Number of Signs.** One per street frontage.
  - 2. **Maximum Size per Sign.** 20 square feet.
  - 3. **Maximum Height of Freestanding Signs.** Four feet.
- B. **Non-Residential Uses in Residential Districts.** Nonresidential uses that are the primary use on a site in a Residential District are allowed total aggregate sign area of one square foot per eight feet of street frontage. Allowed sign types and the maximum sign area for individual signs is as follows.
  - 1. **Awning and Canopy Signs.** Six square feet or 25 percent of the surface area of the awning, whichever is less.
  - 2. **Freestanding Signs.** Six square feet.
  - 3. **Projecting and Shingle Signs.** Six square feet.
  - 4. **Window Signs.** 15 percent of window area.
  - 5. **Wall Signs.** 10 square feet.
- C. **Menu/Order Board Signs.** Outdoor menu/order board signs are subject to the following standards:
  - 1. **Uses Allowed With.** Outdoor menu/order board signs are allowed on the site of a permitted drive-in, walk-up, or drive-thru facility.

2. **Maximum Number.** A maximum of two per business with a drive-thru facility and one per business with a walk-up window.
  3. **Maximum Size.** The area of each menu/order board sign shall not exceed 32 square feet.
  4. **Maximum Height.** Six feet.
  5. **Location.**
    - a. Menu/order board signs shall be located adjacent to the drive-thru aisle or walk-up window; and
    - b. The signs shall not be located so as to impair the vision of the driver of a vehicle traveling either into, out of, or through the drive-thru aisle.
- D. **Display Structures.** Display structures for pedestrian viewing are allowed in Commercial and Mixed-Use Districts pursuant to Master Sign Program approval. Such structures may include enclosed displays or displays incorporated into the structure such as bus stop benches, kiosks, or weather protection structures.

#### 17.20.090 Standards for Specific Sign Types

This Section establishes general standards for specific sign types that apply to all districts where such signs are allowed.

- A. **Awning and Canopy Signs.** Signs painted on awnings, canopies, arcades, or similar attachments or structures are subject to the following standards.
1. **Maximum Number.** One for each establishment having entrance under or offering service under the awning or canopy.
  2. **Maximum Size.** 10 square feet or 25 percent of the surface area of the awning, whichever is less. The sign area of awning and canopy signs is included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
  3. **Maximum Height.** 14 feet.
  4. **Minimum Sign Clearance.** Eight feet.
  5. **Illumination.** Awning and canopy signs shall not be illuminated.
- B. **Freestanding Signs.** Freestanding signs are subject to the following standards.
1. **Maximum Number.** One per 50 feet of street frontage.
  2. **Maximum Size.** The maximum sign area per freestanding sign is listed below. The sign area of freestanding signs is not included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
    - a. *NC, CMU, and CR Districts:* 100 square feet.
    - b. *CC District:* 150 square feet.
    - c. *RC District:* 250 square feet.
    - d. *OP District:* 100 square feet.

- e. *BTP District:* 60 square feet.
  - f. *IL and IG Districts:* 100 square feet.
  - g. *Public and Semi-Public and Resource Production Districts:* 60 square feet.
3. **Maximum Height.**
- a. *NC, CMU, and CR Districts:* 20 feet.
  - b. *CC District:* One sign may be up to 40 feet. 20 feet for all other freestanding signs.
  - c. *RC District:* One sign may be up to 100 feet. 20 feet for all other freestanding signs.
  - d. *OP District:* 20 feet.
  - e. *BTP District:* Up to two signs per street entrance may be up to eight feet. Three feet for all other freestanding signs
  - f. *IL and IG Districts:* One sign may be up to 30 feet. 20 feet for all other freestanding signs.
  - g. *Public and Semi-Public and Resource Production Districts:* Eight feet.
4. **Additional Freestanding Signs in the RC District.** In the RC District, one additional sign up to 250 square feet in size and up to 40 feet high is allowed at each entrance from a public street. This additional sign is not included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
5. **Placement.**
- a. Freestanding signs shall be located a minimum of five feet from any building.
  - b. Freestanding signs shall be located a minimum of 20 feet from the lot line of any lot in a Residential District.
  - c. Freestanding signs shall be setback from all other property lines a minimum distance equal to one-half the height of the sign. Freestanding signs shall also meet visibility requirements at street intersections and driveways pursuant to Chapter 10.36, Visibility Requirements, of the Newark Municipal Code.
- C. **Projecting and Shingle Signs.** Signs that project horizontally from the exterior wall of a building or are suspended beneath a marquee, covered walkway, canopy, or awning, are subject to the following standards.
- 1. **Maximum Number.** One for each building frontage or tenant space.
  - 2. **Maximum Size.** Nine square feet. The sign area of projecting and shingle signs is included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
  - 3. **Maximum Height.** 15 feet.
  - 4. **Minimum Sign Clearance.** Eight feet.
  - 5. **Projection Allowed.**



- a. *Projecting Sign.* A projecting sign cannot extend more than four feet from the building to which it is attached and must be designed and located so as to cause no harm to street trees. Signs projecting into the public right-of-way are subject to an encroachment permit.
  - b. *Shingle Sign.* A shingle sign cannot extend further than the outer edge of the marquee, covered walkway, canopy, or awning from which it is suspended.
6. **Illumination.** Projecting and shingle signs shall not be illuminated.
- D. **Wall Signs.** Wall signs include any sign attached to, erected against or painted upon the wall of a building or structure. Wall signs are subject to the following standards.
1. **Maximum Number.** One per building frontage or tenant space.
  2. **Maximum Size.** Wall sign copy shall not occupy more than 75 percent of the length of the wall to which the sign is attached. The sign area of wall signs is included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
    - a. *BTP District.* In the BTP District, wall signs are limited to 10 square feet per tenant.
  3. **Material.** In Commercial and Mixed-Use Districts, wall signs shall consist of channel sign elements with the exemption of business logos.
  4. **Attachment.**
    - a. Attached flat against or pinned away from a building wall, but shall not extend or protrude more than 15 inches from the wall; or
    - b. Attached to the facade of a building or on a sloping roof (mansard roof), but shall not extend above the upper edge of the facade or the sloping roof.
  5. **Placement.**
    - a. Wall signs shall not be placed higher than the second story of a building.
    - b. Wall signs shall not cover or interrupt major architectural features, including such features as doors, windows, or tile embellishments.
    - c. Wall signs shall not extend higher than the building wall upon which they are attached except on a peaked, mansard, or shed roof where the sign may be placed in such a manner that the highest point on the sign shall be no higher than the lowest two-thirds of the roof height and providing that the vertical dimension of the sign shall be no greater than one-third the vertical dimension of the roof.
- E. **A-Frame Signs.** A-Frame signs are subject to the following standards.
1. **Maximum Number.** One per business.
  2. **Maximum Size.** Six square feet. The sign area of a-frame signs is not included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
  3. **Maximum Height.** Four feet.

4. **Placement.** A-Frame signs must be placed on private property directly in front of the business it is identifying.
  5. **Hours of Display.** A-Frame signs shall be removed during hours when the establishment is not open to the public and cannot be displayed after the activity with which they are associated with is over.
- F. **High-rise Building Identification Signs.** High-rise building identification signs are allowed on buildings of at least four stories, subject to the following standards.
1. **Maximum Number.** One per street frontage.
  2. **Maximum Size.** One square foot per linear foot of building frontage. The sign area of high-rise building identification signs is not included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
  3. **Location.** Signs shall be located on the upper-most story of the building.
- G. **Temporary Signs.** Any temporary sign, banner, balloon, pennant, valance or advertising display for any event of limited duration including, but not limited to, entertainment, sporting events, elections, construction, sales of goods, and real estate sales and rental may be erected and located in accordance with the following standards. Tenants and units include planned future tenants and units to be constructed for which a planning approval has been granted or for which a Building Permit has been issued.
1. **RS and RL Districts.**
    - a. **Maximum Sign Area.** Six square feet per street frontage.
    - b. **Maximum Height.** Six feet above existing grade.
    - c. **Location.** Signs greater than three square feet in size shall be setback from all property lines a minimum of five feet.
  2. **RM and RH Districts.**
    - a. **Maximum Sign Area.** 20 square feet per street frontage.
    - b. **Maximum Height.** 10 feet above existing grade.
    - c. **Additional Individual Unit Signs.** Each groundfloor unit is also allowed one sign up to six square feet in size and six feet in height. Each upperfloor unit is allowed one sign up to three square feet in size and located no higher than the eave line or parapet line of the unit.
    - d. **Location.** Signs between three and 10 square feet in size shall be setback from all property lines a minimum of five feet. Signs 10 square feet in size or larger shall be setback from all property lines a minimum of 10 feet.
  3. **NC, CMU, CR, CC, and OP Districts.**
    - a. **Maximum Sign Area.** 32 square feet per street frontage.
    - b. **Maximum Height.** Six feet above existing grade
    - c. **Additional Individual Tenant/Unit Signs.** Each groundfloor tenant/unit is allowed one sign up to three square feet in size and six feet in height. Each upperfloor

tenant/unit is allowed one sign up to three square feet in size and located no higher than the eave line or parapet line of the unit.

- d. *Location.* Signs between three and 10 square feet in size shall be setback from all property lines a minimum of five feet. Signs 10 square feet in size or larger shall be setback from all property lines a minimum of 10 feet.

4. ***RC, BTP, IL, and IG Districts.***

- a. *Maximum Sign Area.* 64 square feet per street frontage.
- b. *Maximum Height.* 10 feet above existing grade
- c. *Additional Individual Tenant/Unit Signs.* Each groundfloor tenant/unit is allowed one sign up to six square feet in size and six feet in height. Each upperfloor tenant/unit is allowed one sign up to three square feet in size and located no higher than the eave line or parapet line of the unit.
- d. *Location.* Signs between three and 10 square feet in size shall be setback from all property lines a minimum of five feet. Signs 10 square feet in size or larger shall be setback from all property lines a minimum of 10 feet.

5. ***PK and TS Districts.***

- a. *Maximum Sign Area.* Six square feet per street frontage.
- b. *Maximum Height.* Six feet above existing grade.

6. ***PF, OS, and RP Districts.***

- a. *Maximum Sign Area.* 12 square feet per street frontage.
- b. *Maximum Height.* 10 feet above existing grade.
- c. *Location.* Signs between three and 10 square feet in size shall be setback from all property lines a minimum of five feet. Signs 10 square feet in size or larger shall be setback from all property lines a minimum of 10 feet.

- 7. ***Time Limits.*** Temporary signs shall be removed within 60 days after they are placed, erected or installed, or 10 days after the conclusion of the event to which they relate occurs, whichever is later.

H. **Window Signs.** Permanent window signs painted on or otherwise adhered directly onto a window and signs that block a window in any way are subject to the following standards.

- 1. ***Maximum Size.*** 20 percent of the window area. The sign area of window signs is not included in the calculation of aggregate sign area allowed pursuant to Table TBD, Maximum Allowable Aggregate Sign Area.
- 2. ***Height.*** Window signs shall not be mounted or placed on windows higher than the second story.

### **17.20.100 Sign Permit Required**

- A. **Sign Permit Required.** Except as otherwise expressly provided in this Chapter, it is unlawful for any person to affix, place, erect, suspend, attach, construct, structurally or electrically alter (not

including a face change of sign copy), move, or display any temporary or permanent sign within the City without first obtaining a sign permit from the Director. No sign permit is required for exempt signs and for cleaning or other normal maintenance of a properly approved sign, unless a structural or electrical change is made.

- B. **Design Review Required.** All signs 25 square feet or more in size are subject to the design review provisions of Chapter TBD, Design Review.
- C. **Conditional Use Permit Required for Outdoor Advertising Structures (Billboards).** Outdoor advertising structures displaying general advertising for hire are allowed when oriented towards a freeway in the RC and BTP districts subject to Conditional Use Permit approval.
- D. **Applications for Filing, Processing and Review.**
  - 1. **Filing and Filing Fee.** Application for a Sign Permit shall be made upon forms furnished by the Director and accompanied by the required fee and working drawings adequate to show:
    - a. The location, dimensions, construction and design, including colors, materials, lighting, electrical elements, and advertising copy, of the sign.
    - b. The location and dimensions of existing structures and the relationship of the proposed sign to existing structures.
    - c. The location, dimensions, and design of all existing signs.
  - 2. **Compliance with Standards.**
    - a. Upon acceptance of a sign application, the Director shall review the request for compliance with the standards and requirements of this Chapter, and with any standards established in a Master Sign Program pursuant to Section TBD, Master Sign Program.
    - b. The Director's decision shall clearly state any conditions of approval or reasons for disapproval and applicable appeal provisions.
    - c. No permit for construction will be issued until design review, if required, has been granted and the application has been found in conformance with the approved design.
- E. **Permit Number Identification.** A tag issued by the City indicating the Sign Permit number shall be affixed to the sign so as to be readily visible by City inspectors.

#### **17.20.110 Master Sign Programs**

- A. **Purpose.** The purpose of a Master Sign Program is to provide a method for an applicant to integrate the design and placement of signs within a project with the overall development design to achieve a more unified appearance.
- B. **Applicability.**
  - 1. A Master Sign Program is required for:
    - a. Projects with four or more nonresidential tenants,
    - b. Multi-unit developments of 50 or more units, and

- c. Whenever five or more signs are proposed for a building or site.
- C. **Application.** Master Sign Program applications shall contain all written and graphic information needed to fully describe the proposed sign program, including the proposed location and dimension of each sign, as well as proposed color schemes, font types, materials, methods of attachment or support, and methods of illumination. A Master Sign Program application shall also include calculation of total allowed sign area, and total proposed sign area, for the site.
- D. **Allowable Modifications.** A Master Sign Program may provide for deviations from the standards of this Chapter.
- E. **Review Authority.** All Master Sign Programs are subject to review and approval of the Review Authority for the project with which the signs are associated. A Master Sign Program may be submitted separately or as part of the permit application for the project.
  - 1. The Planning Commission shall be the Review Authority for any Master Sign Program application requesting additional sign area, additional height, or an increase in the number of signs otherwise allowed by this Chapter.
  - 2. The Director may, at his or her discretion, refer any application for a Master Sign Program to the Planning Commission for a decision rather than acting on it himself or herself.
- F. **Required Findings.** In order to approve a Master Sign Program, the Review Authority must find that all of the following are met, in addition to other applicable regulations in this Section:
  - 1. The proposed signs are compatible in style and character with any building to which the signs are to be attached, any surrounding structures and any adjoining signage on the site;
  - 2. Future tenants will be provided with adequate opportunities to construct, erect or maintain a sign for identification; and
  - 3. Directional signage and building addressing is adequate for pedestrian and vehicular circulation and emergency vehicle access.
- G. **Lessees to Be Informed of Master Sign Program.** Lessees within developments subject to the requirements of an approved Master Sign Program shall be made aware of the Master Sign Program in their lease.

#### 17.20.120 Nonconforming Signs

- A. **Continuance and Maintenance.** Reasonable and routine maintenance and repairs may be performed on signs that are nonconforming provided there is no expansion of any nonconformity.
- B. **Abandonment of Nonconforming Sign.** Whenever a nonconforming sign has been abandoned, or the use of the property has been discontinued for a continuous period of six months, the nonconforming sign must be removed.
- C. **Restoration of a Damaged Sign.** A nonconforming sign may be restored if it meets either of the following criteria:
  - 1. A sign with damage that does not exceed 50 percent of the total sign area, including hardware and attachments, provided that the repairs start within 60 days of the date of damage and are diligently pursued to completion.

2. A sign that is a danger to the public or is unsafe as determined by the Building Official.

### **17.20.130 Sign Maintenance**

Each sign displayed within the City, including exempt signs, shall be maintained to comply with the following standards:

- A. Graffiti on a sign shall be removed within two days of notice of its placement on such sign.
- B. The display upon any sign area of a sign shall be maintained in good condition, without rips, tears, and similar damage.
- C. All parts, portions, units and materials composing a sign, together with the frame, background, surface, support or enclosure therefore shall be maintained in a safe condition, painted, and adequately protected from weathering with all braces, bolts and structural parts and supporting frames and fastenings reasonably free from deterioration, rot, rust, and loosening so that they do not create a hazard to persons or property or constitute an attractive nuisance.
- D. Any sign or sign structure that is sagging, leaning, fallen, decayed, broken, deteriorated, or other dilapidated condition shall be promptly repaired, to the satisfaction of the City, or removed.
- E. Whenever any sign, by virtue of its physical nature and condition, poses an immediate and serious threat to the public safety, the sign may be removed by City personnel, or its physical deficiency cured, to the extent necessary to protect the public safety. The cost of such removal or repair shall be assessed against the sign owner.
- F. An on-premise sign identifying an activity, business, service or product shall be removed within 30 days following the actual discontinuance of the activity, business, service or product. If the sign is not so removed, the Director may have the sign removed in accordance with the public nuisance abatement provisions of this Ordinance.

### **17.20.140 Enforcement**

Signs which do not conform to the provisions of this Chapter and are erected after its effective date and signs erected after the effective date of this Chapter without obtaining the permit required thereby are declared to be unlawful and a public nuisance. All signs declared to be unlawful by this Section and all persons erecting or maintaining them shall be subject to the terms of Chapter TBD, Enforcement and Abatement Procedures.

## Division IV: Administration and Permits

### Chapter 17.21 Planning Authorities

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#### 17.21.010 Purpose

The purpose of this Chapter is to identify the bodies, officials, and administrators with designated responsibilities under various chapters of the Zoning Ordinance. Subsequent chapters provide detailed information on procedures, applications, and permits. When carrying out their assigned duties and responsibilities, all bodies, administrators, and officials shall interpret and apply the provisions of this Ordinance as minimum requirements adopted to implement the policies and achieve the objectives of the General Plan.

#### 17.21.020 City Council

The powers and duties of the City Council under this Ordinance include, but are not limited to the following:

- A. Consider and adopt, reject or modify amendments to the General Plan map and text pursuant to the provisions of Chapter TBD, Amendments to General Plan, and of the Government Code, following a public hearing and recommended action by the Planning Commission.
- B. Consider and adopt amendments to the Zoning Map and to the text of this Ordinance pursuant to the provisions of Chapter TBD, Amendments to Zoning Ordinance and Map, and the Government Code, following a public hearing and recommended action by the Planning Commission.
- C. Adopt guidelines for design review pursuant to Chapter TBD, Design Review.
- D. Hear and decide applications for development agreements, pursuant to Chapter TBD, Development Agreements.
- E. Hear and decide appeals from decisions of the Planning Commission pursuant to Section TBD, Appeals.
- F. Call for review a decision of the Director, Zoning Administrator, or Planning Commission pursuant to Section TBD, Appeals.
- G. Appoint and remove members of the Planning Commission as provided for in Title 2, Administration and Personnel, of the Newark Municipal Code.
- H. Establish, by resolution, a Municipal Fee Schedule listing fees, charges, and deposits for various applications and services provided, pursuant to this Ordinance.

#### 17.21.030 Planning Commission

The Planning Commission is established and organized pursuant to Chapter 2.12, Planning Commission, of the Newark Municipal Code and the requirements of the Government Code. The powers and duties of the Planning Commission under this Ordinance include, but are not limited to the following:

- A. Conduct hearings and make recommendations to the City Council on proposed amendments to the General Plan map and text, pursuant to Chapter TBD, Amendments to General Plan.
- B. Conduct hearings, and make recommendations to the City Council on proposed amendments to the Zoning Map and to the text of this Ordinance, pursuant to Chapter TBD, Amendments to Zoning Ordinance and Map.
- C. Approve, conditionally approve, modify, or deny Conditional Use Permits and Variances, pursuant to Chapter TBD, Use Permits, and Chapter TBD, Variances.
- D. Hear and decide on modifications to approved Conditional Use Permits and Variances, pursuant to Section TBD, Modification of Approved Plans.
- E. Hear and decide proposals to revoke permits, pursuant to Section TBD, Revocation of Permits, following a public hearing.
- F. Hear and decide appeals from decisions of the Community Development Director or the Zoning Administrator on decisions, determinations, or interpretations made in the enforcement of this Ordinance and any other decisions that are subject to appeal, pursuant to Section TBD, Appeals.
- G. Call for review a decision of the Director or Zoning Administrator pursuant to Section TBD, Appeals.
- H. Make environmental determinations on any approvals it grants that are subject to environmental review under the California Environmental Quality Act pursuant to State law.
- I. Prepare and recommend to the City Council for adoption guidelines for conducting design review, pursuant to Chapter TBD, Design Review.
- J. Conduct design review on any approvals it grants that are subject to design review pursuant to Chapter TBD, Design Review.
- K. Such other duties and powers as assigned or directed by the City Council.

#### **17.21.040 Community Development Director**

The following powers and duties of the Community Development Director (the "Director") under this Ordinance include, but are not limited to the following.

- A. Maintain and administer the Zoning Ordinance, including processing of applications, abatements and other enforcement actions.
- B. Interpret the Zoning Ordinance to members of the public and to other City Departments.
- C. Prepare and effect rules and procedures necessary or convenient for the conduct of the Director's business. These rules and procedures shall be as approved by a resolution of the City Council following review and recommendation of the Planning Commission. They may include the administrative details of hearings officiated by the Director (e.g., scheduling, rules of procedure and recordkeeping).
- D. Issue administrative regulations for the submission and review of applications subject to the requirements of this Ordinance and Government Code Section 65950, Deadlines for Project Approval Conformance; Extensions.



- E. Review applications for permits and licenses for conformance with this Ordinance and issue a Zoning Clearance when the proposed use, activity or building is allowed by right and conforms to all applicable development and use standards.
- F. Review applications for discretionary permits and approvals under this Ordinance for conformance with applicable submission requirements and time limits.
- G. Review applications for discretionary permits and approvals to determine whether the application is exempt from review under the California Environmental Quality Act and notify the applicant if any additional information is necessary to conduct the review.
- H. Process and make recommendations to the City Council on all applications, amendments, appeals and other matters upon which the Council has the authority and the duty to act under this Ordinance.
- I. Process and make recommendations to the Planning Commission on all applications, appeals and other matters upon which the Commission has the authority and the duty to act under this Ordinance.
- J. Conduct design review pursuant to Chapter TBD, Design Review.
- K. Approve, conditionally approve, modify or deny applications for Minor Use Permits, pursuant to Chapter TBD, Use Permits.
- L. Refer items to the Planning Commission where, in his/her opinion, the public interest would be better served by a Planning Commission public hearing and action.
- M. Negotiate the components and provisions of development agreements for recommendation to the City Council.
- N. Serve as Staff of the Planning Commission.
- O. Investigate and make reports to the Planning Commission on violations of permit terms and conditions when the City has initiated revocation procedures.
- P. Delegate administrative functions to members of the Planning Division as deemed necessary.
- Q. Serve as or appoint a Zoning Administrator pursuant to Section TBD, Zoning Administrator.
- R. Other duties and powers as may be assigned by the City Council or established by legislation.

#### **17.21.050 Zoning Administrator**

The Zoning Administrator is a City staff member appointed by the Director with the following powers and duties.

- A. Approve, conditionally approve, modify or deny requests for waivers to dimensional requirements, pursuant to Chapter TBD, Waivers.
- B. Decide requests for minor modifications to approved permits, pursuant to Section TBD, Modification of Approved Plans.
- C. Refer items to the Planning Commission where, in his/her opinion, the public interest would be better served by a Planning Commission public hearing and action.
- D. Other duties and powers as may be assigned by the Director.

**17.21.060 Summary of Review Authorities for Decisions and Appeals**

<b>TABLE TBD: REVIEW AUTHORITY</b>				
<i>Type of Decision</i>	<i>Chapter</i>	<i>Advisory Body</i>	<i>Decision Maker</i>	<i>Appeal Body</i>
Interpretations	TBD	N/A	Director	Planning Commission
Minor Changes to Approved Permit	TBD	N/A	Zoning Administrator	Planning Commission
Major Changes to Approved Permit	TBD	Zoning Administrator	Review Authority of Original Permit	Appeal Body for Applicable Review Authority
Permit Revocation	TBD	Planning Commission	City Council	Superior Court
Zoning Clearance	TBD	N/A	Director	Planning Commission
Certificate of Occupancy	TBD	N/A	Building Official	City Council
Design Review	TBD	N/A	Director or Planning Commission	Planning Commission or City Council
Minor Use Permit	TBD	N/A	Director	Planning Commission
Conditional Use Permit	TBD	Director	Planning Commission	City Council
Variance	TBD	Director	Planning Commission	City Council
Waiver	TBD	N/A	Zoning Administrator	Planning Commission
General Plan Text and Map Amendments	TBD	Planning Commission	City Council	Superior Court
Zoning Text and Map Amendments	TBD	Planning Commission	City Council	Superior Court
Planned Development Districts	TBD	Planning Commission	City Council	Superior Court
Development Agreement	TBD	Planning Commission	City Council	Superior Court

## Chapter 17.22 Common Procedures

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### 17.22.010 Purpose

This Chapter establishes procedures that are common to the application and processing of all permits and approvals provided for in this Ordinance, unless superseded by specific requirement of this Ordinance or State law.

### 17.22.020 Application Forms and Fees

- A. **Applicant.** The owner of property or the owner's authorized agent. If the application is made by someone other than the owner or the owner's agent, proof, satisfactory to the Director, of the right to use and possess the property as applied for, shall accompany the application.
- B. **Application Forms and Materials.**
1. **Application Forms.** The Director shall prepare and issue application forms and lists that specify the information that will be required from applicants for projects subject to the provisions of this Ordinance.
  2. **Supporting Materials.** The Director may require the submission of supporting materials as part of the application, including but not limited to statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe existing conditions and the proposed project and to determine the level of environmental review pursuant to the California Environmental Quality Act (CEQA).
  3. **Availability of Materials.** All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection. At any time upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Division offices. Unless prohibited by law, copies of such materials shall be made available at a reasonable cost.
- C. **Application Fees.**
1. **Schedule of Fees.** The City Council shall approve by resolution a Master Fee Schedule that establishes fees for permits, informational materials, penalties, copying, and other such items.
  2. **Payment of Fees.** No application shall be accepted as complete and processed without payment of a fee unless a fee waiver has been approved.
  3. **Multiple Applications.** The City's processing fees are cumulative. For example, if an application for Design Review also includes a Conditional Use Permit, both fees shall be charged.
  4. **Fee Waiver.** No fee shall be required when the applicant is the City, or if it is waived under any other provision of the Municipal Code.
  5. **Refund of Fees.** Application fees are refundable at the discretion of the Director with good cause unless otherwise provided for in the Newark Municipal Code or by policy of the City Council.

### 17.22.030 Pre-Application Review

Pre-application review is an optional review process that is intended to provide information on relevant policies, zoning regulations, and procedures. This review is intended for large or complex projects and projects that are potentially controversial.

- A. **Exemption from Permit Streamlining Act.** Pre-application review is not subject to the requirements of the California Permit Streamlining Act (the Act). An application that is accepted for pre-application review shall not be considered complete pursuant to the requirements of the Act unless and until the Director has received an application for approval of a development project, reviewed it, and determined it to be complete under Section TBD, Review of Applications.
- B. **Review Procedure.** The Planning Division shall conduct pre-application review. The Director may consult with or request review by any City agency or official with interest in the application.
- C. **Recommendations are Advisory.** Neither the pre-application review nor the provision of information and/or pertinent policies shall be construed as a recommendation for approval or denial of the application by City representatives. Any recommendations that result from pre-application review are considered advisory only and shall not be binding on either the applicant or the City.

### 17.22.040 Review of Applications

- A. **Review Process.** The Director shall determine whether an application is complete within 30 days of the date the application is filed with the required fee.
- B. **Incomplete Application.** If an application is incomplete, the Director shall provide written notification to the applicant listing the applications for permit(s), forms, information, and any additional fees that are necessary to complete the application.
  - 1. **Zoning Ordinance Violations.** An application shall not be found complete if conditions exist on the site in violation of this Ordinance or any permit or other approval granted in compliance with this Ordinance, unless the proposed project includes the correction of the violations.
  - 2. **Appeal of Determination.** Determinations of incompleteness are subject to the provisions of Section TBD, Appeals, except there shall be a final written determination on the appeal no later than 60 days after receipt of the appeal. The fact that an appeal is permitted to both the Planning Commission and the City Council does not extend the 60-day period.
  - 3. **Submittal of Additional Information.** The applicant shall provide the additional information within the time limit specified by the Director, which shall be no sooner than 30 days. The Director may grant one extension of up to 90 days.
  - 4. **Expiration of Application.** If an applicant fails to correct the specified deficiencies within the specified time limit, the application shall expire and be deemed withdrawn. After the expiration of an application, project review shall require the submittal of a new, complete application, along with all required fees.
- C. **Complete Application.** When an application is determined to be complete, the Director shall make a record of that date. If an application requires a public hearing, the Director shall schedule it and notify the applicant of the date and time.

- D. **Extensions.** The Director may, upon written request and for good cause, grant extensions of any time limit for review of applications imposed by this Ordinance.

#### **17.22.050 Environmental Review**

All projects shall be reviewed for compliance or exemption with the California Environmental Quality Act (CEQA). Environmental review will be conducted pursuant to Title 14 of the California Code of Regulations (CEQA Guidelines). If Title 14 of the California Code is amended, such amendments will govern City procedures.

#### **17.22.060 Public Notice**

Unless otherwise specified, whenever the provisions of this Ordinance require public notice, the City shall provide notice in compliance with State law as follows.

- A. **Mailed Notice.** At least 10 days before the date of the public hearing or 15 days before the date of action when no public hearing is required, the Director, or the City Clerk for hearings before the City Council, shall provide notice by First Class mail delivery to:
1. The applicant, the owner, and any occupant of the subject property;
  2. All property owners of record within a minimum 300-foot radius of the subject property as shown on the latest available assessment role or a larger radius if deemed necessary by the Director in order to provide adequate public notification;
  3. All neighborhood and community organizations that have previously filed a written request for notice of projects in the area where the site is located; and
  4. Any person or group who has filed a written request for notice regarding the specific application.
- B. **Newspaper Notice.** At least 10 days before the date of the public hearing or the date of action when no public hearing is required, the Director or the City Clerk for hearings before the City Council, shall publish a notice in at least one newspaper of general circulation in the City.
- C. **Alternative Method for Large Mailings.** If the number of owners to whom notice would be mailed or delivered is greater than 1,000, instead of mailed notice, the Director or City Clerk may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation in the City at least 10 days prior to the hearing.
- D. **Contents of Notice.** The notice shall include the following information:
1. The location of the real property, if any, that is the subject of the application;
  2. A general description of the proposed project or action;
  3. The date, time, location, and purpose of the public hearing or the date of action when no public hearing is required;
  4. The identity of the hearing body or officer;
  5. The names of the applicant and the owner of the property that is the subject of the application;

6. The location and times at which the complete application and project file, including any environmental impact assessment prepared in connection with the application, may be viewed by the public;
  7. A statement that any interested person or authorized agent may appear and be heard;
  8. A statement describing how to submit written comments; and
  9. For Council hearings, the Planning Commission recommendation.
- E. **Failure to Notify Individual Properties.** The validity of the proceedings shall not be affected by the failure of any property owner, resident or neighborhood or community organization to receive a mailed notice.

### **17.22.070 Conduct of Public Hearings**

Whenever the provisions of this Ordinance require a public hearing, the hearing shall be conducted in compliance with the requirements of State law as follows.

- A. **Generally.** Hearings shall be conducted pursuant to procedures adopted by the hearing body. They do not have to be conducted according to technical rules relating to evidence and witnesses.
- B. **Scheduling.** Hearings before the City Council shall be scheduled by the City Clerk. All other hearings shall be scheduled by the Director.
- C. **Presentation.** An applicant or an applicant's representative may make a presentation of a proposed project.
- D. **Public Hearing Testimony.** Any person may appear at a public hearing and submit oral or written evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing representing an organization shall identify the organization being represented.
- E. **Time Limits.** The presiding officer may establish time limits for individual testimony and require that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals.
- F. **Continuance of Public Hearing.** The body conducting the public hearing may by motion continue the public hearing to a fixed date, time and place or may continue the item to an undetermined date and provide notice of the continued hearing.
- G. **Investigations.** The body conducting the hearing may cause such investigations to be made as it deems necessary and in the public interest in any matter to be heard by it. Such investigation may be made by a committee of one or more members of the hearing body or by City staff. The facts established by such investigation shall be submitted to the hearing body either in writing, to be filed with the records of the matter, or in testimony before the hearing body, and may be considered by the body in making its decision.
- H. **Decision.** The public hearing shall be closed before a vote is taken.

### 17.22.080 Timing and Notice of Action and Findings Required

When making a decision to approve, approve with conditions, modify, revoke or deny any discretionary permit under this Ordinance, the responsible authority shall issue a Notice of Action and make findings of fact as required by this Ordinance.

- A. **Date of Action.** The responsible authority shall decide to approve, modify, revoke, or deny any discretionary permit following the close of the public hearing, or if no public hearing is required, within the time period set forth below. These deadlines do not apply to any action that has been appealed to the City Council in accordance with Section TBD, Appeals. Time extensions may be granted pursuant to Section TBD, Expiration and Extension.
  - 1. **Project Exempt from Environmental Review.** Within 30 days of the date the City has determined an application to be complete, a determination must be made whether the project is exempt from Environmental Review per State CEQA requirements.
  - 2. **Project for which a Negative Declaration or Mitigated Negative Declaration is Prepared.** Within 60 days of the date a Negative Declaration or Mitigated Negative Declaration has been completed and adopted for project approval, the City shall take action on the accompanying discretionary project.
  - 3. **Project for which an EIR is Prepared.** Within 180 days from the date the decision-making authority certifies a Final EIR, the City shall take action on the accompanying discretionary project.
- B. **Notice of Action.** After the Zoning Administrator, Director or Planning Commission takes any action to approve, modify, or deny an application that is subject to appeal under the terms of this Ordinance, the Director shall issue a Notice of Action. The Notice shall describe the action taken, including any applicable conditions, and shall list the findings that were the basis for the decision. The Director shall file the Notice with the City Clerk and mail the Notice to the applicant, to the members of the applicable appeal body, and to any other person or entity that has filed a written request for such notification with the Planning Division.
- C. **Findings.** Findings, when required by State law or this Ordinance, shall be based upon consideration of the application, plans, testimony, reports, and other materials that constitute the administrative record and shall be stated in writing in the resolution or record of the action on the permit.

### 17.22.090 Scope of Approvals

- A. **Scope.** Any approval permits only those uses and activities actually proposed in the application, and excludes other uses and activities. Unless otherwise specified, the approval of a new use shall terminate all rights and approvals for previous uses no longer occupying the same site or location.
- B. **Conditions of Approval.** The site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or submitted during the approval process shall be deemed conditions of approval. Any approval may be subject to requirements that the applicant guarantees, warranties or insures compliance with permit's plans and conditions in all respects.

- C. **Actions Voiding Approval.** If the construction of a building or structure or the use established is contrary to the description or illustration in the application, so as to either violate any provision of this Ordinance or require additional permits, then the approval shall be deemed null and void.
- D. **Periodic Review.** All approvals may be subject to periodic review to determine compliance with the permit and applicable conditions. If a condition specifies that activities or uses allowed under the permit are subject to periodic reporting, monitoring or assessments, it shall be the responsibility of the permit holder, the property owner or successor property owners to comply with such conditions.

#### **17.22.100 Effective Dates**

A final decision on an application for any approval subject to appeal shall become effective after the expiration of the 10-day appeal period following the date of action, unless an appeal is filed. No building permit or business license shall be issued until the 11th day following the date of the action. If a different termination date is fixed at the time of granting, or if actual construction or alteration has begun under valid building permits, the 10-day period may be waived.

#### **17.22.110 Expiration and Extension**

- A. **Expiration.** The decision-maker, in the granting of any permit, may specify a time, consistent with the purposes of the use and necessary to safeguard the public safety, health and welfare, within which the proposed use must be undertaken and actively and continuously pursued. If no time period is specified, any permit granted under this Ordinance shall automatically expire if it is not exercised or extended within two years of its approval.
- B. **Exercise of Use Permit.** A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the site.
- C. **Exercise of Building Permit.** A permit for the construction of a building or structure is exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- D. **Extensions.** The Zoning Administrator may approve a two-year extension of any permit or approval granted under this Ordinance upon receipt of a written application with the required fee within two years of the date of the approval.

#### **17.22.120 Modification of Approved Plans**

No change in the use or structure for which a permit or other approval has been issued is permitted unless the permit is modified as provided for in this Ordinance. For the purpose of this Section, the modification of a permit may include modification of a design review approval.

- A. **Minor Modifications.** The Zoning Administrator may approve minor changes to approved plans that are consistent with the original findings and conditions approved by the hearing body and would not intensify any potentially detrimental effects of the project.
- B. **Major Modifications.** A request for changes in conditions of approval of a discretionary permit or a change in an approved site plan or building plan that would affect a condition of approval shall be treated as a new application, except that the Zoning Administrator may approve changes determined to be minor.



### 17.22.130 Revocation of Permits

Any permit granted under this Ordinance may be revoked or modified for cause if any of the conditions or terms of the permit are violated or if any law or ordinance is violated. Notwithstanding this provision, no lawful residential use can lapse regardless of the length of time of the vacancy.

- A. **Initiation of Proceeding.** Revocation proceedings may be initiated by the City Council, Planning Commission, Director, or Zoning Administrator.
- B. **Public Notice, Hearings and Action.** After conducting a duly-noticed public hearing, the Planning Commission shall act on the proposed revocation.
- C. **Required Findings.** The Planning Commission may revoke or modify the permit if it makes any of the following findings:
  - 1. The approval was obtained by means of fraud or misrepresentation of a material fact;
  - 2. The use, building, or structure has been substantially expanded beyond what is set forth in the permit or substantially changed in character;
  - 3. The use in question has ceased to exist or has been suspended for six months or more;
  - 4. There is or has been a violation of or failure to observe the terms or conditions of the permit or Variance, or the use has been conducted in violation of the provisions of this Ordinance, or any applicable law or regulation; or
  - 5. The use to which the permit or Variance applies has been conducted in a manner detrimental to the public safety, health and welfare, or so as to be a nuisance.
- D. **Notice of Action.** Following Planning Commission action to revoke or modify a permit, the Director shall within seven days issue a Notice of Action describing the Commission's action, with its findings. The Director shall mail notice to the permit holder and to any person who requested the revocation proceeding.

### 17.22.140 Appeals

- A. **Applicability.** Any action by the Zoning Administrator, Director, or Planning Commission in the administration or enforcement of the provisions of this Ordinance may be appealed in accordance with this Section.
  - 1. **Appeals of Zoning Administrator Decisions.** Decisions of the Zoning Administrator may be appealed to the Planning Commission by filing a written appeal with the Planning Division.
  - 2. **Appeals of Director Decisions.** Decisions of the Director may be appealed to the Planning Commission by filing a written appeal with the Planning Division.
  - 3. **Appeals of Planning Commission Decisions.** Decisions of the Planning Commission may be appealed to the City Council by filing a written appeal with the City Clerk.
- B. **Rights of Appeal.** Appeals may be filed by the applicant, by the owner of property, or by any other person aggrieved by a decision that is subject to appeal under the provisions of this Ordinance.
- C. **Time Limits.** Unless otherwise specified in State or federal law, all appeals shall be filed in writing within 10 days of the date of the action, decision, motion, or resolution from which the action is

taken. In the event an appeal period ends on a Saturday, Sunday, or any other day the City is closed, the appeal period shall end at the close of business on the next consecutive business day.

**D. Procedures.**

1. **Filing.** The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be accompanied by the required fee.
2. **Proceedings Stayed by Appeal.** The timely filing of an appeal shall stay all proceedings in the matter appealed including, but not limited to, the issuance of City building permits and business licenses.
3. **Transmission of Record.** The Director, or in the case of appeals to the City Council, City Clerk, shall schedule the appeal for consideration by the authorized hearing body within 45 days of the date the appeal is filed. The Director shall forward the appeal, the Notice of Action, and all other documents that constitute the record to the hearing body. The Director shall also prepare a staff report that responds to the issues raised by the appeal and may include a recommendation for action.

**E. Calls for Review.** A member of the Planning Commission may call for review of a decision of the Director or Zoning Administrator. A member of the City Council may call for review of a decision of the Director, Zoning Administrator, or Planning Commission within the 10-day appeal period. The call for review shall be processed in the same manner as an appeal by any other person. Such action shall stay all proceedings in the same manner as the filing of an appeal. Such action shall not require any statement of reasons and shall not represent opposition to or support of an application or appeal.

**F. Standards of Review.** When reviewing any decision on appeal, the appeal body shall use the same standards for decision-making required for the original decision. The appeal body may adopt the same decision and findings as were originally approved; it also may request or require changes to the application as a condition of approval.

**G. Public Notice and Hearing.** Public notice shall be provided and the hearing conducted by the applicable appeal body pursuant to Chapter TBD, Common Procedures. Notice of the hearing shall also be given to the applicant and party filing the appeal and any other interested person who has filed with the City Clerk a written request for such notice. In the case of an appeal of a Planning Commission decision, notice of such appeal shall also be given to the Planning Commission. The Planning Commission may be represented at the hearing.

**H. Action.** An action to grant an appeal shall require a majority vote of the hearing body members. A tie vote shall have the effect of rejecting the appeal.

**17.22.150 Interpretations and Determinations**

Requests for interpretations of this Ordinance and verifications relating to prior approvals or permits may be made to the Director. Requests shall be in writing. The decision of the Director on such requests may be appealed under Section TBD, Appeals.

## Chapter 17.23 Zoning Clearance

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### 17.23.010 Purpose

This Chapter establishes procedures for conducting a Zoning Clearance to verify that each new or expanded use, activity, or structure complies with all of the applicable requirements of this Ordinance.

### 17.23.020 Applicability

A Zoning Clearance is required for buildings or structures erected, constructed, altered, repaired or moved, the use of vacant land, changes in the character of the use of land or building, or for substantial expansions in the use of land or building, which are allowed as a matter of right by this Ordinance.

### 17.23.030 Review and Decision

Before the City may issue any building permit, subdivision approval, or lot line adjustment, the Director shall review the application to determine whether the use, building, or change in lot configuration complies with all provisions of this Ordinance or any design review, Use Permit or Variance approval and that all conditions of such permits and approvals have been satisfied.

- A. **Application.** Applications and fees for a Zoning Clearance shall be submitted in accordance with the provisions set forth in Section TBD, Application Forms and Fees. The Director may request that the Zoning Clearance application be accompanied by a written narrative, plans and other related materials necessary to show that the proposed development, alteration, or use of the site complies with all provisions of this Ordinance and the requirements and conditions of any applicable design review, Use Permit, or Variance approval.
- B. **Determination.** If the Director determines that the proposed use or building is allowed as a matter of right by this Ordinance, and conforms to all the applicable development and use standards, the Director shall issue a Zoning Clearance. An approved Zoning Clearance may include attachments of other written or graphic information, including but not limited to, statements, numeric data, site plans, floor plans and building elevations and sections, as a record of the proposal's conformity with the applicable regulations of this Ordinance.
- C. **Exceptions.** No Zoning Clearance shall be required for the continuation of previously approved or permitted uses and structures, or uses and structures that are not subject to any building or zoning regulations.

## **Chapter 17.24 Certificate of Occupancy**

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### **17.24.010 Purpose**

This Chapter establishes procedures for issuing a Certificate of Occupancy to verify that buildings and the proposed use of land complies with all applicable building and health laws and ordinances and with the requirements of this Ordinance.

### **17.24.020 Certificate of Occupancy Required**

No structure erected, moved, altered or enlarged after the effective date of this Ordinance shall be occupied or used, and no site shall be occupied or used until a Certificate of Occupancy has been issued by the Building Official.

### **17.24.030 Application**

Application for a Certificate of Occupancy shall be filed with the Building Official prior to the erection, moving, alteration or enlargement of any structure and prior to the commencement of a new use or a change in use of any structure or site.

### **17.24.040 Issuance**

The Building Official shall issue a Certificate of Occupancy upon receipt of written notice that the structure or site is ready for occupancy or use and after inspection; provided, that the structure or site and the intended use conform with all applicable building and health laws and ordinances and with the requirements of this Ordinance.

## Chapter 17.25 Design Review

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### 17.25.010 Purpose

This Chapter establishes the design review procedure to ensure that new development supports the goals and objectives of the General Plan and other adopted plans and guidelines. The specific purposes of the design review process are to:

- A. Promote excellence in site planning and design and the harmonious appearance of buildings and sites;
- B. Ensure that new and modified uses and development will be compatible with the existing and potential development of the surrounding area; and
- C. Supplement other City regulations and standards in order to ensure control of aspects of design that are not otherwise addressed.

### 17.25.020 Applicability

Design review is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area except for:

- A. Additions, construction, reconstruction, alterations, improvements, and landscaping for a project developed in compliance with a previous design review approval; and
- B. Replacement of exterior materials, including openings, with the same materials.

### 17.25.030 Assignment of Design Review Responsibilities

- A. **Planning Commission.** The Planning Commission shall have design review authority for the following projects:
  - 1. **Multi-Unit Development.** Multi-unit development consisting of 50 or more units.
  - 2. **Nonresidential Development.** Any improvement, new construction, or addition that results in more than 20,000 square feet of floor area.
  - 3. **Other Projects.** All projects requiring Planning Commission approval (such as Conditional Use Permits and Variances).
- B. **Director.**
  - 1. The Director shall have design review authority for all projects that do not meet the criteria listed in Subsection A for a decision by the Planning Commission.
  - 2. The Director may refer items directly to the Planning Commission when in his/her opinion the public interest would be better served by having the Planning Commission conduct design review.

#### 17.25.040 Procedures; Design Guidelines

- A. **Forms and Fees.** Written applications for design review applications shall be submitted to the Planning Division in compliance with the application procedures in Chapter TBD, Common Procedures.
- B. **Design Guidelines.** Design Guidelines adopted by the City Council provide recommendations to be used in the design review process. They are intended to promote high-quality design, well-crafted and maintained buildings and landscaping, the use of high-quality building materials, and attention to the design and execution of building details and amenities in both public and private projects.
- C. **Concurrent Processing.** When a development project requires a Use Permit, Variance, or any other discretionary approval, the design review application shall be submitted to the Planning Division as a part of the application for the underlying permit, Use Permit, or Variance.
- D. **Public Notice.** When a development project or sign does not require any Use Permit, Variance, or other discretionary approval other than design review, notice of the proposed action shall be posted in the Planning Division and provided by First Class mail delivery to all property owners within a minimum 100-foot radius of the subject property as shown on the latest available assessment role at least 10 days before the date of the decision. The notice shall include a general description of the subject of the application, the location of the property, the date of the decision, the procedure for submitting comments, and the procedure for appealing the decision.

#### 17.25.050 Scope of Design Review

- A. **Design Review Considerations.** Design review shall be based on consideration of the requirements of this Chapter as they apply to the design of the site plan, structures, landscaping, and other physical features of a proposed project, including:
  - 1. Building proportions, massing, and architectural details;
  - 2. Site design, orientation, location, and architectural design of buildings relative to existing structures on or adjacent to the property, topography, and other physical features of the natural and built environment;
  - 3. Size, location, design, development, and arrangement of on-site parking and other paved areas;
  - 4. Exterior materials and, except in the case of design review of a single-family residence, color as they relate to each other, to the overall appearance of the project, and to surrounding development;
  - 5. Height, materials, design, fences, walls, and screen plantings;
  - 6. Location and type of landscaping including selection and size of plant materials, and design of hardscape; and
  - 7. Size, location, design, color, lighting, and materials of all signs.
- B. **Reduction in Density or Floor Area Ratio Prohibited.** Design review shall not result in a reduction in the residential density or the allowable square footage of a proposed project.

### 17.25.060 Design Review Criteria

When conducting design review, the review authority shall evaluate applications to ensure that they satisfy the following criteria, conform to the policies of the General Plan and any applicable specific plan, any adopted design guidelines, and are consistent with any other policies or guidelines the City Council may adopt for this purpose. To obtain design review approval, projects must satisfy the following criteria to the extent they apply.

- A. The overall design of the project including its scale, massing, site plan, exterior design, and landscaping will enhance the appearance and features of the project site and surrounding natural and built environment.
- B. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.
- C. Project details, materials, signage and landscaping, are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.
- D. The design of streetscapes, including street trees, lighting, and pedestrian furniture, is consistent with the intended character of the area.
- E. Parking areas are designed and developed to buffer surrounding land uses; compliment pedestrian-oriented development; enhance the environmental quality of the site, including minimizing stormwater run-off and the heat-island effect; and achieve a safe, efficient, and harmonious development.
- F. Lighting and lighting fixtures are designed to complement buildings, be of appropriate scale, provide adequate light over walkways and parking areas to create a sense of pedestrian safety, and avoid creating glare.
- G. Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on site, and help relate the building to the surrounding landscape.

### 17.25.070 Appeals; Expiration, Extensions, and Modifications

- A. **Appeals.** Design review decisions are subject to the appeal provisions of Section TBD, Appeals.
- B. **Expiration, Extensions and Modifications.** Design review approval is effective and may only be extended or modified as provided for in Chapter TBD, Common Procedures.

## Chapter 17.26 Use Permits

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### 17.26.010 Purpose

The Use Permit review and approval process is intended to apply to uses that are generally consistent with the purposes of the zoning district where they are proposed but require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties.

### 17.26.020 Applicability

Approval of a Use Permit is required for uses or developments specifically identified in Article II, Base and Overlay Districts, and/or any other section of this Ordinance which requires a Use Permit.

### 17.26.030 Review Authority

- A. **Conditional Use Permits.** The Planning Commission shall approve, conditionally approve, or deny applications for Conditional Use Permits based on consideration of the requirements of this Chapter.
- B. **Minor Use Permits.** The Zoning Administrator shall approve, conditionally approve, or deny applications for Minor Use Permits based on consideration of the requirements of this Chapter. The Zoning Administrator may, at his/her discretion, refer any application for a Minor Use Permit for a project that may generate substantial public controversy or involve significant land use policy decisions to the Planning Commission for a decision rather than acting on it himself/herself. In that case, the application shall be processed as a Conditional Use Permit.

### 17.26.040 Application Requirements

Applications for Use Permits shall be filed with the Planning Division on the prescribed application forms. In addition to any other application requirements, the application for a Use Permit shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings, below.

### 17.26.050 Public Notice and Hearing

- A. **Conditional Use Permits.** All applications for Conditional Use Permits shall require public notice and hearing before the Planning Commission pursuant to Chapter TBD, Common Procedures.
- B. **Minor Use Permits.** Minor Use Permit applications do not require public notice or hearing. However, the Notice of Action for each Minor Use Permit shall be mailed to members of the Planning Commission and City Council in addition to the recipients identified in Section TBD, Timing and Notice of Action and Findings Required.

### 17.26.060 Required Findings

The decision-maker must make all of the following findings in order to approve or conditionally approve a Use Permit application. The inability to make one or more of the findings is grounds for denial of an application.



- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Ordinance and all other titles of the Municipal Code;
- B. The proposed use is consistent with the General Plan and any applicable specific plan;
- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided.
- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this Ordinance;
- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and
- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

#### **17.26.070 Conditions of Approval**

In approving a Use Permit, the decision-maker may impose reasonable conditions or restrictions deemed necessary to:

- A. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;
- B. Achieve the general purposes of this Ordinance or the specific purpose of the zoning district in which the project is located;
- C. Generate tax revenue in an amount that exceeds the City's cost of service demand as a result of the development or provide a compelling community benefit.
- D. Achieve the findings for a Use Permit listed in Section TBD, Required Findings, above; or
- E. Mitigate any potentially significant impacts identified as a result of environmental review conducted in compliance with the California Environmental Quality Act.

The decision-maker may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

#### **17.26.080 Appeals; Expiration, Extensions, and Modifications**

- A. **Appeals.** A decision of the Zoning Administrator may be appealed to the Planning Commission and a decision of the Planning Commission may be appealed to the City Council, as provided in Section TBD, Appeals.
- B. **Expiration, Extensions and Modifications.** Use Permits are effective and may only be extended or modified as provided for in Chapter TBD, Common Procedures.

## Chapter 17.27 Variances

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### 17.27.010 Purpose

This Chapter is intended to provide a mechanism for relief from the strict application of this Ordinance where this will deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special conditions.

### 17.27.020 Applicability

Variances may be granted to vary or modify dimensional and performance standards, but Variances may not be granted to allow uses or activities that this Ordinance does not authorize for a specific lot or site.

### 17.27.030 Procedures

- A. **Review Authority.** The Planning Commission shall approve, conditionally approve, or deny applications for Variances based on consideration of the requirements of this Chapter.
- B. **Application Requirements.** Applications for a Variance shall be filed with the Planning Division on the prescribed application forms in accordance with the procedures in Chapter TBD, Common Procedures. In addition to any other application requirements, the application for a Variance shall include data or other evidence showing that the requested Variance conforms to the required findings set forth in Section TBD, Required Findings.
- C. **Public Notice and Hearing.** An application for a Variance shall require public notice and hearing before the Planning Commission pursuant to Chapter TBD, Common Procedures.

### 17.27.040 Required Findings

After conducting a public hearing, the Planning Commission may approve or conditionally approve a Variance application if all of the following findings are made. The Commission shall deny an application for a Variance if it is unable to make any of the required findings, in which case it shall state the reasons for that determination.

- A. There are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zoning district, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone district;
- B. The granting of the application is necessary to prevent a physical hardship which is not of the applicant's own actions or the actions of a predecessor in interest;
- C. The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare or convenience; and
- D. The granting of the Variance will be consistent with the general purposes and objectives of this Ordinance, any applicable specific plans, and of the General Plan.

#### **17.27.050 Conditions of Approval**

In approving a Variance, the Planning Commission may impose reasonable conditions deemed necessary to ensure compliance with the findings required in Section TBD, Required Findings, above and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

#### **17.27.060 Appeals; Expiration, Extensions, and Modifications**

- A. **Appeals.** The applicant or any other aggrieved party may appeal a decision on a Variance pursuant to the provisions of Section TBD, Appeals.
- B. **Expiration, Extensions and Modifications.** Variances are effective and may only be extended or modified as provided for in Chapter TBD, Common Procedures.

## Chapter 17.28 Waivers

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### 17.28.010 Purpose

The purpose of this Chapter is to establish an alternate means of granting relief from the requirements of this Ordinance when so doing would be consistent with the purposes of the Ordinance and it is not possible or practical to approve a Variance. It also allows the Director to grant waivers when necessary to comply with the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act to provide reasonable accommodation to persons with disabilities seeking fair access to housing through a waiver of the application of the City's zoning regulations.

### 17.28.020 Applicability

Waivers may be granted as follows:

- A. **Dimensional Requirements.** Relief from dimensional requirements of property development standards specified in this Ordinance, not to exceed 10 percent of the requirement, may be granted in accordance with the requirements of this Chapter.
- B. **Accommodation of Disabilities.** A waiver of any zoning regulation where the waiver is necessary to allow improvements to an existing building in order to provide reasonable accommodations to individuals with disabilities. This waiver is not available in the case of new buildings, demolitions and rebuilds, or additions where the proposed construction precludes a reasonable accommodation that would not require a waiver.
- C. **Exclusions.** Waivers cannot be granted for any of the following standards:
  - 1. Lot Area, width, or depth.
  - 2. Residential Density.

### 17.28.030 Procedures

- A. **Review Authority.** The Director shall approve, conditionally approve, or deny applications for waivers based on consideration of the requirements of this Chapter.
- B. **Concurrent Processing.** If a request for a waiver is being submitted in conjunction with an application for another approval, permit, or entitlement under this Ordinance, it shall be heard and acted upon at the same time and in the same manner as that application.
- C. **Application Requirements.** An application for a waiver shall be filed to the Director in accordance with Section TBD, Application Forms and Fees. The application shall state in writing the nature of the waiver requested and explain why the findings necessary to grant the waiver are satisfied. The applicant shall also submit plans delineating the requested waiver.
- D. **Review of Requests for Reasonable Accommodation to Ensure Access to Housing.** The Director shall issue a written decision within 45 days of the date of the application and may grant the reasonable accommodation request, grant with waivers, or deny the request. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process.

#### **17.28.040 Required Findings**

A decision to grant a waiver shall be based on the following findings:

- A. The waiver is necessary due to the physical characteristics of the property and the proposed use or structure or other circumstances, including, but not limited to, topography, noise exposure, irregular property boundaries, or other unusual circumstance.
- B. There are no alternatives to the requested waiver that could provide an equivalent level of benefit to the applicant with less potential detriment to surrounding owners and occupants or to the general public.
- C. The granting of the requested waiver would not be detrimental to the health or safety of the public or the occupants of the property or result in a change in land use or density that would be inconsistent with the requirements of this Ordinance.
- D. If the waiver requested is to provide reasonable accommodation pursuant to State or federal law, in addition to any other findings that this Chapter requires, the decision-maker must also make the following findings:
  - 1. That the housing or other property which is the subject of the request for reasonable accommodation will be used by an individual or organization entitled to protection;
  - 2. If the request for accommodation is to provide fair access to housing, that the request for accommodation is necessary to make specific housing available to an individual protected under State or federal law;
  - 3. That the conditions imposed, if any, are necessary to further a compelling public interest and represent the least restrictive means of furthering that interest; and
  - 4. That denial of the requested minor exception or waiver would impose a substantial burden on religious exercise or would conflict with any State or federal statute requiring reasonable accommodation to provide access to housing.

#### **17.28.050 Conditions of Approval**

- A. In approving a waiver, the decision-maker may impose any conditions deemed necessary to:
  - 1. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;
  - 2. Achieve the general purposes of this Ordinance or the specific purposes of the zoning district in which the project is located;
  - 3. Achieve the findings for a waiver granted; or
  - 4. Mitigate any potentially significant impacts identified as a result of review conducted in compliance with the California Environmental Quality Act.
- B. Waivers approved based on State or federal requirements for reasonable accommodation may be conditioned to provide for rescission or automatic expiration based on a change of occupancy or other relevant change in circumstance.

**17.28.060 Appeals; Expiration, Extensions, and Revisions**

- A. **Appeals.** The applicant or any other aggrieved party may appeal a decision on waiver pursuant to the provisions of Section TBD, Appeals.
- B. **Expiration, Extensions, and Revisions.** Waivers granted under this Chapter are effective and may only be extended or revised as provided for in Chapter TBD, Common Procedures.

## Chapter 17.29 Amendments to General Plan Map and Text

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### 17.29.010 Purpose

This Chapter establishes procedures for making changes to the General Plan as provided for in State law when there are compelling reasons to do so. These circumstances include, but are not limited to, changes in State or federal law and problems and opportunities that were unanticipated at the time of Plan adoption or the last amendment.

### 17.29.020 Applicability

The procedures of this Chapter apply to all proposals to change the text of the General Plan and the diagrams that illustrate the application of its provisions.

### 17.29.030 Initiation

An amendment to the General Plan may be initiated by any qualified applicant identified in Section TBD, Application Forms and Fees, or a motion of the City Council or Planning Commission.

### 17.29.040 Application Requirements

- A. **Application.** A qualified applicant shall submit an application for a General Plan amendment on a form prescribed by the Planning Division accompanied by the required fee. The Planning Division may require an applicant to submit such additional information and supporting data as considered necessary to process the application.
- B. **Coordination with Other Applications.** The Planning Division may allow any necessary applications for amendments to zoning regulations or for approval under the requirements of this Zoning Ordinance or Title 16, Subdivisions, of the Newark Municipal Code to be processed simultaneously with the proposed General Plan amendment.

### 17.29.050 Review Procedures and Public Notice

- A. **Staff Report.** The Director shall prepare a report and recommendation to the Planning Commission on any application for a General Plan amendment. The report shall include, but is not limited to, a discussion of how the proposed amendment complies with the purposes of this Chapter, a determination as to whether the proposed amendment will require amendment to other plans that the City Council has adopted, and an environmental document prepared in compliance with the California Environmental Quality Act.
- B. **Public Hearing Required.** All General Plan amendments shall be referred to the Planning Commission, which shall hold at least one public hearing on any proposed amendment.
- C. **Public Notice.** At least 10 days before the date of the public hearing, the Planning Division shall provide notice consistent with Chapter TBD, Common Procedures. Notice of the hearing also shall be mailed or delivered at least 10 days prior to the hearing to the Newark Unified School District and any other local agency expected to provide essential facilities or services to the property that is the subject of the proposed amendment.

### **17.29.060 Planning Commission Hearing and Recommendation**

- A. **Planning Commission Hearing.** The Planning Commission shall conduct a public hearing in conformance with Chapter TBD, Common Procedures.
- B. **Recommendation to Council.** Following the public hearing, the Planning Commission shall make a recommendation on the proposed General Plan amendment to the City Council. Such recommendation shall include the reasons for the recommendation, findings related to the supporting the recommendation, and the relationship of the proposed amendment to applicable plans, and shall be transmitted to the City Council in the form of a Council memo, prepared by Planning Staff, with a copy of the approved minutes from the Planning Commission meeting.

### **17.29.070 City Council Hearing and Action**

- A. **City Council Hearing.** After receiving the report from the Planning Commission, the City Council shall hold a duly-noticed public hearing. The notice shall include a summary of the Planning Commission recommendation. If the Planning Commission has recommended against the adoption of such amendment, the City Council is not required to take any further action unless an interested party files a written request for a hearing with the City Clerk within 10 days after the Planning Commission action.
- B. **City Council Action.** After the conclusion of the hearing, the City Council may approve, modify or deny the proposed amendment. If the Council proposes any substantial modification not previously considered by the Planning Commission during its hearings, the proposed modification shall first be referred back to the Planning Commission for report and recommendation, but the Planning Commission shall not be required to hold a public hearing. The failure of the Planning Commission to report within 40 days after the referral, shall be deemed a recommendation to approve and the amendment shall be returned to Council for adoption.



## Chapter 17.30 Amendments to Zoning Map and Text

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### 17.30.010 Purpose

This Chapter provides procedures by which changes may be made to the text of this Zoning Ordinance and to the Zoning Map whenever the public necessity and convenience and the general welfare require such amendment to maintain consistency with the General Plan.

### 17.30.020 Applicability

The procedures in this Chapter shall apply to all proposals to change the text of this Zoning Ordinance or to revise a zoning district classification or zoning district boundary line shown on the Zoning Map.

### 17.30.030 Initiation

An amendment to the text of the Zoning Ordinance or to the Zoning Map may be initiated by any qualified applicant identified in Section TBD, Application Forms and Fees, or a motion of the City Council or Planning Commission.

### 17.30.040 Application Requirements

- A. **Application.** A qualified applicant shall submit an application for a zoning amendment on a form prescribed by the Planning Division accompanied by the required fee. The Planning Division may require an applicant to submit such additional information and supporting data as considered necessary to process the application.
- B. **Coordination with Other Applications.** The Planning Division may allow any necessary applications for amendments to the General Plan or for approval under the requirements of this Zoning Ordinance or Title 16, Subdivisions, of the Newark Municipal Code to be processed simultaneously with the proposed zoning amendment.

### 17.30.050 Review Procedures and Public Notice

- A. **Staff Report.** The Director shall prepare a report and recommendation to the Planning Commission on any application for a zoning amendment. The report shall include, but is not limited to, a discussion of how the proposed amendment meets the criteria in Section TBD, Criteria for Zoning Amendments, for approving a zoning amendment and an environmental document prepared in compliance with the California Environmental Quality Act.
- B. **Public Hearing Required.** All zoning amendments shall be referred to the Planning Commission, which shall hold at least one public hearing on any proposed amendment.
- C. **Public Notice.** At least 10 days before the date of the public hearing, the Planning Division shall provide notice consistent with Chapter TBD, Common Procedures. Notice of the hearing also shall be mailed or delivered at least 10 days prior to the hearing to the Newark Unified School District and any other local agency expected to provide essential facilities or services to the property that is the subject of the proposed amendment.

### **17.30.060 Planning Commission Hearing and Recommendation**

- A. **Planning Commission Hearing.** The Planning Commission shall conduct a public hearing in conformance with Chapter TBD, Common Procedures.
- B. **Recommendation to Council.** Following the public hearing, the Planning Commission shall make a recommendation on the proposed zoning amendment to the City Council. Such recommendation shall include the reasons for the recommendation, findings related to the criteria for zoning amendments in Section TBD, and the relationship of the proposed ordinance or amendment to applicable general and specific plans, and shall be transmitted to the City Council in the form of a Council memo, prepared by Planning Staff, with a copy of the approved minutes from the Planning Commission meeting.

### **17.30.070 City Council Hearing and Action**

- A. **City Council Hearing.** After receiving the report from the Planning Commission, the City Council shall hold a duly-noticed public hearing. The notice shall include a summary of the Planning Commission recommendation. If the matter under consideration is a proposal to reclassify a property from one zone to another and the Planning Commission has recommended against the adoption of such amendment, the City Council is not required to take any further action unless an interested party files a written request for a hearing with the City Clerk within 10 days after the Planning Commission action.
- B. **City Council Action.** After the conclusion of the hearing, the City Council may approve, modify or deny the proposed amendment. If the Council proposes any substantial modification not previously considered by the Planning Commission during its hearings, the proposed modification shall first be referred back to the Planning Commission for report and recommendation, but the Planning Commission shall not be required to hold a public hearing. The failure of the Planning Commission to report within 40 days after the referral, shall be deemed a recommendation to approve and the amendment shall be returned to Council for adoption.

### **17.30.080 Criteria for Zoning Amendments**

The Planning Commission shall not recommend and the City Council shall not approve a Zoning Amendment unless the proposed amendment meets the following criteria:

- A. The amendment is consistent with the General Plan;
- B. Any change in district boundaries is necessary to achieve the balance of land uses desired by the City, consistent with the General Plan, and to increase the inventory of land within a given zoning district; and
- C. The amendment will promote the growth of the City in an orderly manner and to promote and protect the public health, safety, peace, comfort and general welfare.

## Chapter 17.31 Development Agreements

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### 17.31.010 Purpose

This Chapter establishes procedures and requirements for considering and entering into legally binding agreements with applicants for development projects, as provided for in State law. Such agreements provide a greater degree of certainty than the normal permit approval process by granting assurance that an applicant may proceed with development in accord with policies, rules, and regulations in effect at the time of approval subject to conditions to promote the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved.

### 17.31.020 Applicability

A development agreement may be considered for a complex or multi-phase development projects that will require a developer to make a substantial investment at the early stages of the project for planning and engineering for the entire project and for public facilities and services. In order to be considered for a development agreement, a project shall be consistent with the General Plan and any applicable specific plan unless the applicant has submitted an application for any necessary amendments to the General Plan or specific plan.

- A. **Property Subject to Annexation.** An applicant whose property is located within the City's sphere of influence, or whose property is the subject of a pending application for inclusion into the sphere of influence, may file an application to enter into a development agreement.
1. The agreement shall not become operative unless annexation proceedings annexing property to the City are completed within the period of time specified by the agreement.
  2. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement shall be null and void.

### 17.31.030 Authority and Duties

- A. The Director shall negotiate the specific components and provisions of the development agreement on behalf of the City for Planning Commission review and recommendation to the City Council.
- B. The City Council shall have the exclusive authority to approve a development agreement.

### 17.31.040 Procedure

An applicant for a development project may request that the City review the application as a development agreement application in accordance with the following procedures. The City incorporates by reference the provisions of Government Code Sections 65864-65869.5. In the event of any conflict between these statutory provisions and this Section, this Section shall control.

- A. **Application Requirements.** An applicant shall submit an application for a development agreement on a form prescribed by the Director, accompanied by the required fees. The Director shall identify submittal requirements for applications for development agreements and may require an applicant to submit such additional information and supporting data as considered necessary to

process the application. In addition to any other information that the Director requires, each application for a development agreement shall be accompanied by the general terms and conditions of the agreement proposed by the applicant and shall include the contents required in Subsection B below.

**B. Contents of Development Agreements.**

1. **Required Contents.** A development agreement shall specify its duration; the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes. It shall contain provisions concerning its transferability.
2. **Improvements and Fees.** A development agreement may include requirements for construction and maintenance of on-site and off-site improvements or payment of fees in lieu of such dedications or improvements.
3. **Conditions.** A development agreement may also include conditions, terms, restrictions, and requirements for subsequent discretionary actions, but does not eliminate the applicant's responsibility to obtain all required land use approvals.
4. **Environmental Mitigation.** A development agreement may include, without limitation, conditions and restrictions imposed by the City with respect to the project, including those conditions, restrictions and mitigation measures proposed in any Final Environmental Impact Report applicable to the project that eliminate or mitigate adverse environmental impacts of the project.
5. **Phasing.** A development agreement may provide that the project be constructed in specified phases, that construction shall commence within a specified time, and that the project or any phase thereof be completed within a specified time.
6. **Financing.** If the development agreement requires applicant financing of necessary public facilities, it may include terms relating to subsequent reimbursement over time for such financing.
7. **Indemnity.** A development agreement may contain an indemnity clause requiring the applicant to indemnify and hold the City harmless against claims arising out of or in any way related to the actions of applicant in connection with the application or the development process, including all legal fees and costs.
8. **Performance Obligation Fees.** A development agreement may include provisions to guarantee performance of obligations stated in the agreement.

**17.31.050 Planning Commission Review and Recommendation**

- A. **Planning Commission Hearing.** The Planning Commission shall provide notice and conduct a public hearing in conformance with the provisions of Chapter TBD, Common Procedures.
- B. **Recommendation to City Council.** Within 30 days after the public hearing has been closed by the Planning Commission, it shall render its decision in the form of a written recommendation to the City Council. Its report and recommendation, including proposed findings on the matters stated in Section TBD(B), Findings, shall be forwarded to the City Council.

### 17.31.060 City Council Review and Decision

- A. **City Council Hearing.** Within 45 days after receipt of the written recommendation of the Planning Commission, the City Clerk shall set the matter for public hearing before the City Council. A public hearing shall be held within a reasonable time after receipt of the Planning Commission recommendation but no later than the time specified by Section 65943 of the Government Code.
- B. **Findings.** The City Council shall not approve a proposed development agreement unless it finds that its provisions are consistent with the General Plan and any applicable specific plan. This requirement may be satisfied by a finding that the provisions of a proposed development agreement are consistent with proposed General Plan or specific plan provisions to be adopted concurrently with the approval of the proposed development agreement.
- C. **Decision.** After the City Council completes the public hearing, the City Council shall approve, modify, or disapprove the development agreement. Approval of a development agreement shall be by ordinance. The ordinance shall refer to and incorporate by reference the text of the development agreement. Matters not previously considered by the Planning Commission during its hearing may, but need not, be referred back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the City Council.

### 17.31.070 Execution and Recordation of Development Agreement

Within 10 days after the ordinance approving the development agreement takes effect, the City Manager shall execute the development agreement on behalf of the City, and the City Clerk shall record the development agreement with the County Recorder.

### 17.31.080 Annual Review

The applicant shall be required to demonstrate compliance with the provisions of the development agreement at least once a year at which time the Director shall review each approved development agreement.

- A. **Finding of Compliance.** If the Director, on the basis of substantial evidence, finds compliance by the applicant with the provisions of the development agreement no action is required.
- B. **Finding of Non-compliance.** If the Director finds the applicant has not complied with the provisions of the development agreement, the Director may issue a finding of noncompliance which may be recorded by the City with the County Recorder after it becomes final. The Director shall specify in writing to the applicant the respects in which the applicant has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. If the applicant does not comply with any terms of compliance within the prescribed time limits, the development agreement shall be subject to termination or modification pursuant to this Chapter.
- C. **Appeal of Determination.** Within 10 days after issuance of a finding of noncompliance, any interested person may file a written appeal of the finding with the City Council. The appellant shall pay fees and charges for the filing and processing of the appeal in amounts established by resolution of the City Council. The appellant shall specify the reasons for the appeal. The issuance of a finding of compliance or finding of noncompliance by the Director and the expiration of the

appeal period without appeal, or the confirmation by the City Council of the issuance of the finding on such appeal, shall conclude the review for the applicable period and such determination shall be final.

### **17.31.090 Amendment or Cancellation**

- A. **Mutual Agreement.** Any development agreement may be canceled or amended by mutual consent of the parties following compliance with the procedures specified in this Section.
1. **Director Approval.** Any amendment to a development agreement which does not relate to the duration of the agreement, permitted uses of the property, density or intensity of use, timing of development, height or size of proposed buildings, provisions for reservation or dedication of land, or to any conditions, terms, restrictions and requirements relating to subsequent discretionary actions related to design or improvement or construction standards and specifications may be made by the Director without noticed public hearing. A development agreement may also specify procedures for additional administrative approval of minor amendments by mutual consent of the applicant and Director.
  2. **City Council Approval.** Except as provided in Paragraph TBD(A)(1), Director Approval, the procedure for proposing and adopting an amendment to, or the cancellation in whole or in part, of a development agreement, shall be the same as the procedure for entering into a development agreement in the first instance.
- B. **After Finding of Noncompliance.** If a finding of noncompliance does not include terms of compliance, or if applicant does not comply with the terms of compliance within the prescribed time limits, the Director may refer the development agreement to the City Council for termination or modification. The City shall first give written notice to the party executing the agreement of its intention to initiate such proceedings. Such notice shall be given not less than 30 days in advance of public notice of the City Council hearing to consider an amendment or cancellation. After the public hearing, the City Council may terminate the development agreement, modify the finding of noncompliance, or rescind the finding of noncompliance, and issue a finding of compliance.
- C. **Recordation.** If the parties to the agreement or their successors in interest amend or cancel the development agreement, or if the City terminates or modifies the development agreement for failure of the applicant to fully comply with the provisions of the development agreement, the City Clerk shall record notice of such action with the County Recorder.
- D. **Rights of the Parties After Cancellation or Termination.** In the event that a development agreement is cancelled or terminated, all rights of the applicant, property owner or successors in interest under the development agreement shall terminate. If a development agreement is terminated following a finding of noncompliance, the City may, in its sole discretion, determine to return any and all benefits, including reservations or dedications of land, and payments of fees, received by the City.

### **17.31.100 Effect of Approved Agreement**

- A. **Existing Rules and Regulations.** Unless otherwise specified in the development agreement, the City's rules, regulations, and official policies governing permitted uses of the property, density and design, and improvement standards and specifications applicable to development of the

property shall be those City rules, regulations, and official policies in force on the effective date of the development agreement. The applicant shall not be exempt from otherwise applicable City ordinances or regulations pertaining to persons contracting with the City.

- B. **Future Rules and Regulations.** A development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations and policies that do not conflict with those rules, regulations and policies applicable to the property as set forth in the development agreement. A development agreement shall not prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the project on the basis of such existing or new rules, regulations, and policies. Unless otherwise specified in the development agreement, a development agreement shall not exempt the applicant from obtaining future discretionary land use approvals.
- C. **State and Federal Rules and Regulations.** In the event that any regulation or law of the State of California or the United States, enacted or interpreted after a development agreement has been entered into prevents or precludes compliance with one or more provisions of the development agreement, then the development agreement may be modified or suspended in the manner and pursuant to the procedures specified in the development agreement, as may be necessary to comply with such regulation or law.

#### **17.31.110 Enforcement**

The procedures for enforcement, amendment, modification, cancellation or termination of a development agreement specified in this Section and in Government Code Section 65865.4 or any successor statute, are non-exclusive. A development agreement may be enforced, amended, modified, cancelled or terminated by any manner otherwise provided by law or by the provisions of the development agreement.

#### **17.31.120 Judicial Review**

- A. Any judicial review of the initial approval by the City of a development agreement shall be by writ of mandate pursuant to Section 1085 of the Code of Civil Procedure. Any judicial review of any City action taken pursuant to this Chapter, other than the initial approval of a development agreement, shall be by writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure. The use of the phrase "substantial evidence" in this Chapter with respect to the quantum of proof necessary in conjunction with a finding of noncompliance is not intended to limit nor impose a standard of review upon any court pursuant to a proceeding initiated for that purpose.
- B. Any action or proceeding to attack, review, set aside, void or annul any decision of the City taken pursuant to this Chapter shall not be maintained by any person unless the action or proceeding is commenced within 90 days after the date of decision.

## **Chapter 17.32 Enforcement and Abatement Procedures**

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### **17.32.010 Purpose**

This Chapter establishes the responsibilities of various departments, officials, and public employees of the City to enforce the requirements of this Ordinance and establishes uniform procedures the City will use to identify, abate, remove, and enjoin uses, buildings, or structures that are deemed to be in violation of this Ordinance.

### **17.32.020 Enforcement**

All departments, officials, and public employees of the City vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance, and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Ordinance, and any such permit or license issued in conflict with the provisions of this Ordinance shall be null and void. It shall be the duty of the Building Inspector of the City to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, or addition to or of any building or structure.

### **17.32.030 Revocation**

Any permit granted under the Zoning Ordinance may be revoked in accordance with the provisions in Section TBD, Revocation of Permits, if any of the conditions or terms of such permit are violated or if any law or ordinance is violated in connection therewith. Notwithstanding this provision, no lawful residential use can lapse regardless of the length of time of the vacancy.

### **17.32.040 Voidable Conveyances**

Any deed of conveyance, sale or contract to sell made contrary to the provision of this Ordinance, is voidable at the sole option of the grantee, buyer, or person contracting to purchase, his heirs, personal representative or trustee in insolvency or bankruptcy, within one year after the date of execution of the deed of conveyance, sale or contract to sell but the deed of conveyance, sale or contract to sell is binding upon any assignee or transferee of the grantee, buyer or person contracting to purchase other than those above enumerated, and upon the grantor, vendor or person contracting to sell or his assignee, heir or devisee.

### **17.32.050 Nuisance Defined**

- A. Any building, structure, or planting set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Ordinance, any use of any land, building, or premises established, conducted, operated, or maintained contrary to the provisions of this Ordinance, and failure to comply with any of the conditions of a permit granted under this Ordinance is declared to be unlawful and a public nuisance.
- B. Any use, event, structure or building, whether non-conforming or otherwise, which meets any of the following criteria shall be deemed a public nuisance subject to abatement as set forth herein: disturbances of the peace, illegal drug activity including sales or possession thereof; public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations



or arrests or any other activity declared by the City to be a public nuisance; violation of any provision of this Chapter or any other City, State or federal regulation, ordinance or statute.

#### **17.32.060 Penalty for Violation**

Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating a provision of this Ordinance or failing to comply with a mandatory requirement of this Ordinance shall be guilty of an infraction. Upon conviction, such person shall be punished as set forth in Chapter 1.16, General Penalty, of the Newark Municipal Code. A person, firm, or corporation shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this Ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punished accordingly.

#### **17.32.070 Remedies**

The remedies provided for herein shall be cumulative and not exclusive. Upon a finding of nuisance pursuant to this Chapter, and after giving the property owner an opportunity to cure the nuisance and determining that the nuisance still exists, the Planning Commission or City Council may impose any remedy available at law or in equity, which shall include, but is not limited to, any of the following or combination thereof:

- A. Ordering the cessation of the use in whole or in part;
- B. Imposing reasonable conditions upon any continued operation of the use, including those uses that constitute existing non-conforming uses;
- C. Requiring continued compliance with any conditions so imposed;
- D. Requiring the user to guarantee that such conditions shall in all respects be complied with; or
- E. Imposing additional conditions or ordering the cessation of the use in whole or in part upon a failure of the user to comply with any conditions so imposed.

#### **17.32.080 Nuisance Abatement**

- A. **Initiation.** Proceedings under this Section to terminate, modify or condition (hereinafter abate or if context requires, abatement) any use, structure or building may be initiated by resolution of the Planning Commission or the City Council on its own accord or following recommendation by the Director. In either case, the resolution shall identify the use, building, or structure being considered, identify the property involved, set forth the reason or reasons for the proposed abatement, and fix a time and place for a public hearing on the proposed abatement. In the case of proceedings initiated by the Council, the resolution shall refer the matter for a public hearing before the Commission. A resolution initiating abatement proceedings may be adopted without a public hearing.
- B. **Notice.** Upon initiation of abatement proceedings, the Director shall give notice of a public hearing before the Commission pursuant to the provisions in Chapter TBD, Common Procedures. In addition, within the prescribed time period, the Director shall also mail the notice of the hearing to the person or persons whose use, structure or building is the subject of the abatement proceedings, any person who requested initiation of abatement proceedings, and to any other person who has filed a written request with the Planning Division for such notice.

- C. **Public Hearing.** The Planning Commission shall conduct a duly-noticed public hearing and shall provide for testimony by City staff and the owner of the use, structure, or property that is the subject of the proceeding. Any other interested person shall also be given an opportunity to provide testimony.
- D. **Action.** The Planning Commission shall consider the staff report and the evidence, testimony, and facts presented at the hearing before taking action. If the Commission finds that the use, building, or structure constitutes a nuisance, it may impose any remedy as provided for in this Chapter.
- E. **Decision and Notice.** After the Commission takes abatement action to modify a permit, the Director shall issue a Notice of Action describing the Commission's action, with its findings. The Director shall mail the notice to the permit holder and to any person who has requested such notification by filing a written request with the Planning Division, and shall file a copy of the Notice of Action with the City Clerk. The Clerk shall present said copy to the Council at its next regular meeting.
- F. **Effective date; Appeal to Council.** A decision to abate a nuisance shall become effective immediately after the date of decision unless appealed to the Council within 15 days. If the Council finds, after a duly-noticed public hearing, that the use, structure or building constitutes a nuisance, it may impose any remedy provided for in this Chapter. If the Council finds that the use, structure or building is not a nuisance, it shall reverse the decision of the Commission.
- G. **City Attorney Action.** The City Attorney shall, upon order of the City Council, or on his or her own motion, immediately commence action or proceedings for the abatement and removal and enjoinder of said public nuisance in the manner prescribed by law, and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any such building contrary to the provisions of this Ordinance.

#### **17.32.090 Recording a Notice of Violation**

- A. If compliance is not had with an order of the Director or the Building Official to correct violations of this Ordinance within the time specified therein, the City Manager may file in the Office of the Alameda County Recorder, a certified statement describing the property and certifying that:
  - 1. The property and/or structure is in violation of this Ordinance; and
  - 2. The owner has been so notified. The notice shall specifically describe the violations and a proof of service shall also be recorded with the Notice and Order.
- B. Whenever the corrections ordered have been completed, the Director shall file a new certified statement with the County Recorder certifying that all required corrections have been made so that the property and/or structure is no longer in violation of this Ordinance.