



## **A G E N D A**

**General Plan/LCP Implementation Committee  
November 19, 2008  
3:30 p.m.  
City Council Chambers**

1. Approve Action Minutes from November 5, 2008  
Attachment No. 1 3:30-3:35pm
  
2. Committee Meeting Schedule  
Discuss start time and whether to continue with weekly meetings 3:35-3:50pm
  
3. Draft Zoning Code Review
  - Review No. 10 – Part 6 Zoning Code Administration  
Attachment No. 2 3:50-5:15pm
  
4. Items for Future Agenda 5:15- 5:25pm
  
5. Public Comments on non-agenda items 5:25-5:30pm
  
6. Adjourn to December 3, 2008

Attachments:

1. Draft Action Minutes for November 5, 2008
2. Draft Code Review No. 10 – Part 6 Zoning Code Administration
3. Written Responses to Commissioner Eaton's Sept. 30<sup>th</sup> e-mail

Attachment No. 1



# CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

## DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, November 5, 2008**

### Members Present:

X	Ed Selich, Mayor, Chairman
E	Leslie Daigle, Mayor Pro Tem
E	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

### Advisory Group Members Present:

	Mark Cross
	Larry Frapwell
	William Guidero
	Ian Harrison
	Brion Jeannette
	Don Krotee
	Todd Schooler
	Kevin Weeda
	Dennis Wood

### Staff Representatives:

X	Sharon Wood, Assistant City Manager
	David Lepo, Planning Director
	Robin Clauson, City Attorney
	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

### Committee Actions

1. **Agenda Item No. 1** – Approval of minutes of October 29, 2008.

**Action:** Committee approved draft minutes.

**Vote:** Consensus

## 2. Agenda Item No. 2 - Zoning Code Re-write

### ▪ Review of Alcohol Sales/Eating and Drinking Establishments

**Action:** Staff opened with an explanation and philosophy of the proposed changes to Alcohol Sales/Eating and Drinking Establishments in the draft code.

Staff explained that Walker Consultants are currently conducting a parking study for the City and are expected to present results that will provide guidance on parking standards for eating and drinking establishments. Therefore, proposed parking standards for eating and drinking establishments will be discussed with the Committee at a later meeting.

The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding alcohol sales/eating and drinking establishments of the draft code. The Committee and Advisory Members discussed and directed staff to:

- revise use tables and definitions related to alcohol sales/eating and drinking establishments to clarify and make a reference to drive-through facilities
- revise use tables related to eating and drinking establishments to require that all establishments that have alcohol require an MUP
- revise mixed-use zoning district tables 2-9 pg. 2-30, 2-10 pg. 2-33 prohibit bars, lounges and nightclubs under eating and drinking establishments
- revise Sections 20.60.030 subsection A.5.a. and b. pg. 4-5 and 20.60.090 subsection B.1.d.1. and 2. pg. 4-15 – add “vendors” after “operators”
- revise Section 20.60.090 subsection A.2. pg. 4-14 – permit outdoor storage if it is screened and not occupying parking space or area that is used for other development standards and if has its own dedicated space
- revise Section 20.60.090 subsection B.e. so that conditions are required to be on-site and available upon request but do not need to be posted in a location visible to the public.
- revise Section 20.60.090 subsection F.3. – add “among” before “review criteria”, subsection F.3.a.(2) – expand language to indicate that the operational character of the proposed use of occupancy loads of the use, and add a subsection F.3.c. for alcohol sales

The public provided comments to the Committee and staff regarding:

- outdoor dining parking requirement was discussed, – Committee and staff welcomed written comments regarding all eating and drinking establishment regulations
- an outreach meeting will be held to explain all revised tables and sections related to eating and drinking establishments and receive feedback from the Newport Beach Restaurant Association

**Vote:** Consensus

**3. Agenda Item No. 3 – Items for future agenda**

**Action:** None

**Vote:** None

**4. Agenda Item No. 4 – Public Comments on non-agenda items**

None

**Meeting Adjourned 5:40 p.m.**

## Attachment No. 2

## **Draft Code Review No. 10**

### **Part 6 - Zoning Code Administration**

Part 6 of the draft code consolidates the administrative regulations. New regulations are largely those related to Coastal Development Permits and other Implementation Plan processes.

#### **1. Administrative Responsibility**

- Existing Code: Related to R-A zone only – 20.10.020.E and 20.10.030.H
- New Code: new Section 20.74.040 pg. 6-4 which provides provisions for a hearing officer, added City Council information in Section 20.74.020 pg. 6-3

#### **2. Public Hearings**

- Existing Code: Section 20.91.030, 20.95.050, 20.93.025
- New Code: consolidates all public hearing requirements into one Chapter, contains two new Sections, 20.74.020 pg. 6-7 and 20.74.030 pg. 6-9 to provide noticing procedures for non-coastal, appealable coastal development, and non-appealable coastal development

#### **3. Appeals**

- Existing Code: Ch. 20.95
- New Code: provides new Section 20.78.040 pg. 6-15 to provide guidelines for appealing to the Coastal Commission

#### **4. Amendments**

- Existing Code: Ch. 20.94
- New Code: provides additional procedures for coastal land use amendments in Section 20.80.060 pg. 6-18 and rezoning for annexations in Section 20.80.070 pg. 6-20

#### **5. Enforcement**

- Existing Code: Ch. 20.96
- New Code: expanded from existing code provides with additional legal remedies Section 20.82.050 pg. 6-22, provides additional provisions for inspections Section 20.82.030 pg. 6-21, initial enforcement action Section 20.82.040 pg. 6-22, costs and fees Sections 20.82.060 pg. 6-23, 20.82.070 pg. 6-24, 20.82.080 pg. 6-24

## Attachment No. 3

## Responses to Barry Eaton's September 30th E-mail

### Chapter 20.14 - Zoning Map

15) Table 1-1 (in Section 20.14.020) lists a "R-1-A" zone, but there appears to be no such zone in Part 2, or on the Map. Is there any reason to retain the reference to it? **There are no R-1-A District proposed. The Committee directed staff to add here since R-1-A is a land use category in the GP.**

16) What is the purpose of the "Area Maps" that precede the large Zoning Map itself? **Several development regulations in the code are specific to a certain geographic area. An example is front yard fence height in Corona del Mar. The area maps are intended to clearly identify these geographic areas.**

17) The several area maps for the Peninsula and West Newport all include large areas of the sand beach for that? Are those areas zoned? **The beaches are part of the geography. Public beaches are zoned PR.**

18) The area map for Mariner's Mile appears to only include the west portion of the Mariner's Mile Overlay Area. Was that deliberate? **The Mariner's Mile map will include the east portion as well.**

19) The area map for the high rise areas include Belcourt, One Ford Road, adjacent smaller developments, and all of Newport North Planning Area as within the 375' height zone. Now that all of those areas have been developed as residential and low rise non-residential, shouldn't this be amended? **They should be removed from the high rise area.**

20) On the zoning map itself, all of the several "Bluffs" developments, and the project at the south east corner of Irvine and University are proposed to be designated as R-1 zoning. But the R-1 zone in the text states that it is exclusively for detached single family zoning, prohibits attached dwellings, and requires side yards for each unit; and these areas are developed as attached "townhouse" units. Is this not internally inconsistent? Should we not consider a different zoning designation for Single Family Attached units? **No "R-1-A" zone, use R-1 zone with existing entitlements and add a provision requiring discretionary review for new attached single family projects.**

### Chapter 20.16 (labeled as Chapter 20.30) - Development and Land Use Approval Requirements

21) The section numbered as 20.30.020.E. (presumably intended to be Section 20.16.020.E.) states that "The City may adopt criteria, guidelines, and policies separate from this Zoning Code that may affect the use and development of land." If so, how will these other categories of restrictions be memorialized and made available to the public, so that property owners and applicants may know all the restrictions that will apply to their property? **These exist today. For example, City Council policies, design guidelines (e.g. Balboa Village design guidelines) and others. It the responsibility of staff to inform the public of all applicable regulations.**

22) The section numbered as 20.30.030.A.2. (presumably intended to be numbered Section 20.16.030.A.2.) refers to "Minor Use Permits" as if they were the same thing as Conditional Use Permits, even though they are separately provided for in subsection 4. of this same section. Was this intentional? Are CUPs and MUPs the same thing, with the same processing requirements? If not, shouldn't they be separated in this Section? **20.16.030. A.2 is referring to Section 20.66.090 which is titled "Conditional Use Permits and Minor Use Permits". Minor Use Permits are in A.4. The cross reference is there because the section referred to is titled "Conditional Use Permits and Minor Use Permits". Processing of CUP's and MUP's is essentially the same except that that the review authority for CUP's is the PC and the review authority for MUP's is the ZA. We will remove "Minor Use Permit" from A.2 and "Conditional Use Permit" from A.4.**

#### Chapter 20.18 - Residential Zoning Districts

23) Section 20.18.010.A. - see question 20) above. **No "R-1-A" zone, use R-1 zone with existing entitlements and add a provision requiring discretionary review for new attached single family projects.**

24) Table 2-1, 2nd line (indicating that "Single Family Dwellings - Attached" are prohibited in the R-1 zone) - see question 20) above. **No "R-1-A" zone, use R-1 zone with existing entitlements and add a provision requiring discretionary review for new attached single family projects.**

25) Table 2-1, 9th line (indicating that short term lodging is prohibited in the R-1 zone) - is this consistent with the current version of Chapter 5.95 of the Code? **Yes. Here's the Municipal Code Section:**

#### **5.95.020 Permit Required.**

**No owner of a lodging unit located within a residential district shall rent that unit for a short term without a valid short term lodging permit (permit) for that unit issued pursuant to this chapter. No permit shall be issued subsequent to June 1, 2004 to any dwelling unit on any parcel zoned for "Single-family Residential (R-1)" or is designated for single-family residential use as part of a Planned Community Development Plan, Specific Area Plan or Planned Residential District unless a permit has previously been issued for that dwelling unit and was not subsequently revoked**

26) Table 2-1, 13th line (indicating that large [9-14 children] Day Care facilities are permitted with a Minor Use Permit in the R-1 zone) - does this reflect the current code? **Yes**

27) Table 2-1, 21st line (indicating that "parking facilities" are permitted with a MUP in the R-1 zone) - is this consistent with the current code? What is a "Parking Facility"? It is not defined in Part 7 (Definitions) of the proposed code. **Yes, the current code allows public or a no fee parking lot in residential districts with a UP.**

28) Table 2-1, 23rd line, "Utilities" are permitted by right in all of the residential zones. But "Utilities" are defined in Part 7 (page 7-52) to include the "provision.... of oil, gas, power, ... and includes facilities for the generation of electricity." Does this mean that oil facilities and "peaker" electric generating facilities would be permitted in all the residential zones - even the R-1 zone - by right? Why on earth would we permit a "peaker" electric generation facility in the R-1 zone by right? **Will revise based on direction from Committee to define "Minor" and "Major" utilities.**

29) Table 2-2, in the right hand column, states that garages facing alleys shall have a "maximum" setback of 7 feet. Why? **This will provide adequate space to park one vehicle out of the alley. Expanding regulation to R-1 district based on Committee direction.**

30) Table 2-2, under height, lists a separate height maximum in the R-1-7,200 zone than all the other R-1 zones. Why? **This is existing code, B-5 Overlay. We do not recommend changing.**

31) Table 2-2, footnotes (1) and (4) appear to be new to me. Are they new, or are they in the existing code? Footnote (1) can be particularly onerous, if actually implemented by the City. **Footnote no. 1 calls attention to an existing Title 19 regulation. Footnote no. 4 is consistent with an existing Fire Department requirement.**

32) Table 2-3 has footnote (3) in the first line. Shouldn't it be in the 10th line, dealing with Site Area per Dwelling Unit? **Footnote (3) relates to the minimum "lot" size and so belongs where it is.**

33) The staff summary sheet notes that almost all of Balboa Island has been proposed to be, in effect, rezoned from R-1.5 to R-2. As I understand it, the difference between R-1.5 and R-2 currently is the lower FAR provided for in the R-1.5 zone; and that Balboa Island considers this to be a very important provision in their community character. Yet, Table 2-3, under Floor Limit, provides no FAR restriction whatever in the proposed R-2 zone. Isn't this completely contrary to what the Balboa Island residents have consistently requested for their island? Why is no FAR proposed for the R-2 zone - or at least in the Balboa Island portion of the R-2 zone? **Floor area limits are not proposed for any R-1 or R-2 district.**

34) In the Open Space section of Table 2-3 no minimum dimensions are stated for either the proposed Common open space or Private open space requirements. Yet, in Chapter 20.22 (page 2-36), there are such minimum dimension requirements for exactly the same required Open Space requirements. Shouldn't those also be provided here? **The dimensions will be added to the table.**

#### Chapter 20.20 - Commercial Zoning Districts

35) The Title Block of this Chapter includes a reference to Section 20.65.085 - uses requiring City Manager approval. I could not find such a section; and is there really a zoning process approvable only by the City Manager? If so, what is it? **That reference is to an existing code**

**section and will be removed. The City Manager issues licenses for the following activities: pool tables/amusement devices, dancing, live entertainment, pawnbrokers.**

36) Table 2-4, 4th line, permits "Research and Development" by right in all the proposed Office zones, with no limitations as to size or nature of such development. The definition of R & D in part 7 (page 7-43) includes "product testing". Do we really want no limitations whatever on such a use in the office zones other than the Airport Office zone? **Definition will be revised and an R&D "limited/restricted" category may be created.**

37) Table 2-4, 11th line, permits Accessory Off Site Alcohol Sales in all the proposed office zones, by right. Do we really want no limitation whatever on this use in the office zones other than the Airport Office zone? **Discussed at 11-5-08 meeting**

38) Table 2-4, last line on page 2-17, permits large Day Care (15+ children) in the Airport Office zone, with a MUP. Do we really want this kind of use in such a noise impacted area - even with a MUP? **No. Will not be permitted in OA district.**

39) Table 2-4, 11th line on page 2-18, permits Emergency Shelters by right in only the Airport Office zone, and I could find no other zone in which this use is permitted in any way. This use is defined in Part 7 (page 7-23) as essentially "housing". Why would we permit housing in only the most noise impacted area in the City? Is this consistent with the Airport AELUP, that the City must be consistent with? **Also allowed by right in IG and PI districts. (I'm checking with ALUC in regard to that part of this question)**

40) Table 2-4, page 2-18, permits Crematoriums by CUP in all the office zones, and Maintenance and Repair Services by right in all the office zones except OM (Medical Office). It also permits Hotels and Motels by CUP in the OM zone, but prohibits them in the OR (Regional Office) zone; and would permit "peaker" electric generator facilities in all the office zones, including the OM (medical) zone. Is all this consistent with the General Plan? **We are looking at this and will revise definition of "Utilities".**

41) Table 2-5, 12th line, prohibits retail sales in the CV (Commercial Visitor-Serving) zone. Why would we do that? **The GP Visitor Serving Commercial category identifies these areas as intended to serve visitors. A Visitor Serving Retail land use was added to the code. See page 7-55 for the definition.**

42) Table 2-5, under Service Uses, would require that Corporate and Professional Offices could only be located above the first floor; but that requirement would not apply to Business or Medical and Dental offices. Why? Is there such a difference between "Business" and "Professional" offices that one is permitted on the first floor in the Commercial zones, but not the other? There is a difference in the amount of foot traffic. **Those with less foot traffic are proposed to be allowed above the first floor in order to preserve first floor space for uses that generate more pedestrian traffic.**

#### Chapter 20.22 - Mixed Use Zoning Districts

43) Table 2-9, 6th line, permits Boat Rentals and Sales by right in the Dover/Westcliff zoning district. Really? Do we want a boat yard in that district? **Will be removed. Not permitted.**

44) Table 2-9, top line on page 2-31, has footnote (2) (regarding Coast Highway) in the MU-H4 (Cannery Village/Peninsula) district. Doesn't this footnote belong in the HU-H1-MM (Mariner's Mile) district? **Yes**

45) Table 2-11, first line, requires a minimum lot size in the MU-H1-DW (Dover/Westcliff) district of 40,000 square feet. Why so large? **Consistent with existing lot size. Larger developments are preferable in this area.**

46) Table 2-11, 3rd line. provides both minimum and maximum lot areas per square foot (minimum, as well as maximum residential density) in all the MU Districts, except for the MU-H1-DW district. Why the minimum density requirement, and why does neither the minimum nor maximum apply to Dover/Westcliff? **Minimum 1,631 per du. Maximum 2,167 per du**

47) Table 2-12 appears to have the "MM" missing from the MU-W1 District, and refers to Specific Plan numbers for both of the districts in this table; whereas none of the other tables refer to Specific Plans. Why? **Reference to SP's will be removed.**

48) Table 2-12, 4th line, refers to separate FAR standards for "Lido Marina Village", but doesn't have any other separate standards for this particular area. Was this intentional? **Yes. The difference does appear in the table for mixed-use development.**

#### Chapter 20.24 - Industrial Zoning District

49) Table 2-13, 17th line, permits retail by right in this Industrial District. Why wouldn't there be a MUP required for retail uses in an Industrial District? **This is consistent with the current code and staff does not recommend changing.**

#### Chapter 20.26 - Special Purpose Districts

(No comments.)

#### Chapter 20.28 - Overlay Districts

(No comments.)

Commissioner Hawkins' Policy Questions on Review No. 10  
Draft Zoning Code Part 6

1. **Page 6-4, 20.74.030B.1**

Approve, conditionally approve, or deny the applications prescribed by this Zoning Code (e.g., Conditional Use Permits, Planned Development Permits, Variances, etc.) and Tentative Tract Maps in compliance with Municipal Code Title 19 (Subdivision Code); PQ: jurisdiction over development agreements affecting land use?

**Per 15.45.050 of the Municipal Code the Commission holds a hearing but the Council has final decision making authority.**

2. **Page 6-14, 20.78.030, B.2**

**Appeal by 2 Coastal Commissioners.** An appeal of a City decision on a Coastal Development Permit by 2 Coastal Commissioners shall be subject to Section 20.78.040, below. PQ: Is this necessary? Why should the City dictate appeal procedures for the CC?

**This is intended to be informational that CDP's may be appealed by the CCC and that the procedure is different.**

3. **Page 6-14, 20.78.030C.3(a)**

Except for appeals from a decision of a hearings officer, \_\_\_\_\_ PQ: This should refer to a specific code section re hearing officer decisions. the public hearing on an appeal shall be conducted "de novo," ~~except as may be otherwise specified in this Zoning Code,~~ in that the decision that has been appealed has no force or effect as of the date on which the appeal was filed.

**Will add reference to 20.66.095G.2**

4. **Page 6-15, 20.78.040B.1**

**Who may appeal.** An appeal may be filed by an applicant, an aggrieved person, or PQ: any 2 members of the Coastal Commission in compliance with Public Resources Code Section 30625.

**This is consistent with state law.**

5. **Page 6-26, 20.84.010**

Purpose and Applicability

**November 19, 2008**

Permits shall not be issued for any structure involved in an approved application until and unless the same shall have become final in compliance with Section 20.68.040 (Effective Date of Permits).

PQ: This section is out of place. Integrate it into the rest of the Code.

**We will move this to Part 1 Section 20.10.040.**

## Responses to Commissioner Eaton's November 14th E-mail

### Part 6 - Zoning Code Administration

#### Chapter 20.74 - Administrative Responsibility

151) Section 20.74.010 (on page 6-3) states the purpose of this Chapter to describe the responsibilities of the various decision making authorities in the Code, but it fails to mention Hearing Officer, even though that is one of the categories in this Chapter. Shouldn't that be included in this Section? **Yes. It will be added.**

152) Section 20.74.060 (on page 6-5) does not include a sub section on imposition of conditions for Planning Director decisions, even though such a sub section is included in all the other categories of decision makers. Should it not also be included here? **Yes. It will be added.**

#### Chapter 20.76 - Public Hearings

153) Section 20.76.020.B.1.a. & b. (on page 6-8) carefully distinguish between calendar days and working days in the publication of notice. But subsections 2. and 3. of this section (on page 6-8 & 6-9), as well as sub section B. of Section 20.76.030 (on page 6-10) do not specify whether they refer to calendar or working days. Having raised that issue in subsection B.1., isn't it necessary to specify which is being utilized in the subsequent sub sections? **CDP's and Coastal Amendments are working days, everything else is calendar days. This is specified in Section 20.12.020 subsection C.3. to always use calendar days unless specified otherwise such as the Coastal Act items that use working days. This will be clarified.**

#### Chapter 20.78 - Appeals

154) Section 20.78.040.C.1. (on page 6-15) contains a long, long reference to a section of the "Code of Regulations". Presumably, that is the State Code of Regulations. Wouldn't it be helpful here to give the reader some sort of idea of what that reference provides for? **Staff believes the reference in this instance is sufficient.**

155) Section 20.78.040.C.2. (on page 6-15) states that "The appeal shall be suspended where the City decision has been appealed." This doesn't make any sense to me; and seems to be self contradictory. Can you clarify what this is supposed to mean? **This is under the very limited procedure where at least 2 members of the Coastal Commission file an appeal against a City decision. It applies where, for example, an appeal is filed by at least 2 members of the Coastal Commission against a decision made by the City's Planning Commission. If the Planning Commission's decision is appealed by an eligible aggrieved party to the City Council, the appeal**

by the Coastal Commission members is suspended pending the final decision by the City Council. Then the Coastal Commission members would have to file a new appeal, if still desired, against the City Council's decision.

156) The last section in that same sub section ends with the phrase "...if deemed appropriate and necessary." But it doesn't appear to specify by who. Who makes that decision on whether the Coastal Commissioners "shall be required to file a new appeal"? And why is a statement purporting to regulate the actions of the Coastal Commissioners even in this Code? **The decision as to "appropriate and necessary" is made by the Coastal Commission members who filed the original appeal. In my example above "if still desired" was used to explain their possible thinking on this matter. Only the Coastal Commission members can decide if they still want to appeal.**

157) Section 20.78.050 (on page 6-16) ends with the phrase "...and, where applicable, all appeals to the Coastal Commission allowed by the Coastal Act." Shouldn't this phrase either be put into the body of the earlier part of this section, or given its own verb? **We will separate for clarity in the following manner:**

#### **20.78.050 – Judicial Review of City Decision**

A person shall not seek judicial review of a City decision on a permit or other matter in compliance with this Zoning Code until all appeals to the Planning Commission and Council have been first exhausted in compliance with this Chapter. Additionally, and where applicable, a person shall not seek judicial review of a Coastal Commission decision on a permit or other matter until all appeals to the Coastal Commission allowed by the Coastal Act have been first exhausted in compliance with the Coastal Act.

#### Chapter 20.80 - Amendments

158) Section 20.80.040.A.2. (on page 6-18) states that the failure of the PC to act shall be deemed an approval. Why? I was under the impression that the PC's existing rules state that a failure to act shall be deemed a denial. **This particular provision is the same as the existing code (20.94.040.B).**

159) Section 20.80.050.C. (on page 6-18) does not include a provision that CC hearings are "De Novo", whereas other provisions in the existing and proposed Codes do state that. Was that an error of omission here; or was it determined that CC hearings on Amendments, in particular, would not be De Novo, as in cases of appeals from Hearing Officer decisions? **The draft code is consistent with the existing code in regard to what appeals are de novo. Amendments are legislative so the status quo is recommended.**

160) Section 20.80.060.B.1. (on page 6-18) states that a proposed amendment to the CLUP must be consistent with the existing CLUP. Isn't that almost an oxymoron? Isn't

the reason for a proposed amendment normally based on the fact that whatever is being proposed in the amendment is not consistent with the existing, and that is why an amendment is being proposed? **The words "...consistent with all applicable sections and policies..." should be added.**

161) Section 20.80.060.C.3. (on page 6-19) states that a proposed CLUP amendment shall be available at least 6 weeks prior to final action (presumably by the CC). Is this an existing requirement? Is the notice of the PC hearing part of this "availability"? If so, what if there are significant changes after the amendment is recommend by the PC? Does the availability period have to start over again? **The section indicates that the 6 week availability is before final City action.**

**Here is the actual language from the Code of Regulations:**

**13515 (c) Notice of the availability of review drafts of LCP or LRDP materials and transmittal of said documents pursuant to paragraphs (a) and (b) shall be made as soon as such drafts are available, but at a minimum at least six (6) weeks prior to any final action on the documents by the local government or governing authority. Review drafts shall also be made readily available for public perusal in local libraries, in the administrative offices of the local government or educational facility and at the Commission offices.**

162) Section 20.80.060.D.1. (on page 6-19) purports to specify to the Coastal Commission what it must do, after certifying a proposed CLUP amendment. Can this proposed City Zoning Code really tell the Coastal Commission what it may or may not do? If not, should it be in here? **This is consistent with state law. If the CCC changes what the City approved, the City must take formal action on those changes. The intent is to "inform" a Zoning Code user of the responsibility of the CCC rather than tell the CCC what to do. It also refers to the applicable Code of Regulations Section (13544.5).**

#### Chapter 20.82 - Enforcement

163) Section 20.82.060.B. (on page 6-24) states that the proposed new enforcement cost recovery procedures of this Code are effectuated "Upon determination that recovery of costs is warranted....". But it doesn't explicitly state who makes that determination, that will lead to what may be a long legal process. Is it the Director? If so, shouldn't that be explicitly stated; and should there be provisions for guidelines, or consultation, before such a determination is made? **The Planning Director. The Planning Department is responsible for tracking all costs. It was not the intent to burden the Director with "guidelines" or the requirement for consultation.**

#### Chapter 20.84 - Use of Property

164) Section 20.84.010 (on page 6-26) is the only section in this Chapter; and seems like it is stuck out in space by itself, without much reason for being there. Could this

section be more efficiently incorporated into a different part of the Code (for instance, in Chapter 20.68, which deals with Permit implementation)? **We will move this to Part 1 Section 20.10.040.**

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## Chapter 20.74 – Administrative Responsibility

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### Sections:

- 20.74.010 – Purpose
- 20.74.020 – City Council
- 20.74.030 – Planning Commission
- 20.74.040 – Hearing Officer [New]
- 20.74.050 – Zoning Administrator
- 20.74.060 – Planning Director

### 20.74.010 – Purpose

This Chapter describes the authority and responsibilities of the Newport Beach City Council, Planning Commission, Zoning Administrator, and Planning Director in the administration of this Zoning Code.

### 20.74.020 – City Council

- A. **Duties and functions.** The City Council (referred to in this Zoning Code as the Council) shall perform the duties and functions prescribed in this Zoning Code, which include the following:
1. **Final review authority on legislative acts.** To make final City decisions on applications involving interpretation of legislative acts (e.g., General Plan and amendments, Coastal Land Use Plan and amendments, specific plans and amendments, zoning amendments), Final Maps in compliance with Municipal Code Title 19 (Subdivision Code), and other applicable policy or ordinance matters related to the City's planning process. Additionally, the Council shall be the final review authority on all concurrent applications filed with legislative act applications; and
  2. **Appeals.** To hear and decide appeals filed from Hearing Officer and Commission decisions in compliance with Chapter 20.78 (Appeals).
- B. **Imposition of conditions.** In making decisions on applications, the Council may impose any conditions it deems necessary to implement the General Plan, Coastal Land Use Plan, and the Municipal Code standards that apply to development, and to further the public health, safety and general welfare of the community.

### 20.74.030 – Planning Commission

- A. **Appointment.** The Planning Commission (referred to in this Zoning Code as the Commission) shall consist of 7 members appointed by the Council in compliance with Article VII of the City Charter.
- B. **Duties and functions.** The Commission shall perform the duties and functions prescribed by State law, the City Charter, and this Zoning Code, including the following:

1. Approve, conditionally approve, or deny the applications prescribed by this Zoning Code (e.g., Conditional Use Permits, Planned Development Permits, Variances, etc.) and Tentative Tract Maps in compliance with Municipal Code Title 19 (Subdivision Code); PQ: jurisdiction over development agreements affecting land use?
  2. Review the effectiveness and appropriateness of this Zoning Code and recommend amendments or changes to the Council as it deems appropriate;
  3. Provide recommendations to the Council for final decisions on applications involving interpretations of legislative acts (e.g., General Plan and amendments, Coastal Land Use Plan and amendments, specific plans and amendments, zoning amendments), and other applicable policy or ordinance matters related to the City's planning process. Additionally, the Commission shall provide recommendations to the Council on all concurrent applications filed with legislative act applications; and
  4. Hear and decide appeals for all Zoning Administrator decisions and Director determinations in compliance with Chapter 20.78 (Appeals).
- C. Imposition of conditions.** In making decisions on applications, the Commission may impose any conditions it deems necessary to implement the General Plan, Coastal Land Use Plan, and the Municipal Code standards that apply to development and to further the public health, safety and general welfare of the community

#### 20.74.040 – Hearing Officer [New]

- A. Appointment.** The Hearing Officer(s) shall be appointed by the Council.
- B. Duties and functions.** The Hearing Officer(s) shall perform the duties and functions prescribed by State law, the City Charter, and this Zoning Code, including the following:
  1. **Conditional Use Permits.** Approve, conditionally approve, or deny Conditional Use Permits for uses and sites located in residential zoning districts in compliance with Section 20.66.095 (Conditional Use Permits in Residential Zoning Districts).
  2. **Nonconforming uses.** Approve, conditionally approve, or deny requests for extensions of time of abatement periods for nonconforming uses located in residential zoning districts in compliance with Section 20.50.100 (Abatement Periods).
  3. **Reasonable Accommodations.** Approve, conditionally approve, or deny requests for Reasonable Accommodations in compliance with Section 20.66.040 (Reasonable Accommodations).
- C. Imposition of conditions.** In making decisions on applications, the Hearing Officer(s) may impose any conditions it deems necessary to implement the General Plan, Coastal Land Use Plan, and the Municipal Code standards that apply to development and to further the public health, safety and general welfare of the community

**20.74.050 – Zoning Administrator**

- A. Appointment.** The Director shall appoint a qualified Department staff member to serve as the Zoning Administrator who shall serve at the discretion of the Director.
- B. Duties and functions.**
1. The Zoning Administrator shall have the authority to investigate and make decisions on the applications identified in Table 5-1 (Review Authority) in compliance with this Zoning Code and the Municipal Code as well as the following:
    - a. Condominium conversions involving 4 or fewer units, through the approval of a tentative parcel map, in compliance with Chapter 20.83 and Title 19 (Subdivision Code);
    - b. Lot line adjustments, in compliance with Title 19 (Subdivision Code); and
    - c. Tentative parcel maps, in compliance with Title 19 (Subdivision Code).
  2. The primary role of the Zoning Administrator is to make decisions on applications in compliance with this Zoning Code.
  3. The above listed duties and functions shall be performed in compliance with Section 20.64.020 (Authority for Land Use and Zoning Decisions).
- C. Imposition of conditions.** In making decisions on applications, the Zoning Administrator may impose conditions it deems necessary to implement the General Plan, Coastal Land Use Plan, and the Municipal Code standards that apply to development and to further the public health, safety and general welfare of the community

**20.74.060 – Planning Director**

- A. Appointment.** The Planning Director (referred to in this Zoning Code as the Director) shall be appointed by the City Manager and shall serve at the discretion of the City Manager.
- B. Duties and functions.** The Director shall:
1. Have the responsibility to perform all of the functions designated by State law;
  2. Perform the duties and functions prescribed in this Zoning Code. The role of the Director is to manage the Planning Department and make determinations on the matters specified in this Zoning Code as "subject to the determination of the Director."
  3. Delegate the responsibilities of the Director to Department staff as deemed appropriate.

**2. Project Information.**

- a. The name of the project applicant;
- b. The City's file number(s) assigned to the project application;
- c. A general explanation of the project or the matter to be considered;
- d. A general description, in text and/or by diagram, of the location of the project or the property that is the subject of the hearing; and
- e. If a Negative Declaration or Environmental Impact Report has been prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the local CEQA guidelines, the hearing notice shall include a statement that the review authority will also consider approval or recommend approval of the Negative Declaration or certification of the Environmental Impact Report.

3. **Coastal Zone information.** The notice shall also include a statement, if applicable, that the project is located within the City's Coastal Zone.

**B. Method of notice distribution.** Notice of a public hearing required by this Zoning Code shall be given as specified below. Publication, mailing, and posting shall be as follows.**1. Publication.**

- a. **Notice.** Notice for all matters, except for a Coastal Land Use Plan amendment, shall be published at least once in a newspaper of general circulation in the City at least 10 calendar days before the scheduled hearing.
- b. **Coastal Land Use Plan amendment notice.** Notice for a Coastal Land Use Plan amendment shall be published at least once in a newspaper of general circulation in the City at least 10 working days before the scheduled hearing.

**2. Mailing.** Notice shall be mailed or delivered at least 10 days before the scheduled hearing to all of the following:

- a. **Project site owners and applicant.** The owners of the property being considered in the application, or the owners' agent, and the applicant or the applicant's agent;
- b. **Local agencies.** Each local agency expected to provide schools, water, or other essential facilities or services to the project, whose ability to provide the facilities and services may be significantly affected;
- c. **Nearby property owners.** All owners of property located within a 300-foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject lot, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. It shall be the responsibility of the applicant to obtain

- and provide to the Department the names and addresses of all owners required by this Section;
- d. **Nearby residents.** For projects located within the Coastal Zone, notice shall also be mailed or delivered to each dwelling unit located within a 100-foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject lot. It shall be the responsibility of the applicant to obtain and provide to the Department the addresses of all dwelling units required by this Section;
  - e. **Persons requesting notice.** A person who has filed a written request for notice with the Director and has paid the required fee for the notice; and
  - f. **Coastal Commission.** The Coastal Commission, if the proposed project is located within the Coastal Zone.
3. **Posting of a sign and notice.** Notice shall be posted on or close to the subject property in a prominent location at least 10 days before the scheduled public hearing in the following manner:
- a. One or more signs shall be posted as determined by the Director.
  - b. The size and location of the sign(s) shall be as determined by the Director.
  - c. The project applicant shall be responsible for maintaining the sign(s) in a satisfactory condition.
  - d. The project applicant shall remove all sign(s) at the end of the appeal period.
4. **Alternative to mailing.** If the number of property owners to whom notice would be mailed in compliance with Subparagraph B. 2. c., above, is more than 1,000, the Director may choose to provide the alternative notice specified by State law.
5. **Failure to receive notice.** The failure of any person or entity to receive notice given in compliance with this Section shall not invalidate the actions of the applicable review authority.

**20.76.030 – Notice of Public Hearing for Non-Appealable Coastal Development**  
[New]

This Section provides notice requirements for applications for Coastal Development Permits that are not appealable to the Coastal Commission in compliance with Public Resources Code Section 30603 and which are not categorically excluded in compliance with Subsection 20.66.020.E. (Project exempt from Coastal Permit requirements).

- A. **Public notice required.** Code of Regulations, Title 14, Section 13568(b), requires that public notice shall be given for all development located within the Coastal Zone (except that which is categorically excluded). The public notice shall be given regardless of whether this Zoning Code requires a public hearing before the development can be approved, conditionally approved, or denied. Public notice requirements for projects

requiring a public hearing are provided in Subsection 20.76.020.A. (Content of notice), above.

- B. Distribution of notice.** At least 10 days before the City's scheduled hearing on the application, the City shall provide notice to:
1. All persons who have requested to be on the mailing list for the particular project or for decisions by the City within the Coastal Zone;
  2. All property owners and residents located within a 100-foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject lot, as shown on the last equalized assessment roll or, alternatively, from other records that contain more recent addresses. It shall be the responsibility of the applicant to obtain and provide to the Department the names and addresses of owners and residents required by this Section; and
  3. The Coastal Commission.
- C. Content of notice.** The notice shall contain the information required for public notices in compliance with Subsection 20.76.020 A. (Contents of notice), above, and the following:
1. The date the application will be acted upon by the City's review authority;
  2. The City's general procedure concerning the submission of public comments either in writing or orally before the decision is rendered; and
  3. A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held before the decision is rendered.

#### 20.76.040 – Hearing Procedure

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

#### 20.76.050 – Decision

- A. Decision.**
1. The review authority may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting agenda—in compliance with Section 20.76.040 (Hearing Procedure), above.

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## Chapter 20.78 – Appeals

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### Sections:

- 20.78.010 – Purpose
- 20.78.020 – Appeals
- 20.78.030 – Filing and Processing of Appeals
- 20.78.040 – Appeal to the Coastal Commission [New]
- 20.78.050 – Judicial Review of City Decision

### 20.78.010 – Purpose

The purpose of this Chapter is to provide procedures for the appeal of determinations and decisions of the Director, Zoning Administrator, Hearing Officer, and Planning Commission, and to establish provisions for appeals to the California Coastal Commission.

### 20.78.020 – Appeals

- A. **Director.** Any Determinations of the Director may be appealed to the Planning Commission.
- B. **Zoning Administrator.** Any Decisions of the Zoning Administrator may be appealed to the Planning Commission.
- C. **Hearing Officer.** Any Decisions of the Hearing Officer may be appealed to the Council.
- D. **Planning Commission.** Any Decisions of the Commission may be appealed to the Council.
- E. **Coastal Development Permits.** Coastal Development Permits approved by the City may be appealed to the Coastal Commission in compliance with Section 20.78.040 (Appeals to the Coastal Commission), below.

### 20.78.030 – Filing and Processing of Appeals

- A. **Eligibility.** Appeals may be initiated by any interested party.
- B. **Timing and form of appeal.** An appeal shall be submitted in writing and shall specifically state the pertinent facts and the basis for the appeal.
  - 1. **General appeals.**
    - a. An appeal shall be filed with the Director or City Clerk, as applicable, within 14 days following the date the action or decision was rendered.
      - (1) ~~Appeals addressed to the Commission shall be filed with the Director on forms provided by Department; and~~

(2) Appeals addressed to the Commission or the Council shall be filed with the City Clerk on forms provided by the Clerk.

b. An appeal shall be accompanied by the filing fee identified in the City's Master Fee Schedule.

2. **Appeal by 2 Coastal Commissioners.** An appeal of a City decision on a Coastal Development Permit by 2 Coastal Commissioners shall be subject to Section 20.78.040, below. PQ: Is this necessary? Why should the City dictate appeal procedures for the CC?

**C. Report, scheduling, noticing, and conduct of hearing.**

1. When an appeal has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority identified in Section 20.78.020 (Appeals), above.

2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Chapter 20.76 (Public Hearings).

3. Conduct of hearing.

a. Except for appeals from a decision of a hearings officer, PQ: This should refer to a specific code section re hearing officer decisions. The public hearing on an appeal shall be conducted "de novo," except as may be otherwise specified in the Zoning Code, in in that the decision that has been appealed has no force or effect as of the date on which the appeal was filed.

b. The review authority is not bound by the decision that has been appealed or limited to the issues raised on appeal.

c. The review authority shall hear testimony of the appellant, the applicant, and any other interested party.

d. The review authority shall consider the same application, plans, and project related materials that were the subject of the original decision, unless otherwise deemed relevant by the review authority.

**D. Decision on appeal.**

1. As provided in this Zoning Code, the review authority may, based upon findings of fact about the particular case:

a. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal. Adopted findings shall identify the reasons for the action on the appeal;

b. Adopt additional conditions of approval that may address issues or concerns other than those that were the basis of the appeal; or

- c. Deny the permit approved by the previous review authority, even where the appellant only requested a change or elimination of one or more conditions of approval.
2. If new or different evidence is presented on appeal, the Commission or Council may refer the matter to the previous review authority for further consideration.
3. In the event of a tie vote by the review authority on an appeal, the decision being appealed shall stand.

#### 20.78.040 – Appeal to the Coastal Commission [New]

A final action taken by the City on a Coastal Development Permit application for appealable development as defined in Subsection A., below, may be appealed to the Coastal Commission in compliance with this Section.

**A. Appealable development - Public Resources Code Section 30603(a).** A decision by the City on a Coastal Development Permit application within the appeal areas depicted on the Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission.

**B. Status of appellant.**

1. **Who may appeal.** An appeal may be filed by an applicant, an aggrieved person, or PQ: any 2-members of the Coastal Commission in compliance with Public Resources Code Section 30625.
2. **Aggrieved person defined.** As provided by Public Resources Code Section 30801, an aggrieved person is anyone who, in person or through an explicitly identified representative, appeared at a public hearing held before the Director, Zoning Administrator, Hearing Officer, Planning Commission, or Council in connection with the decision or appeal of any project, or who by other appropriate means before a hearing, informed the City of the nature of their concerns, unless for good cause was unable to do either.

**C. Exhaustion of City appeals required.** An applicant or other aggrieved person may appeal a City decision on a Coastal Development Permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this Chapter. This limitation shall not apply to any circumstance identified in Code of Regulations Section 13573, including:

1. An appellant was denied the right of appeal under this Chapter because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subdivision 2 of the Code of Regulations; or
2. An appeal of a City decision was filed by any 2-members of the Coastal Commission in compliance with Public Resources Code Section 30625. (Notice of a Coastal Commissioners' appeal shall be transmitted to the City in compliance with Code of Regulations Section 13573(b). The appeal shall be suspended where the City decision has been appealed. If the final action by an appellate body modifies or reverses the previous decision, the Coastal

Commissioners shall be required to file a new appeal of that decision if deemed appropriate and necessary.)

- D. Grounds for appeal to Coastal Commission - Public Resources Code Section 30603.** The grounds for an appeal to the Coastal Commission of a City decision on a Coastal Development Permit application are as follows:
1. For approval of a Coastal Development Permit as described in Subsection A., above, an allegation that the project does not conform to the standards of the City's certified Coastal Land Use Plan or the public access policies of the Coastal Act;
  2. For elimination or modification of a condition(s) of approval for a Coastal Development Permit, an allegation that the condition(s) was not needed or should be adjusted; or
  3. For denial of a development described in Subsection A., above, an allegation that the project conforms to the standards of the City's certified Coastal Land Use Plan and the public access policies of the Coastal Act.
- E. Notice of final action on appeals within the Coastal Zone.** Where an appeal has been filed and decided on a project that is appealable to the Coastal Commission in compliance with this Section, the City shall provide notice of the final action.
- F. Time limit for filing an appeal to the Coastal Commission.** An appeal of a Council decision on an appealable development shall be filed with the Coastal Commission within 10 working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this Chapter and the Coastal Act.
- G. Notice to City of appeal to Coastal Commission.** An appellant shall notify the City when appealing to the Coastal Commission by providing the City a copy of the appeal within 5 days of filing the appeal.

#### **20.78.050 – Judicial Review of City Decision**

A person shall not seek judicial review of a City decision on a permit or other matter in compliance with this Zoning Code until all appeals to the Planning Commission and Council have been first exhausted in compliance with this Chapter and, where applicable, all appeals to the Coastal Commission allowed by the Coastal Act.

**20.80.040 – Commission Recommendation**

The Commission shall recommend approval, approval with modifications, or denial of the amendment to the Council.

**A. Approval or approval with modifications.**

1. If approved, the Commission shall make and file a resolution part of its findings and recommendations with the Council.
2. Failure of the Commission to take action on the proposed amendment shall be deemed to be denial approval of the proposed amendment by the Commission.

**B. Denial by the Commission.** If the proposed amendment is denied, no further action shall be taken, unless appealed to the Council in compliance with Chapter 20.78 (Appeals).

**20.80.050 – Council Decision**

**A. Time of hearing.** The decision of the Council shall be rendered within 60 days after the receipt of a resolution part and recommendation of approval from the Commission or within 60 days after the filing of an appeal of the Commission's action to deny the amendment.

**B. Notice of appeal.** Notice shall be given to the Commission of the appeal, and the Commission shall submit a resolution part of its findings and recommendations to the Council specifying the reasons for the Commission's decision. ~~or the Commission shall be represented at the hearing.~~

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**C. Council's decision.** Upon receipt of the Commission's recommendation, the Council shall conduct a public hearing and either approve, approve in modified form, or deny the proposed amendment.

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**D. Referral.** If the Council proposes to adopt a substantial change to the amendment not previously considered by the Commission, the proposed change shall be first referred to the Commission for its recommendation.

**20.80.060 – Coastal Land Use Plan Amendments [New]**

**A. Amendment procedure.** The certified Coastal Land Use Plan or any portion may be amended only in compliance with the procedures identified in Sections 20.80.020 through 20.80.050, above.

**B. Findings for Coastal Land Use Plan amendments.** An amendment to the certified Coastal Land Use Plan may be approved by the City only if all of the following findings are first made.

1. The proposed amendment is consistent with the General Plan, certified Coastal Land Use Plan, Coastal Act, and any applicable specific plan; and
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

**C. Coastal Act requirements.**

1. **Compliance with Coastal Act required.** An amendment to the certified Coastal Land Use Plan approved by the Council in compliance with this Chapter shall be prepared for submittal, filed with the Coastal Commission, and processed and decided by the Coastal Commission in compliance with the Coastal Act.
2. **Submittal to the Coastal Commission.**
  - a. **Frequency of submittals.** Only ~~four~~ three submittals of proposed Coastal Land Use Plan amendments shall be allowed in any single calendar year. However, there are no limitations on the number of amendments included in each of the three submittals.
  - b. **Submittal.** Submittal of a Coastal Land Use Plan amendment shall be made in compliance with the resolution adopted by the Council and submitted by the City to the Coastal Commission in compliance with Code of Regulations Section 13551.
  - c. **Contents.** The contents of the Coastal Land Use Plan amendment application shall be in compliance with Code of Regulations Section 13552.
3. **Notice of availability.** Notice of the availability of the review draft of the Coastal Land Use Plan amendment shall be made as soon as the draft is available, but at a minimum of at least 6 weeks before final City action on the document in compliance with Code of Regulations Section 13515(c).

**D. Following action by Coastal Commission.**

1. **Action by Coastal Commission.** After certification of a Coastal Land Use Plan amendment, the Coastal Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the City in compliance with Code of Regulations Section 13544.5 (Effective Date of Certification of a Land Use Plan).
2. **Action by the City.** The City shall then:
  - a. Acknowledge receipt of the Coastal Commission's resolution of certification including any terms or modifications which may have been required for final certification;
  - b. Consider the terms and modifications; and
  - c. Take appropriate action regarding the terms and modifications.

**20.80.070 – Prezoning – Annexations**

- A. **Prezoning required.** Before the annexation to the City of any property, the sponsor of such an annexation shall file an application for prezoning of the subject property to be

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## **Chapter 20.84 – Use of Property**

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### **Section:**

20.84.010 – Purpose and Applicability

### **20.84.010 – Purpose and Applicability**

Permits shall not be issued for any structure involved in an approved application until and unless the same shall have become final in compliance with Section 20.68.040 (Effective Date of Permits).

PQ: This section is out of place. Integrate it into the rest of the Code.