



## AGENDA

### General Plan/LCP Implementation Committee

October 8, 2008

3:30 p.m.

City Council Chambers

1. Approve Action Minutes from October 1, 2008

Attachment No. 1

3:30-3:35pm

2. Draft Zoning Code Review

- Review No. 3 – Planning Permit Procedures from Part 5

- Review No. 4 - Residential Standards  
R-1, R-2, RM zones

3:35-6:45pm

3. Items for Future Agenda

6:45- 6:55pm

4. Public Comments on non-agenda items

6:55-7:00pm

5. Adjourn to October 15, 2008

## Attachments

1. Draft Action Minutes for October 1, 2008
  2. Draft Code Review No. 3 - Planning Permit Procedures, Part 5 of Draft Code
  3. Draft Code Review No. 4 - Residential Standards for the R-1, R-2, RM zones
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**Attachment No. 1**

Draft Action Minutes – October 1, 2008



# 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, October 3, 2008**

### Members Present:

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

### Advisory Group Members Present:

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

### Staff Representatives:

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

E = Excused Absence

### Committee Actions

- 1. Agenda Item No. 1** – Approval of minutes of September 24, 2008.

**Action:** Committee approved the draft minutes.

**Vote:** Consensus

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

**Action:** The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding Part Two of the draft code. The Committee provided direction to staff and consultants regarding changes to Part Two of the draft code. Due to time constraints Part Five (Planning Permit Procedures) was not discussed.

**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 6:45 p.m.**

## **Attachment No. 2**

Review No. 3 – Planning Permit Procedures  
from Part 5

**Draft Code Review No. 3  
Planning Permit Procedures  
Part 5 of Draft Code**

**Chapters/sections to be discussed at meeting: All of Part 5 however, staff recommends that the focus of the review and discussion be on:**

- Coastal Development Permits
- Modification Permits
- Planned Development Permits
- Site Development Review.

**1. Coastal Development Permits – Section 20.66.010 (New)  
Existing Code: None**

- Written to be consistent with the Coastal Act and Coastal Regulations
- City will have jurisdiction to issue CDP's when code/IP is certified by the Coastal Commission
- Required of most development in the Coastal Zone if the development is not located in the Categorical Exclusion area or specifically exempted by Section 20.66.020.E.3 (As recommended by the City)
- Allows the Director to issue a de minimus waiver which eliminates the need to obtain a CDP if certain requirements are met (Section 20.66.020.N)
- Has different notice and hearing requirements in compliance with the Coastal Act
- CDP decisions may be appealed to the Coastal Commission
- Review Authority: Planning Commission

**2. Emergency Permits – Section 20.66.030 (New)  
Existing Code: None**

- Provides procedures for the issuance of Emergency Coastal Development Permits
- Generally, a project may be eligible if a situation requires that action be taken more quickly than the time typically taken to process a CDP
- Requires that a CDP be applied for and obtained within 90 days of issuance of the Emergency Permit.
- Review Authority: Planning Director

**3. Reasonable Accommodations – Section 20.66.040  
Existing Code: Chapter 20.98**

- Written to be consistent with State and Federal law
- Provides a course for relief from compliance with code requirements when it can be demonstrated that a deviation is necessary to provide an individual with a disability equal opportunity to use and enjoy a dwelling
- Review Authority: Hearing Office
- Written to be consistent with reasonable Accommodation regulations adopted as part of Group Home Ordinance

**4. Modification Permits – Section 20.66.050 (Revised)**  
**Existing Code: Chapter 20.93**

- Deviation from standards limited to a maximum of 10%
- Current code does not have a deviation limit
- Findings revised but remain similar to existing code
- Review Authority: Zoning Administrator

**5. Planned Development Permits – Section 20.66.060 (New)**  
**Existing Code: None**

- Provides a comprehensive review process for a proposed project where multiple deviations are requested and possibly desirable instead of requiring multiple requests for modification permits, relief from parking requirements, etc.
- Allows deviations from all development standards except height and FAR or residential density, or commercial intensity or use.
- Useful with re-development and in-fill projects
- Requires efficient site planning, efficient use of land and enhanced amenities
- Minimum site area - 1 acre
- Review Authority: Planning Commission

**6. Site Development Reviews – Section 20.66.070 (New)**  
**Existing Code: None**

- Mandatory for review of development projects that exceed thresholds
- Thresholds and review authority outlined in Table 5-2 on page 5-41
- SDR includes review for compliance with all zoning code standards in addition to General Plan polices and any other City regulations or polices such as design criteria
- Is not a tool to request relief from development standards
- Not a substitute for CUP or MUP review

- Review Authority: Zoning Administrator or Planning commission

**7. Limited Term Permits – Section 20.66.080 (Revised)**  
**Existing Code: Section 20.60.015**

- Regulates requests for limited duration land uses
- 12 month limitation with a maximum of one 12 month extension
- Examples of uses include: construction yards, off-site parking for marine uses, Christmas tree lots, work trailers, mobile labs, etc.
- No public hearing for uses not exceeding 90 days
- Review Authority: Zoning Administrator

**8. Conditional Use Permits – Section 20.66.090 (Revised)**  
**Existing Code: Chapter 20.91**

- Name change from Use Permit (UP to Conditional Use Permit (CUP)
- Findings revised
- Review Authority: Planning Commission

**9. Minor Use Permits – Section 20.66.090 (Revised)**  
**Existing Code: Chapter 20.91 (Use Permit issued by PD)**

- Replaces current Use Permit issued by the Planning Director (PD/U)
- Public hearing now required for each application.
- Findings revised
- Review Authority: Zoning Administrator

**10. Conditional Use Permits in Residential Zones – Section 20.66.095**  
**Existing Code: Chapter 20.91A**

- Includes regulations from recently adopted Group Homes Ordinance for CUP's in residential districts.
- Review Authority: Hearing Officer

**11. Variances – Section 20.66.100 (Revised)**  
**Existing Code: Chapter 20.91**

- Findings revised
- Clearly indicates that past Variance approvals do not create precedent
- Review Authority: Planning Commission

**12. Zoning Clearance – Section 20.66.110 (New)**  
**Existing Code: None**

- Procedure to verify use or structure complies with applicable code provisions
- Ministerial – used when no discretionary action is required by the code
- Examples include Planning Department approval of building permits and issuance of zoning compliance letters
- Review Authority: Planning Director

**13. Specific Plans (Chapter 20.72) (New)**  
**Existing Code: Chapter 20.40**

- Complete re-write of SP regulations
- New regulations more consistent with how SP's are used statewide
- Review Authority: City Council
- While not covered under this Section, all existing SP's except Santa Ana Heights replaced by traditional zoning

## **Attachment No. 3**

Review No. 4 – Residential Standards R-1, R-2,  
RM Zones

**Draft Code Review Topic No. 4**  
**Residential Standards**  
**R-1, R-2, RM Zones**

**Chapters/Sections to be discussed at meeting: Residential Standards found within Parts 2, 3 and 4 with a focus on the following standards and the relevant existing and new chapters.**

**1. Setback maps**

- a. Existing Code: Part VII Districting maps
- b. New Code: new setback maps retain setback information from old maps, sample in Part 8

**2. Setbacks**

- a. Existing Code: Section 20.10.030
- b. New Code: Section 20.18.030 Table 2-2 and Table 2-3 pgs. 2-9 thru 2-11 and pgs. 2-12 thru 2-14 – new rear setback for Balboa Island and new side setback for Buck Gully along with new setbacks for Bluffs and Canyons

**3. Height**

- a. Existing Code: Sections 20.65 and 20.10.030 – measured to midpoint of sloping roof
- b. New Code: Sections 20.18.030 Table 2-2 and Table 2-3 pg. 2-10 and pg. 2-13, 20.30.050 pg. 3-13 – measured to the roof peak or to the top of a flat roof, new setback plane requirement regulates height in R-1 and R-2 (20.30.050 subsection A. 4.)

**4. Grade**

- a. Existing Code: within Ch. 20.65 – “natural grade”
- b. New Code: Section 20.30.040 pg. 3-10 – average grade for most lots

**5. Floor Area Limit**

- a. Existing Code: Sections 20.10.030 subsection (M) and 20.10.040 subsection (B)
- b. New Code: no floor area limit or replaced by lot coverage Sections 20.18.030 Table 2-2 and Table 2-3 and Table 2-3 (4) for RM which maintains floor area limit pgs. 2-10 2-13 2-14, and 20.60.190 subsection A. pg. 4-30

**6. Outdoor living area/Open Space**

- a. Existing Code: Sections 20.10.030 subsection (O), 20.10.040 subsection (C) – open space required for R-2 and MFR and R-1, R-2 and MFR in CDM West Newport and Balboa Peninsula

- b. New Code: Sections 20.18.030 Table 2-2 and 2-3 pgs. 2-10 and 2-13, 20.60.190 subsection B. pg. 4-30 – open space required for all R-1, R-2 and RM

#### **7. Alley Setbacks**

- a. Existing Code: Sections 20.10.030 subsection (I) and 20.60.030 subsection I. – provisions for alley setbacks based on width of alley and provision for encroachment of second floor for lot depths not exceeding 85 ft.
- b. New Code: Sections 20.30.090 subsection D.13. pg. 3-29, 20.18.030 Tables 2-2 and 2-3 pgs. 2-10 and 2-13 – provisions carried over from existing code with the addition of a minimum and maximum setback for garages adjacent to alleys

#### **8. Outdoor Lighting**

- a. Existing Code: Sections 20.60.050 provision for sports courts swimming pools and similar uses
- b. New Code: Section 20.30.060 subsections B.-E. pg. 3-18 – carries over existing provision with the addition of limiting light beams from crossing property lines and parking lot light standards applying to all uses of property

#### **9. Parking Requirements and Standards**

- a. Existing Code: Sections 20.66.020, 20.66.030, 20.66.040
- b. New Code: Sections 20.52.030 pg. 3-116, 20.52.040 pg. 3-117 Table 3-11 Residential Uses, 20.52.050 subsection B.1. pg. 3-121, 20.52.070 pg. 3-127 and 20.52.100 pg. 3-131 – majority carried over with some adjustments required covered parking needs to be in garage and added requirement for senior housing and live/work units

#### **10. Fences, Hedges, and Walls**

- a. Existing Code: 20.60 – limits heights within setbacks
- b. New Code: Section 20.30.030 pg. 3-7 – height limit increased for front yard added sections for decorative features, pool fencing, how to measure height, and prohibited materials

#### **11. Accessory Structures**

- a. Existing Code Ch. 20.60
- b. New Code: Sections 20.18.020 Table 2-1 pg. 2-8 and 20.30.090 Subsections A.1.d. pg. 3-23, D.2. pg. 3-26, D.7 pg. 3-28, D.8 pg. 3-28 – added provisions for garden structures, solar devices, decks, fireplaces, bbqs, foundations, basement walls and structural supports

Commissioner Hawkins' Comments on Part 5 Planning Permit Procedures  
Policy Questions

1. pg. 5-6 Section 20.64.060 Initial Application Review subsection A.2. (Throughout substitute "Director" for Department)
2. pg. 5-7 Section 20.64.070 Project Evaluation and Staff Reports subsection A. (should be called Project Evaluation instead of Department Evaluation? This Chapter appears to use the Director and the Department interchangeably: this should reference the Director)
3. pg. 5-12 Section 20.66.020 Coastal Development Permits subsection E.3.b. (Separate the exceptions to the exclusion so that you can determine what is excluded and what is not)
4. pg. 5-17 Section 20.66.020 Coastal Development Permits subsection G.2.a. (how is a home occupation a fixture?)
5. pg. 5-18 Section 20.66.020 subsection G.3.a.(1) (Categorical exclusions for change in use?)
6. pg. 5-19 Section 20.66.020 Coastal Development Permits subsection H.2.a. proposals pending at time of Coastal Land Use Plan certification (how does the City dictate this?)
7. pg. 5-24 Section 20.66.020 Coastal Development Permits subsection N. (Consider combining the waiver sections; this and minor coastal development projects seem to be the same)
8. pg. 5-26 Section 20.66.030 Emergency Permits subsection B. (This is awkward: the definition of person includes businesses and public agencies; the better practice is to use words commonly i.e. use the word business or business entity or local government or public agency)
9. pg. 5-29 Section 20.66.040 Reasonable Accommodations subsection B.2. (some discretionary permits go to the Coastal Commission, can they make such a request?)
10. pg. 5-35 Section 20.66.050 Modification Permits subsection E. 2. (Why all the rest i.e. the structure and use?)
11. pg. 5-36 Section 20.66.050 Modification Permits subsection E. (What about all of the other findings required under the current Code? This should be revised to incorporate the earlier 2004 revision to the Code.)

12. pg. 5-37 Section 20.66.060 Planned Development Permits subsection B.4.a. (Where are the standards for such adjustment? Are they in the specifics of the standards? If so, do we need this section? If not, then shouldn't we have standards by which to apply this adjustment?)
13. pg. 5-41 Section 20.66.070 Site Development Permits subsection B. Table 5-2 Note (2) (do we want the PC to refer anything to the CC?)
14. pg. 5-43 Section 20.66.070 Site Development Permits subsection E.1. (This seems odd: given that there is an appeal right from such decisions, how does someone appeal something that is done without the benefit of a public hearing?)
15. pg. 5-46 Section 20.66.080 Limited Term Permits subsection E.5.a. (give director authority?)
16. pg. 5-60 and 5-61 Section 20.68.060 Performance Guarantees subsection C.3. (substantial ? Why the irreparable harm standard? this seems extreme. Is this penalty lawful? If an applicant posts a \$20 million bond and defaults but only on a portion of the work, can we take the entire thing?)
17. pg. 5-63 and 5-64 Section 20.68.100 Covenants subsection E. (The burden/benefit language is very broad: this section appears to refer to the property affected by the covenant as benefited and burdened by the covenant. This is probably correct. If so, then the language should simply say the property which is the subject of the approval or similar language.)

## Responses to Barry Eaton's October 7<sup>th</sup> E-mail

Sharon, et al,

I have now read all 74 pages of this part of the proposed Zoning Code; and, as I'm sure you anticipated, I do have some questions. My guess is that at least questions 51), 55), 57), 61), 63) through 67), 69) through 72) and 76) rise to the level of policy questions, to be discussed by the Committee as a whole, but you may feel that these are too many, or that there are others that do, as well. For clarity, I am continuing the numbering of those questions from my first 2 emails on the proposed Code; and I have separated them by Chapter. Again, I apologize for getting them to you so late (for me). I think I am getting slower, as I get old and decrepit. And, I again suspect that I will not be able to get to all the various parts of Parts 2, 3 and 4 of the proposed Code that were assigned as backup material if we got through more than Part 5 in this one week interval.

### Chapter 20.64 - Permit Filing and Processing

50) In Table 5-1, Site Development Review is listed as "Decision" under both Zoning Administrator and Planning Commission. Is this correct? **Yes, the ultimate review authority is identified in Table 5-2, located on page 5-41, based on specified development thresholds.**

51) In proposed Section 20.64.070.B, the draft states that "The Department shall provide a written recommendation to the applicable authority....". Does this mean that the staff would have to provide a written staff report to even the Zoning Administrator and/or the Planning Director on items subject to their approval? Won't this require a lot more paper work than currently? **Yes for Zoning Administrator decisions, but a more standardized "check-off" sheet is anticipated for administrative applications decided by the Zoning Administrator. No staff report would be required for the Director's determinations.**

52) In proposed Section 20.64.070.C, the draft states that "...requires a set of findings to be true...". Is this proper and/or artful legal language? Does it imply a set of false findings are possible? Couldn't it be better worded? **Yes, the sentence could be reworded to read as follows: Whenever this Zoning Code requires a set of findings to be made before granting approval of an application by the applicable review authority, it shall be the responsibility of the Department to present all relevant facts to support the findings.**

### Chapter 20. 66 - Permit Review Procedures

53) In proposed Section 20.66.020.B.1, there is a general exception to required Coastal Development Permit for "...a facility subject to Public Resources Code Section 25500...". What kind of facility would this apply to? Would there be a harm in stating what that is, in the proposed Code? **These facilities are electric transmission lines or thermal powerplants, or both electric transmission lines and thermal powerplants, regulated according to the provisions of Division 15 of the PRC. These are electrical powerplants of 50 megawatts or larger and per 25550, alteration of an existing one that increases its output by 50 megawatts or increases its voltage. Section will be revised as follows:**

**1. Except as otherwise provided in this Section, persons wishing to perform or undertake a coastal development project in the City's Coastal Zone, other than a thermal powerplant or electrical transmission line regulated in accordance with Division 15 of the Public Resources Code and subject to Public Resources Code Section 25500, shall obtain a Coastal Development Permit in compliance with this Section.**

54) In proposed Section 20.66.020.E.3.a.-d, there is a list of exceptions to Coastal Act Exemptions that goes on for pages and pages (specifically, 4 full single spaced pages). The intro to this Section states that these are listed pursuant to Public Resources Code Section 30610. Are all these exceptions listed in and/or required by Section 30610, or have some been added thereto in this draft Code? **The short answer is YES. For the most part all of the exemptions identified in the subparagraphs identified above (20.66.020.E.3.a.-d) are listed in Section 30610, along with extensive specifications and clarifications which originated in IP Section 925 (Exemptions).**

55) In proposed Section 20.66.020.G.2.b.(3), it states that 2 parking spaces shall be required for all dwelling units in the Coastal Zone. Does this not conflict with the proposed Section in the Density Bonus provisions, which mandates that certain affordable units qualifying for the Density Bonus provisions must be permitted less than 2 spaces per unit? **This provision is a general standard which is adjustable by virtue of the Density Bonus and incentive program.**

56) In proposed Section 20.66.020.J.4, it states that an Approval In Concept sent to the Coastal Commission by staff shall include that the proposed project complies with all City requirements "...including any applicable discretionary actions,...". Does this mean that such an approval in concept cannot be sent to the Coastal Commission until any required discretionary hearings have been completed? **Yes, all discretionary hearing/approvals are required before an Approval in Concept is sent to the Coastal Commission.**

57) In proposed Section 20.66.020.N. the proposed Code states that the Director may waive the required Coastal Development Permit for "De Minimus development". The section goes on to state the criteria for such a waiver, but there appears to be no maximum size criteria. Does this mean that the Director could grant such a waiver for a project of 25 acres, if it met the criteria of this proposed Section? Shouldn't there be a maximum size for a "de minimus" development? Doesn't that phrase refer to a non consequential development? **While the conclusion is correct, could a 25-acre coastal development project in Newport Beach ever meet all of the criteria listed in Subparagraph N. 2. (Determination of applicability)? We believe that the criteria are enough protection against abuse by a future Director. Additionally, Subsection O. (Report to the Planning Commission and Council) offers additional protection plus the opportunity for appeal.**

58) Proposed Section 20.66.030.A. states that "emergency" is defined in Part 7 (Definitions). There is no such definition in Part 7. Was this intended to refer to "Emergency Work", which is defined in Part 7 (page 7-23)? **Yes.**

59) Proposed Section 20.66.040 appears to replicate the City's recently adopted provisions for "Reasonable Accommodations". Are there any changes from the recently adopted Ordinance? If so, what are they? **No material changes; simply formatting and stylization.**

60) Proposed Section 20.66.040.B.1 refers to the Hearing Officer, as defined in "Article 8 (Glossary)". There is no such "Article". Was this meant to refer to the definition in Part 7 (on page 7-28)? **Yes, the sentence will be revised to read as follows: "...as defined in Part 7 (Definitions)..."**

61) Proposed Sections 20.66.040.B.2. and 20.66.040.C.3. appear to me to conflict with each other. B.2. states that the Hearing Officer shall hear consolidated applications; whereas C.3. states that the processing procedures of the concomitant discretionary permit shall govern. The discretionary permit could be one that the Planning Director or the Zoning Administrator or the Planning Commission would be considering. Do not these provisions conflict? Are they both in the recently adopted Ordinance? **Yes, both subparagraphs are taken verbatim from the Group Home Ordinance amendment.**

62) Proposed Section 20.66.040.C.2.b. states that there shall be no fee required for a Reasonable Accommodation. Really? So all the costs of a professional Hearing Officer would have to be paid for by the City in every such case? Is this in the recently adopted Ordinance? **Yes, the fee exemption is taken verbatim from the Group Home Ordinance amendment.**

63) Proposed section 20.66.050.B.2.a. provides for 2 Modifications that cannot even be applied for (alley setbacks, and bluff and canyon setbacks). Is this new? What is the thinking behind the prohibition of even being able to apply for such modifications? Could an applicant apply for a Variance or a Reasonable Accommodation for these things? **Yes, they are both new. They were prohibited because of the problems associated with each encroachment. Yes, both a Variance and a Reasonable Accommodation could be requested for these things.**

64) Proposed Section 20.66.050.E. provides new criteria for the approval of Modifications, and appears to delete the existing requirement (in Section 20.93.030.A of the existing Code) that Modification approvals require the showing that "... the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code." This language was added to the existing code a couple of years ago, after long public hearings at both the Planning Commission and City Council, and after a detailed staff study of the difference it would make in the wholesale granting of Modifications that had been the City's practice up until then. Why is this proposed to be deleted now, as part of a huge overhauling of the Code, where it will not be noticed?

**EXISTING:** The granting of the application is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

**PROPOSED:** The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.

**We believe that we refined the finding so that it would not closely resemble the mandatory Variance finding from State law.**

65) Proposed Section 20.66.060.B.4.a. introduces a new procedure, wherein the Planning Commission can "...adjust...all applicable development standards identified in this Zoning Code..." (with a couple of exceptions). Really? A procedure to waiver (grant a variance to) almost any standard in the Zoning Code, without even the findings required for a Modification, let alone a Variance? Is this even legal, let alone desirable? Isn't this a perfect opportunity to have total flexibility for favored developers without the justification normally required? **The intent is to provide a discretionary procedure to address all of the site plan and design issues associated with a complex development project (e.g., mixed use project, infill project, etc.). It also relies heavily on the quid-pro-quo of added amenities.**

66) Further, the proposed findings for this all purpose variance procedure, in proposed Section 20.66.060.F, appear to me to be very vague and ambiguous. What do things like "higher quality",

"greater excellence of design", "enhanced amenities", and "etc." mean; and how will the PC determine whether they have been realized to the point of granting wholesale Variances to the Code? **Restraint and experience will provide the tools needed by the PC to use this procedure in an effective manner. Once again, the quid-pro-quo of added amenities should be the guiding tool.**

67) Proposed Section 20.66.070 proposes to add a new Site Development Review procedure to the processing of larger projects. Not all Committee members may agree with me, but I think this is a good addition to the Code. Almost every City in Orange County (other than Newport Beach) have such procedures. **We agree.**

68) However, Table 5 appears to have a "hole" in how such procedures are applied to Mixed Use developments. Smaller such projects (less than 5 units and less than 10,000 square feet of non residential) can be approved by the Zoning Administrator. Larger such projects (5 or more units AND more than 10,000 square feet of non residential) require approval by the Planning Commission. What about the in-between projects - those of 5 or more units and less than 10,000 square feet of non residential, or 4 or less units and more than 10,000 square feet? These 2 categories don't seem to be covered in the Table at all. Which process applies to them? See changes below.

**TABLE 5-2  
REVIEW AUTHORITY FOR SITE DEVELOPMENT REVIEW**

Type of Construction Activity	Role of Review Authority (1) (2)	
	Zoning Administrator (Minor Review)	Planning Commission (Major Review)
Residential construction: 5 to 20 dwelling units, without a tentative or parcel map.	Decision	Appeal
Residential construction: 5 or more dwelling units with a tentative or parcel map and 21 or more dwelling units, without a tentative or parcel map.		Decision
Mixed-Use projects: 1 to 4 dwelling units and nonresidential construction of up to a maximum of 9,999 square feet of gross floor area.	Decision	Appeal
Mixed-Use projects: 5 or more dwelling units and/or nonresidential construction of 10,000 square feet or more of gross floor area.		Decision
Nonresidential construction: 10,000 to 19,999 square feet of gross floor area.	Decision	Appeal
Nonresidential construction: 20,000 square feet or more of gross floor area.		Decision

69) Further, Section 20.66.070.D. doesn't seem to cover the possibility of a Planned Development Permit and a Site Development Review both applying to the same project; and, in that case, which criteria applies in that case. Was this intentional? Was it intended that that could not happen? If so, shouldn't that be clearly stated? **We will clearly state that an application for a Planned Development Permit negates the need for and takes the place of a Site Development Review.**

70) Further, proposed Section 20.66.070.E.1. appears to state that these shall be no notice and no hearing on those applications approved by the Zoning Administrator. Where there is a discretionary Permit being granted by the City, shouldn't there be some kind of notice? At least to the adjacent owners, or perhaps within a 100 foot radius, as provided for in Section 20.76.030 of the proposed Code? **Section 20.76.030 (Notice of Public Hearing for Non-Appealable Coastal Development) is for coastal development projects only. The City may have administrative discretionary**

applications to be considered without public notice or hearing; this becomes a policy matter. Up to and including 4 units can be approved with only a Zoning Clearance, but 5 or more trigger a SDR. The question is: When or if to require public notice?

71) Proposed Section 20.66.080 proposes another new kind of permit: a Limited Term Permit. This seems reasonable to me, except that sub section D.1. would permit an off site Contractor's Construction Yard in any zone for up to 90 days, without any notice whatever to the adjacent property owners. An off site Contractor's yard in the R-1 zone for 90 days with no notice, even if there were occupied homes directly adjacent thereto? That doesn't seem right to me..... The City may have administrative discretionary applications considered without public notice or hearing; this is a policy matter.

72) Proposed Section 20.66.090 recounts the applicability of Conditional Use Permits and Minor Use permits; but limits their applicability to the non residential zones. What about MUPs in the Residential zones? The Land Use table in Part 2 lists a significant number of such MUP uses, but neither this Section nor the next one (detailing CUPs in the Residential zones, which require a Hearing Officer approval) states how such permits are to be processed. Is that not necessary to be provided?

**Proposed Subparagraph 20.66.090 C. reads as follows:**

- C. Review authority and related procedures.**
  - 1. Conditional Use Permits. Conditional Use Permits for nonresidential uses shall be approved, conditionally approved, or denied by the Commission.**
  - 2. Minor Use Permits.**
    - a. Minor Use Permits for both residential and nonresidential uses shall be approved, conditionally approved, or denied by the Zoning Administrator.**
    - b. The Zoning Administrator may instead choose to refer any Minor Use Permit application to the Commission for consideration and final action.**

**To help clarify this issue, we should revise Subparagraph 20.66.090 B. to read as follows:**

**B. Applicability. A Conditional Use Permit is required to authorize proposed nonresidential uses located in nonresidential zoning districts and a Minor Use Permit is required to authorize proposed residential and nonresidential uses located in residential and nonresidential zoning districts identified by Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards) as being allowable in the applicable zoning district subject to the approval of a Conditional Use Permit or Minor Use Permit. For Conditional Use Permits for uses located in residential zoning districts see Section 20.66.095, below.**

73) It appears that the proposed findings for CUPs and MUPs (in proposed Section 20.66.090.F. of the proposed Code) are essentially an expanded and more complete listing of the existing Use Permit findings. Is this correct? **Yes, essentially the same.**

74) Proposed Section 20.66.095 appears to restate the recently adopted Hearing Officer procedure for CUPs in the Residential Zones. Is this correct? Are there any significant differences now proposed? If so, what are they? **Yes, the language was taken almost verbatim (except for**

minor formatting and stylization refinements) from the Group Home Ordinance amendment with no significant changes.

75) What about MUPs in the Residential zones? (See question 72 above.) **MUP's are allowed in residential zones in compliance with Table 2-1 (Allowed Uses and Permit Requirements) and Section 20.66.090. (See answers to question 72, above.)**

76) Both sub sections 20.66.095.E. and I. refer to these procedures as assumed to apply to areas provided for as residential in Planned Community Districts and Specific Plan Districts; but sub-section B., which states the proposed Section's applicability, fails to mention these 2 situations at all. Is this the case in the recently adopted Ordinance? Regardless, shouldn't these 2 situations be covered in sub-section B.?

**Yes, Subsection B. (Applicability) should be revised to read as follows:**

**B. Applicability. A Conditional Use Permit is required to authorize proposed uses identified by Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards) as being allowable in the applicable residential zoning district or in an area where residential uses are provided for in Planned Community Districts or specific plan districts subject to the approval of a Conditional Use Permit.**

77) It appears that the required findings for Variances (in proposed Section 20.66.100.F.) are restated and slightly expanded from the existing required findings. Is this correct? **Yes, essentially the same.**

78) Chapter 20.68 - Permit Implementation, Time Limits, and Extensions

This Chapter is not mentioned in the staff summary at all. Why not? Are there any significant changes proposed from the existing Code, other than the addition of Section 20.68.100, dealing with the provision of Covenants in favor of the City? **No substantial/significant changes; more consolidation (aka elimination of a great deal of repetition), formatting, and stylization.**

79) Chapter 20.70 - Planned Community District Procedures. This Chapter is also not mentioned at all in the staff summary. Why not? Are there any significant changes proposed from the existing Code? **No substantial/significant changes; more consolidation, formatting, and stylization.**

80) Chapter 20.72 - Specific Plan Procedures. The staff summary for this Chapter indicates that these regulations would be more consistent with "...how SP's are used statewide." I am aware that the Government Code has a wide ranging requirement for what must be contained in a Specific Plan. Does this apply to Charter Cities? Regardless, are the provisions of proposed Section 20.72.060.B. now consistent with the Government Code requirements? If not, how do they still differ therefrom? **Yes, they are consistent with applicable Government Code requirements.**

Thank you for your consideration of these questions. As you can see, I got tired once again toward the end of my review, and probably missed some questions that I should have asked. I look forward to your responses thereto (and your responses to last week's non policy questions as well, incidentally); and whether you agree with those herein that I have assumed are policy questions.

Barry

# Part 5

## Planning Permit Procedures

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## Chapter 20.64 – Permit Application Filing and Processing [New]

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### Section:

- 20.64.010 – Purpose
- 20.64.020 – Authority for Land Use and Zoning Decisions
- 20.64.030 – Multiple Permit Applications
- 20.64.040 – Application Preparation and Filing
- 20.64.050 – Application Fees
- 20.64.060 – Initial Application Review
- 20.64.070 – Project Evaluation and Staff Reports
- 20.64.080 – Environmental Review

### 20.64.010 – Purpose

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

### 20.64.020 – Authority for Land Use and Zoning Decisions

Table 5-1 (Review Authority), ~~below,~~ identifies the review authority responsible for approving, reviewing and making decisions on each type of application required by this Zoning Code.

### 20.64.030 – Multiple Permit Applications

- A. **Concurrent filing.** Any applicant for a project requiring more than one permit application (e.g., Conditional Use Permit, Tentative Map, ~~etc.~~ Minor Use Permit or other such permits), shall file all related applications concurrently, ~~together with all appropriate~~ application fees required by Section 20.64.050 (Application Fees).
- B. **Concurrent processing.** Multiple applications for the same project shall be processed concurrently, and shall be reviewed, and modified, approved or denied by the highest review authority designated by this Zoning Code for any of the applications.

**TABLE 5-1  
REVIEW AUTHORITY**

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)				
		Director	Zoning Administrator	Hearing Officer	Commission	Council (2)
<b>Administrative and Legislative</b>						
Interpretations	20.12.020	Determination (3)			Appeal	Appeal
Coastal Land Use Plan Amendments	20.80				Recommend	Decision (4)
Zoning Code Amendments	20.80				Recommend	Decision
Zoning Map Amendments	20.80				Recommend	Decision
<b>Permits and Approvals</b>						
Coastal Development Permits	20.66.020				Decision	Appeal (4)?
Conditional Use Permits	20.66.090				Decision	Appeal
Conditional Use Permits -- Residential Zones Only	20.66.090			Decision	Decision	Appeal
Emergency Permits	20.66.030	Determination (3)				
Limited Term Permits	20.66.080		Decision (3)		Appeal	Appeal
Minor Use Permits	20.66.090		Decision (3)		Appeal	Appeal
Modification Permits	20.66.050		Decision (3)		Appeal	Appeal
Planned Development Permits	20.66.060				Decision	Appeal
Reasonable Accommodations	20.66.040			Decision	Appeal	Appeal
Sign Permits	20.54	Determination (3)			Appeal	Appeal
Site Development Review	20.66.070		Decision (3)		Decision	Appeal
Variances	20.66.100				Decision	Appeal
Zoning Clearances	20.66.110	Determination (3)			Appeal	Appeal

## Notes:

- (1) "Recommend" means that the Planning Commission or other review authority makes a recommendation to the Council, a higher decision making body; "Determination" and "Decision" means that the review authority makes the final determination or decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of a previous decision making body, in compliance with Chapter 20.78 (Appeals).
- (2) The Council is the final review authority for all applications in the City.
- (3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.
- (4) On Coastal Land Use Plan Amendments, the Californian Coastal Commission is the final decision making authority. See Chapter 20.80 (Amendments).

### 20.64.040 – Application Preparation and Filing

#### A. Pre-application conference.

1. Any prospective applicant is strongly encouraged to request a pre-application conference with the Department before completing and filing a permit application.

2. The purpose of this pre-application conference is: ~~to generally:~~
- a. ~~To~~ inform the applicant of City requirements as they apply to the proposed project;
  - b. ~~To state~~ Review the City's review process, possible project alternatives or revisions; and
  - c. ~~To~~ identify information and materials the City will require with the application, and any necessary technical studies and information relating to the environmental review of the project.
3. Neither the pre-application review nor the provision of information and/or pertinent policies shall be construed as either a recommendation for approval or denial of the permit application by any City staff. Failure by City staff to identify any ~~any~~ required studies or any ~~any~~ applicable requirements shall not constitute a waiver of those studies or requirements.
- B. Application contents.** Each permit application required by this Zoning Code shall be filed with the Department on the appropriate ~~a~~ City application form, together with all required fees and/or deposits, and all other information and materials specified by the Director for the specific type of application.
- C. Eligibility for filing.** An application may only be filed by the owner of the subject property or authorized agent of the owner with the written consent of the property owner. The application shall be signed by the owner of record or by an authorized agent, if written authorization from the owner of record is filed concurrently with the application.
- D. Rejection of application.** If the Director determines that an application cannot lawfully be approved by the City, the Director shall not accept the application for processing.

#### 20.64.050 – Application Fees

- A. Fee schedule.** ~~The City's Master Fee Schedule~~ council shall establish a schedule of fees for the processing of the applications required by this Zoning Code, ~~hereafter referred to as the City's Master Fee Schedule.~~
- B. Timing of payment.** Applications shall not be deemed complete, and processing shall not commence on any such application, until all required fees or deposits have been paid. Failure to timely pay supplemental requests for payment of required fees and/or deposits shall be a basis for suspension of processing or issuance of any permit.
- C. Refunds and withdrawals.** ~~Application fees cover City costs for public hearings, mailings, staff time and the other activities involved in processing applications. Therefore, n~~ No refund for an application which is denied due to a denial shall be allowed. In the case of a withdrawal by the Applicant, the Director shall have the discretion to authorize a partial refund based upon the pro-rated costs to date and the status of the application at the time of withdrawal.

**20.64.060 – Initial Application Review**

- A. Review for completeness.** The Department shall review each application for completeness and accuracy before it is accepted as being complete. The determination of completeness shall be based on the City's applicable list of required application contents and any additional written instructions provided to the applicant in any pre-application conference, and/or during the initial application review period.
- 1. Notification of applicant or authorized agent.** Within 30 calendar days of application filing, the applicant or authorized agent shall be informed in writing, either that the application is complete and has been accepted for processing, or that the application is incomplete and that additional specified information shall be provided before the application is deemed complete.
  - 2. Appeal of determination.** Where the Director ~~department~~ (PQ: throughout substitute "Director" for the "Department") has determined that an application is incomplete, and the applicant believes that the application is complete and/or that any the additional information requested by the Director is not required, the applicant may appeal the determination to the appropriate review authority in compliance with Chapter 20.78 (Appeals).
  - 3. Submittal of additional information.**
    - a. When the Director determines that an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness shall occur.
    - b. The time available to an applicant for submittal of additional information is limited by Subparagraph A. 4., below.
    - c. The additional specified information shall be submitted in writing.
    - d. The Director's ~~department~~ review of any the resubmitted information resubmitted by the Applicant shall be accomplished in compliance with Subparagraph A. 1., above, along with another 30-day period of review for completeness.
  - 4. Expiration of application.**
    - a. If an applicant fails to provide any the additional information requested by the Director specified in the letter within 60 days following the date the application was deemed incomplete, the application shall be deemed withdrawn without any further action by the City.
    - b. After the expiration of an application, future City consideration shall require the submittal of a new, complete application and associated filing fees.

**5. Submittal of additional information.**

- a. During the course of the review process, the review authority may require the Applicant to submit the submittal of additional information or revised plans.
- b. The Director shall notify the applicant shall be notified in writing of any revisions or additional information required and shall submit the requested information to the Director department within 30 days after the date of the notice or within the period of time designated by the review authority.
- c. Failure to submit the required information within the 30-day period or within the period of time designated by the review authority may be cause for denial.

**6. Additional Environmental information.** After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with the California Environmental Quality Act (CEQA), the City's CEQA guidelines, and Section 20.64.080 (Environmental Review), below.

- B. Determination of Coastal Development Permit notice and hearing procedures.** The Director shall make a determination in compliance with Subsection 20.66.020.E. (Projects exempt from Coastal Development Permit requirements) as to whether or not the development is categorically excluded for the purposes of notice, hearing, and appeal procedures, at the same time that completeness review occurs in compliance with Subsection A., above.
- C. Referral of application.** At the discretion of the Director, or where otherwise required by this Zoning Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project for their review and comment and/or input.

**20.64.070 – Project Evaluation and Staff Reports**

- A. Project Department evaluation.** The Director (This Chapter appears to use the Director and the Department interchangeably: this should reference the Director)department shall review all applications to determine whether they comply and are consistent with the provisions of this Zoning Code, the General Plan, the certified Coastal Land Use Plan, and other applicable provisions identified in Section 20.10.040 (Applicability of Zoning Code).
- B. SDepartment staff report.** The Director department shall provide a written recommendation to the applicable review authority recommending that the application should be approved, conditionally approved, or denied.

- C. **Staff report to include findings.** Whenever this Zoning Code requires a set of findings to be true before granting approval of an application by the applicable review authority, it shall be the responsibility of the Department to present all relevant facts to support the findings.
- D. **Report distribution.** Each staff report shall be furnished to the applicant at the same time as it is provided to the review authority before the review authority's action on the application.

#### 20.64.080 – Environmental Review

- A. **CEQA review.** After acceptance of a complete application, the project shall be reviewed in compliance with the California Environmental Quality Act (CEQA) to determine whether:
1. The project is not a project as defined by CEQA;
  2. The project is exempt from the requirements of CEQA;
  3. A Negative Declaration may be issued;
  4. A Mitigated Negative Declaration may be issued; or
  5. An Environmental Impact Report (EIR) shall be required.
- B. **Compliance with CEQA.** These determinations and, where required, the preparation of appropriate environmental documents, shall be in compliance with CEQA and appropriate Council policies.

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## Chapter 20.66 – Permit Review Procedures

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### Sections:

- 20.66.010 – Purpose
- 20.66.020 – Coastal Development Permits [New]
- 20.66.030 – Emergency Permits [New]
- 20.66.040 – Reasonable Accommodations
- 20.66.050 – Modification Permits [REVISED]
- 20.66.060 – Planned Development Permits [New]
- 20.66.070 – Site Development Reviews [New]
- 20.66.080 – Limited Term Permits [New]
- 20.66.090 – Conditional Use Permits and Minor Use Permits [New]
- 20.66.100 – Variances [REVISED]
- 20.66.110 – Zoning Clearances

### 20.66.010 – Purpose

- A. **Permit review procedures.** This Chapter provides procedures for the review and approval or denial of permit(s) and other applications established by this Zoning Code.
- B. **Subdivision review procedures.** Procedures and standards for the review and approval of subdivision maps are found in Title 19 (Subdivisions).
- C. **Application filing and initial processing.** Where applicable, the procedures of this Chapter are carried out after those described in Chapter 20.64 (Permit Application Filing and Processing) for each application.

### 20.66.020 – Coastal Development Permits [New]

#### A. Purpose.

- 1. This Section provides procedures for Coastal Development Permits to ensure that all public and private coastal development projects in the City's Coastal Zone, as depicted on the Zoning Map, are consistent with the certified Coastal Land Use Plan.
- 2. For purposes of this Section, the term development shall be as defined in Part 7 (Definitions) under development, coastal, as in coastal development project.

#### B. Coastal Development Permit required.

- 1. Except as otherwise provided in this Section, persons seeking wishing to perform or undertake a coastal development project in the City's Coastal Zone, other than a facility subject to Public Resources Code Section 25500, shall obtain a Coastal Development Permit (since other defined phrases are not capitalized, why is this capitalized?) in compliance with this Section.

2. All coastal development projects shall conform ~~with to~~ the conditions, plans, specifications, and terms of the permit. The requirements for obtaining a Coastal Development Permit shall be in addition to the requirements needed to obtain any other permits required by this Zoning Code, other applicable provisions identified in Section 20.10.040 (Applicability of Zoning Code), or from any Federal, State, regional, or local agency.

**C. Projects located within more than one jurisdiction.**

1. **Projects located both within and outside the Coastal Zone.** Where a proposed project site is located both within and outside the Coastal Zone, the following procedures shall apply:
  - a. For divisions of land, a Coastal Development Permit shall be required only for new lots or portions of new lots located within the Coastal Zone and the review shall be confined to those lots or portions of lots within the Coastal Zone.
  - b. For a coastal development project involving a structure or similar integrated physical construction partially located within the Coastal Zone, a Coastal Development Permit shall be required for the entire project.
  - c. The City may request, with the consent of the property owner, that the Coastal Commission make an adjustment to the boundary of the City's Coastal Zone in order to avoid bisecting a lot or to make the Coastal Zone boundary conform to readily identifiable natural or manmade features in compliance with Public Resources Code Section 30103 (b).
2. **Projects of type or location subject to Coastal Commission appeal jurisdiction.** If a portion of the approved coastal development project is of the type or in a location that makes the action by the City subject to appeal to the Coastal Commission, the City's action on the Coastal Development Permit for the entire project shall be subject to appeal to the Coastal Commission.
3. **Projects located within both City and Coastal Commission permit jurisdictions.** Where a proposed coastal development project is located within both the City's and Coastal Commission's Coastal Development Permit jurisdictions, Coastal Development Permits are required by both the City and the Coastal Commission. The following procedures shall apply:
  - a. For ~~subdivisions of land~~, a Coastal Development Permit issued by the Coastal Commission shall be required only for new lots or portions of new lots located within the area subject to the Coastal Commission's jurisdiction.
  - b. For any coastal development project involving a structure or similar integrated physical construction, a Coastal Development Permit issued by the Coastal Commission shall be required for any structure located partially in the retained jurisdiction area.

- (2) A significant alteration of land forms including removal or placement of vegetation on a beach, sand dune, or wetland, or within 50 feet of the edge of a coastal bluff or stream, or in an environmentally sensitive habitat area.
  - (3) Expansion or construction of a water well or septic system.
  - (4) Improvements on property that is located between the sea and first public road paralleling the sea, or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the Coastal Commission, when the improvements would constitute or result in any of the following:
    - (a) An increase in floor area of 10 percent or more within any 12-month period or an increase in floor area of 10 percent or less within any 12-month period where an improvement has previously been approved in compliance with Public Resources Code Section 30610(b) and/or this Subsection.
    - (b) The construction of an additional story or loft or increase in structure height of more than 10 percent within any 12-month period.
    - (c) The construction, placement, or establishment of any significant detached structure (e.g., a fence, garage, shoreline protective works, or docks).
  - (5) In areas that the Coastal Commission has declared by resolution after a public hearing to have a critically short water supply that shall be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water-using development not essential to residential use (e.g., a swimming pool or the construction or extension of any landscaping irrigation system).
  - (6) An improvement where the Coastal Development Permit issued for the original structure indicates that future additions would require a Coastal Development Permit.
- b. **Other existing structures and landscaping.** Improvements to existing structures, other than single-family dwellings and public works facilities, including all fixtures and other structures directly attached to the existing structure, and landscaping, (PQ: Separate the exceptions to the exclusion so that you can determine what is excluded and what is not) with the exception of the following classes of projects that might result in an adverse environmental impact, adversely affect public access, or involve a change in use contrary to the Coastal Act:

(8) An improvement made in compliance with a conversion of an existing structure from a multi-family dwelling unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including, but not limited to, a condominium conversion, stock cooperative conversion, or motel/hotel timesharing conversion.

c. **Maintenance dredging.** Maintenance dredging of existing navigation channels or moving dredged materials from those channels to a disposal area outside of the Coastal Zone, in compliance with a permit from the United States Army Corps of Engineers.

d. **Repair and/or maintenance.** Repair and/or maintenance activities, with the exception of the following activities that involve a risk of adverse environmental effects:

(1) A method of repair or maintenance of a bluff retaining wall, breakwater, culvert, groin, outfall, seawall revetment, or similar shoreline work that involves:

(a) Repair and/or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

(b) The placement, whether temporary or permanent, of rip-rap, or artificial berms of sand or sand dunes, or any other form of solid material, on a beach or in coastal waters, estuaries, streams, wetlands, or on shoreline protective works;

(c) The replacement of 20 percent or more within any 12-month period of the materials of an existing structure with materials of a different kind; or

(d) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any bluff or sand area or within 20 feet of coastal waters or streams.

(2) A method of routine maintenance dredging that involves:

(a) The dredging of 100,000 cubic yards or more within a 12-month period;

(b) The placement of dredged spoils or materials of any quantity within an environmentally sensitive habitat area, or any sand area, or within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(c) The removal, sale, or disposal of dredged spoils or materials of any quantity that would be suitable for beach

- (c) The replacement structure is sited in the same location on the affected property as the destroyed structure.
4. **Ongoing routine repair and/or maintenance.** In compliance with Code of Regulations Section 13252 (c), the following on-going routine repair and/or maintenance activities conducted by the City:
- a. **Beaches.** Periodic maintenance of public beaches landward of the mean high tide line and outside of dune habitat areas, including the cleaning and redistributing of sand using mechanized equipment.
  - b. **Piers.** The repair and/or maintenance of existing public recreational piers including, but not limited to, resurfacing of pedestrian decks and the removal and replacement of existing pilings.
  - c. **Storm berms.** The use of temporary sand dunes or storm berms in shoreline areas to protect structures and infrastructure from wave uprush during storm events in a manner that minimizes significant impacts to coastal access and resources.
  - d. **Storm drains.** Periodic inspection, cleaning, maintenance, and replacement of existing storm drain lines.
5. **Temporary events.**
- a. Temporary events (e.g., limited term activities [Section 20.66.080] or special events [Chapter 11.03 of the Municipal Code]) held in the Coastal Zone, unless the event meets all of the following criteria:
    - (1) Occurs during the period between the day before the Memorial Day weekend (Friday) and the day after the Labor Day weekend (Tuesday);
    - (2) Occupies any portion of a public sandy beach area; and
    - (3) Involves a charge for general public admission where no fee is currently charged for use of the same area.
  - b. A Coastal Development Permit may also be required for temporary events that do not meet all of the above criteria, but which, in the opinion of the Director, have the potential to result in significant adverse impacts to public access, recreation, and/or coastal resources.
6. **Utilities.** The installation, testing, and placement in service or the replacement of any necessary utility connection in compliance with Public Resources Code Section 30610(f).
7. **Emergency Permits.** Emergency work allowed by Public Resources Code Section 30600(e) when granted and preformed in compliance with Section 20.66.030 (Emergency Permits).

**F. Conversion of an existing structure.** The conversion of an existing structure from a multi-unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold, (e.g., condominium conversion, motel/hotel timesharing conversion, or stock cooperative conversion) may be regarded ~~shall be considered to constitute a risk of adverse environmental effect, adversely affect public access, and/or~~ involve a change in use contrary to Division 20 of the Public Resources Code and shall require approval of a Coastal Development Permit in compliance with Code of Regulations Section 13253(b)(8) and Public Resources Code Section 30610(b).

**G. Exclusions.**

**1. Applicability.**

- a. Coastal development projects that will not result in any potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast are excluded from the requirements of Coastal Development Permit processing as authorized by and in compliance with the procedures certified by the Coastal Commission.
- b. Coastal development projects listed in this Subsection have been approved as categorical exclusions by the Coastal Commission. Excluded zoning districts as described below shall not require a Coastal Development Permit; provided, that a notice of exclusion is issued in compliance with this Subsection. Requirements for any other City permit are unaffected by this Subsection. Challenges to determination of exclusion may be made in compliance with Subsection Q. (Post decision procedures), below.

**2. All residential zoning districts.**

- a. **Residential zoning districts.** This categorical exclusion is for the demolition and/or construction of residential structures and their appurtenant facilities and fixtures (including home occupations PQ? Question: how is a home occupation a fixture?) located within all residential zoning districts and designated residential areas located within PC Districts located within the City's Coastal Zone.
- b. **Terms and conditions.** The terms and conditions applied by the Coastal Commission to the categorical exclusion for residential zones are as follows:
  - (1) **Exceptions.** This categorical exclusion for residential zoning districts does not include the first row of lots located adjacent to the following:
    - (a) Bay;
    - (b) Beach;
    - (c) Naturally occurring Wetlands; and

- (d) The canyon edges of Buck Gully and Morning Canyon.
- (2) **Infill or replacement projects.** Allowed coastal development projects shall be limited to infill or replacement, and shall be in conformity with the character, scale, and size of the surrounding community.
  - (3) **Parking.** A minimum of 2 parking spaces shall be provided for each residential unit, regardless of size.
  - (4) **Applicable zoning.** Coastal development projects authorized in compliance with this exclusion shall conform to the zoning in effect on the date of issuance of the required Building Permit.
  - (5) **Public trust.** In the event that any competent jurisdictional agency or court with jurisdiction determines that any lands excluded are subject to the public trust, this exclusion shall immediately become void as to those lands determined to be subject to the public trust and any coastal development project undertaken on such these lands shall be subject to the full permit requirements of the Coastal Act of 1976.
  - (6) **Implementation.** The City shall send a notice of the approval of a coastal development project in compliance with this exclusion to the Coastal Commission. The notice shall include a certification by the applicant that the approved project conforms to the terms and conditions of this exclusion and the issuance of the Building Permit shall not occur until 5 working days have elapsed following receipt of the completed form by the Coastal Commission.
3. **All nonresidential and mixed-use zoning districts.**
- a. **Nonresidential and mixed-use zoning districts.**
    - (1) **Demolition or construction of commercial and mixed use structures.** This categorical exclusion is for the demolition and/or construction of commercial and mixed use structures and their appurtenant facilities and fixtures, ~~including changes of use,~~ located within all of the nonresidential zoning districts and designed commercial and mixed use areas located within PC Districts (e.g., CC, CG, CM, CN, CV, MU-V, MU-H1-MM, MU-H4, MU-W1, and MU-W2) within the City's Coastal Zone. PQ: Categorical exclusion for Change in use?
    - (2) **Other allowed exclusions.** The following commercial and mixed-use structures and uses are also excluded from the requirement for a Coastal Development Permit.
      - (a) ~~Change of use from one allowed commercial use to another allowed commercial use in an existing structure.~~

- (b) Outdoor sales, commercial sidewalk/parking lot sales, and outdoors display of merchandize in compliance with Section 20.60.150 (Outdoor Storage, Display, and Activities).
      - (c) Temporary (12 months or less; non-renewable) structures and uses installed or initiated in compliance with this Zoning Code and do not conflict with public access and public view policies.
    - (3) **Exceptions.** This categorical exclusion for nonresidential and mixed-use zoning districts does not include any proposed improvement made that would results in a conversion of an existing structure occupied by visitor-serving hotels, motels, or other similar lodging accommodations to any other use.
  - b. **Terms and conditions.** The terms and conditions applied by the Coastal Commission to the categorical exclusion for nonresidential and mixed-use zones are as follows:
    - (1) **Infill or replacement projects.** Allowed coastal development projects shall be limited to infill or replacement and shall conform to the character, scale, and size of the surrounding community and to the former use on the site.
    - (2) **Applicable zoning.** Coastal development projects authorized in compliance with this exclusion shall conform to the zoning in effect on the date of issuance of the required and requested Building Permit.
    - (3) **Implementation.** The City shall send a notice of the approval of a coastal development project in compliance with this exclusion to the Coastal Commission. The notice shall include a certification by the applicant that the approved project conforms to the terms and conditions of this exclusion and the issuance of the Building Permit shall not occur until 5 working days have elapsed following receipt of the completed form by the Coastal Commission.
- H. **Determination of jurisdiction over development carried out before Coastal Land Use Plan certification.**
- 1. **Development approved by Coastal Commission.** Coastal development projects authorized by a Coastal Commission-issued permit remain under the jurisdiction of the Coastal Commission for the purposes of condition compliance, amendment, and revocation.
  - 2. **Proposals pending at time of Coastal Land Use Plan certification.**
    - a. A coastal development project, including one with an approval in concept that the City has approved before certification of the Coastal Land Use Plan and for which an application has been filed with the Coastal Commission, may, at the option of the applicant, remain with the Coastal Commission for completion of the review. ~~Coastal Commission review of~~

~~any application shall be based upon the certified Coastal Land Use Plan;~~  
Question: How does the City dictate this? or

- b. The applicant may resubmit the coastal development project to the City through an application for a Coastal Development Permit. A decision on the application shall be based upon the certified Coastal Land Use Plan.

- i. **Application filing, processing, and fees.** An application for a Coastal Development Permit shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing). The application shall include all of the information and materials specified by the Director (e.g., initial site inventory, public view report, public access report, geologic report, etc.), together with the required fee in compliance with the City's Master Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection L. (Findings and decision), below.

#### J. Review of Coastal Development Permits.

- 1. **Authority.** The authority to approve, conditionally approve, or deny applications for Coastal Development Permits shall be in compliance with the following:
  - a. **Council.** The Council shall be the City's final review authority on all applications for Coastal Development Permits filed concurrently with amendments to the General Plan, Coastal Land Use Plan, Zoning Code, or Zoning Map, or with new or amendments to development agreements, PC District development plans, or specific plans. The Council's action shall follow receipt and consideration of the Planning Commission's recommendation.
  - b. **Planning Commission.** The Planning Commission shall be the review authority on all applications for Coastal Development Permits filed concurrently with or subsequent to any other discretionary action required by this Zoning Code, unless authority for the discretionary action is specifically assigned to the Director or Zoning Administrator.
  - c. **Hearing Officer.** The Hearing Officer shall be the review authority for all applications for Coastal Development Permits filed concurrently with or subsequent to another discretionary action required by this Zoning Code where the authority is specifically assigned to the Hearing Officer or is delegated to the Hearing Officer by the Planning Commission or Council.
  - d. **Director.** The Director shall be the review authority for all applications requiring only a Coastal Development Permit or a Coastal Development Permit filed concurrently with or subsequent to another discretionary action required by this Zoning Code where the authority is specifically assigned to the Director or is delegated to the Director by the Planning Commission or Council.
  - e. **Zoning Administrator.** The Zoning Administrator shall be the review authority for all applications for Coastal Development Permits filed concurrently with or subsequent to another discretionary action required by this Zoning Code where the authority is specifically assigned to the

Zoning Administrator or is delegated to the Zoning Administrator by the Planning Commission or Council.

- f. **Harbor Resources Manager.** The Harbor Resources Manager shall have the authority to issue approvals in concept, as described in Subparagraph 4., below, for coastal development projects located totally or partially on tidelands or submerged lands (i.e., lands that are located seaward of the City's Bulkhead Line and, therefore, adjacent to and outside of the City's various zoning districts).
2. **Emergency Permits.** The provisions of Section 20.66.030 (Emergency Permits) shall apply where the Director determines that an Emergency Coastal Development Permit (referred to in this Chapter as an "Emergency Permit") is necessary as an urgency measure to protect life and property from imminent danger, or to restore, repair, or maintain public works, utilities, or services during and immediately following a disaster or serious accident within the Coastal Zone. The decision to issue an Emergency Permit may be made solely at the discretion of the Director.
3. **Coastal Commission permit authority.**
  - a. **Coastal Commission.** Development on tidelands, submerged lands, and public trust lands as described in Public Resources Code Section 30519(b) and in deferred certification areas designated by the certified Coastal Land Use Plan shall require a Coastal Development Permit issued by the Coastal Commission in compliance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City.
  - b. **Exception.** Permit authority on public trust lands, submerged lands, and tidelands that are determined by the Coastal Commission to be filled and developed and located within an area committed to urban uses shall be delegated to the City in compliance with Coastal Act Section 30613. What areas does this apply to?
4. **Approval in concept.** Development in areas where the Coastal Commission retains Coastal Development Permit authority shall require an "Approval in Concept" conceptual approval from the Director department before an application is submitted? to the Coastal Commission. An approval in concept indicates that the proposed coastal development project conforms in concept to all City use and development regulations, including any applicable discretionary actions, and, therefore, entitles the applicant to apply to the Coastal Commission for a Coastal Development Permit.

**K. Notice and hearing requirements.**

1. **Compliance with Chapter 20.76.** Notice of a the hearing on any Coastal Development Permit application shall be provided as required by, and the hearing shall be conducted in compliance with, Chapter 20.76 (Public Hearings).

2. **Waiver of public hearing requirement.** The Director may waive the requirement for a public hearing on a Coastal Development Permit application for any minor coastal development project.
- a. **Applicability.** For purposes of this Subparagraph, a "minor coastal development project" shall mean a coastal development project that the Director determines to meet all of the following requirements:
- (1) The coastal development project is consistent with the certified Coastal Land Use Plan;
  - (2) The coastal development project requires no discretionary actions other than a Coastal Development Permit; and
  - (3) The coastal development project could ~~will~~ have no adverse effect either individually or cumulatively on coastal resources, public views, or public access to the shoreline or along the coast.
- b. **Criteria for waiver.** A public hearing may be waived for minor coastal development project if both of the following occur:
- (1) Notice that a public hearing shall be held upon request by any person is provided by the City to all persons who would otherwise be required to be notified of a public hearing by Subsection 20.76.020 B. (Method of Notice Distribution) as well as any other persons known to be interested in receiving notice; and
  - (2) A request for a public hearing is not received by the City within 15 days from the date of the City sending the notice identified in Subparagraph (1), above.
- c. **Content of notice.** The notice shall contain all information required by Subsection 20.76.020 A. (Content of Notice) and a statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a Coastal Development Permit application.

**L. Findings and decision.**

1. **General findings.** The review authority may approve or conditionally approve an application for a Coastal Development Permit if, on the basis of the application, plans, materials, and testimony submitted, all of the following findings are first made:
- a. The coastal development project is in compliance with the objectives of this Zoning Code;
  - b. The coastal development project conforms to all applicable sections of the certified Coastal Land Use Plan;
  - c. The coastal development project will not negatively impact public access to coastal resources;

- d. The coastal development project will not negatively impact coastal views;
  - e. The coastal development project will not negatively impact sensitive coastal resources and environmentally sensitive areas; and
  - f. The coastal development project will not negatively impact the site's stability or structural integrity due to project design, location on the site, or any other reasons.
2. **Additional findings for projects in protected resource areas.** Approval of coastal development projects within or adjacent to a Protected Resource Area identified in Chapter 20.44 (Resource Protection in the Coastal Zone) shall require that the review authority make all of the following findings, in addition to the General Findings findings set forth in identified in Subsection 1., above:
- a. The resource will not be significantly degraded by the proposed coastal development project;
  - b. There is no feasible less environmentally damaging alternative; and
  - c. All feasible mitigation measures capable of reducing or eliminating project related impacts have been imposed on the coastal development project.

**M. Effective date - notice of final action.**

**1. Effective date.**

- a. Coastal Development Permits shall not become effective for 14 days after being granted, and in the event an appeal is filed in compliance with Chapter 20.78 (Appeals), the permit shall not become effective unless and until a decision granting the Coastal Development Permit is made by the Planning Commission or Council plus any appeal period as provided by this Code.
- b. The effective date of a Coastal Development Permit for a coastal development project that is subject to appeal to the Coastal Commission (see Chapter 20.78 [Appeals]) shall not become effective until at least the 11<sup>th</sup> working day following the receipt by the Coastal Commission of adequate notice of final City action in compliance with Subparagraph 2., below.
- c. If the notice of final City action is received by the Coastal Commission before the 14<sup>th</sup> day following the granting of the Coastal Development Permit, the Coastal Development Permit shall not become effective until after the 14<sup>th</sup> day in compliance with Subparagraph a., above.

**2. Notice of final City action.**

- a. Within 7 days following the date of the final City action on a Coastal Development Permit, a notice shall be sent to the applicant, to the Coastal Commission, and to any person who has specifically requested

the notice by submitting a self-addressed, stamped envelope to the Department.

- b. The notice shall be accompanied by a copy of any written findings adopted, the conditions of approval, and the procedures for appeal of the action to the Coastal Commission.

**N. Waiver for *de minimis* development. (PQ: Consider combining the waiver sections: this and minor coastal development projects seem to be the same.)**

1. **Authority.** The Director may issue a written waiver from the Coastal Development Permit requirements of this Section for any coastal development project that is *de minimis*.
2. **Determination of applicability.** A proposed coastal development project is considered *de minimis* if the Director determines, based on a review of an application for a Coastal Development Permit, that the project satisfies all of the following requirements:
  - a. The coastal development project is not located within an appeal area or within an area where the Coastal Commission retains permit jurisdiction;
  - b. The coastal development project is consistent with the certified Coastal Land Use Plan;
  - c. The coastal development project requires no discretionary actions other than a Coastal Development Permit; and
  - d. The coastal development project will have no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.
3. **Required notice.** Notice of the *de minimis* waiver shall be given in the following manner:
  - a. **Mailed or delivered notice.** At least 10 days before the decision, notice shall be mailed to:
    - (1) The applicant;
    - (2) The property owner;
    - (3) All owners of property and residents located within a 300-foot radius, excluding intervening rights-of-way and waterways, of the exterior boundaries of the subject site, as shown on the last equalized assessment roll or, alternatively, from the other records that contain more recent addresses;
    - (4) Any and all interested persons requesting notice;
    - (5) The Council;

The Planning Commission; and

- (6) The Coastal Commission.
- b. **Posted notice.** Notice shall be posted in not less than 1, or as determined by the Director, place on or close to the property at least 10 days before the decision.
4. **Contents of notice.** The notice of the *de minimis* waiver shall contain all of the following information:
- a. A statement that the coastal development project is located within the Coastal Zone;
  - b. A description of the location of the project site and the purpose of the application;
  - c. The general procedure concerning the submission of public comments either in writing or orally before the decision;
  - d. A reference to application materials on file for detailed information;
  - e. 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; and
  - f. The date that the waiver may become effective.
5. **Effective date.** A waiver shall not take effect until after decision of the waiver is reported to the Planning Commission and Council in compliance with Section O. If the Planning Commission or the Council, on a majority vote, object to the decision of the waiver, the *de minimis* waiver shall not be effective and, instead, an application for a Coastal Development Permit shall be required.
- O. **Report to the Planning Commission and Council.** The Director shall report a decision on a *de minimis* waiver or Coastal Development Permit to the Planning Commission and Council at the next regular meeting of each body or within 5 days of the decision, whichever occurs first.
- P. **Environmental review.** Public notice and posting of environmental documents and the initial study and completion of all required documents shall be conducted in compliance with the State CEQA Guidelines and any environmental review guidelines or policies adopted by the City in compliance with Section 20.64.080 (Environmental Review).
- Q. **Post decision procedures.** The procedures and requirements in Chapter 20.68 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 (Zoning Code Administration) shall apply following the decision on a Coastal Development Permit application.

**20.66.030 – Emergency Permits [New]**

- A. **Purpose.** This Section provides the procedures for the City's issuance of an Emergency Coastal Development Permit (hereafter referred to in this Zoning Code as an

"Emergency Permit") deemed necessary to perform work to resolve problems resulting from an ~~an~~ ~~situation falling within the term~~ "emergency" as defined in Part 7 (Definitions).

**B. Applicability.**

1. When immediate action by a ~~person~~ (PQ: This is awkward: the definition of person includes businesses and public agencies; the better practice is to use words commonly i.e. use the word business or business entity or local government or public agency) ~~or public agency~~ is required to resolve an emergency, requirements to obtain the otherwise appropriate development permit may be waived by the Director upon receiving notification of the emergency, identification of the type of work required to resolve the emergency, and the location of the work to be performed, all in compliance with this Section.
2. The Director shall not grant an Emergency Permit for any development that lies within the Coastal Commission's continuing permit jurisdiction in compliance with the Public Resources Code Section 30519. In these areas and for these developments, a request for an Emergency Permit shall be made directly to the Coastal Commission.

**C. Review authority.** The Director shall have the sole discretion to grant Emergency Permits in compliance with this Section.

**D. Method and content of notification.** Notification of the emergency to the Director shall be by letter, if time allows, or by telephone, electronic or personal contact, if time does not allow. The person notifying the Director shall report to their best knowledge all of the following:

1. The nature and location of the emergency;
2. The cause of the emergency, insofar as this can be established;
3. The remedial, protective, or preventative work required to resolve the emergency;
4. The circumstances during the emergency that appeared to justify the proposed courses of action; and
5. The probable consequences of failing to take the action(s) necessary to resolve the emergency.

**E. Verification.**

1. The Director shall verify that an emergency does exist that necessitates the requested remedial, protective, or preventative work.
2. The Director shall verify the facts related to the emergency by the person or agency that made the notification, as time allows.

- F. Public notice.** The Director shall provide public notice of the proposed emergency actions by any means determined to be appropriate by the Director based on the nature of the emergency.
- G. Required findings and conditions.**
1. **Findings.** Before granting the Emergency Permit, the Director shall first find all of the following:
    - a. An emergency exists that requires action more quickly than allowed by City procedures customarily required for the processing of appropriate Coastal Development Permits;
    - b. Public comment has been considered regarding the emergency and the proposed action(s), if time allows;
    - c. The work is consistent with the nature of the emergency and the requirements of the certified Coastal Land Use Plan; and
    - d. The work authorized by the Emergency Permit qualifies for an emergency exemption under CEQA.
  2. **Conditions of approval.**
    - a. If granted, an Emergency Permit shall be subject to necessary terms and conditions, including but not limited to the following:
      - (1) Language clearly indicating that the work accomplished under an Emergency Permit is considered temporary until the appropriate City required permit(s) is issued for the work;
      - (2) Completion of the approved work shall be accomplished within 30 days in compliance with Code of Regulations Section 13329.3; and
      - (3) A condition specifying the need to apply for the appropriate City required permit(s) once the emergency is resolved, or within 90 days following the date of issuance of the Emergency Permit, whichever occurs first.
    - b. The violation of any condition of approval shall constitute a violation of this Section and may constitute grounds for revocation of the Emergency Permit.
- H. Contents of written Emergency Permit.** If the Director makes the appropriate findings, the Director shall issue The Emergency Permit shall be a written permit document that contains all of the following information:
1. The date of issuance;
  2. An expiration date;

3. The scope of the work to be performed;
4. Terms and conditions of the permit;
5. ~~A statement provision stating that within 90 days following the issuance of the Emergency Permit, the applicant or person shall submit a follow-up, Coastal Development Permit application shall be submitted to the City in compliance with Section 20.66.020;~~
6. ~~A statement provision stating that any development or structures constructed in compliance with the Emergency Permit shall be considered temporary until authorized by a follow-up Coastal Development Permit, and that the issuance of an Emergency Permit shall not constitute an entitlement to the construction of a permanent structure(s); and~~
7. ~~A statement provision stating that the development authorized by the Emergency Permit shall be removed unless a complete application for a Coastal Development Permit for the development is filed within 90 days of approval of the Emergency Permit and is approved. If a Coastal Development Permit authorizing permanent retention of the development, or a portion of the development, is denied, then the development that was authorized by the Emergency Permit, or the denied portion of the development, shall be removed within 90 days following the date of denial.~~
8. A statement and verification that the Applicant and/or property owner agrees with the above findings together with a written verification from the Applicant and/or property owner to the same effect.

**I. Reporting.**

1. The Director shall report, in writing or orally, to the Council and the Planning Commission at their next meeting that an Emergency Permit for the applicable property or project is in effect. The report shall state the nature of the emergency, the progress of the work to resolve the emergency, the location of the work, and any other pertinent information.
2. Copies of any written report shall be available at the Council and Planning Commission meetings and shall be mailed to all persons who have requested notification and associated reports in writing.
3. The Director shall report the issuance of an Emergency Permit to the Coastal Commission within three days following the date of issuance.

**J. Time limits.** Unless another expiration date is stated in the Emergency Permit ~~written permit~~, an approved Emergency Permit shall be valid for a maximum of 30 days following the date of issuance; provided, the permit shall expire and become void seven days following the date of issuance if it is not properly exercised, or if the emergency ceases to exist.

**K. Permits required.**

1. The responsible person or public agency shall apply for the appropriate City required permit(s) (e.g., Coastal Development Permit, etc.) otherwise required by this Zoning Code within 90 days following the date of issuance of the Emergency Permit or once the emergency is resolved, whichever occurs first.
2. Failure to file the necessary applications and obtain the City required permit(s) normally required by this Zoning Code shall result in enforcement action in compliance with Chapter 20.82 (Enforcement).
3. During the processing of the appropriate City required permit application(s), all work required to remedy the emergency may continue until the emergency is satisfactorily resolved.

#### 20.66.040 – Reasonable Accommodations

**A. Purpose.** In compliance with Federal and State fair housing laws, it is the purpose of this Section to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with any disability an equal opportunity to use and enjoy a dwelling.

**B. Review authority.**

1. The Hearing Officer, as defined in Part? Article 8 (Glossary), is hereby designated to approve, conditionally approve, or deny all applications for a reasonable accommodation.

\*

2. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval (e.g., Coastal Development Permit, Conditional Use Permit, etc.), then an applicant may request that the Hearing Officer hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. (PQ: Question: some discretionary permits go to the Coastal Commission, can they make such a request?

3. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval.

**C. Application for Reasonable Accommodation.**

1. **Applicant.** A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer?? or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit??? of one or more individuals with a disability.

2. **Application.**

- a. An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on forms provided by the Directorepartment.

- b. A fee (other than a fee to provide for administration of the application?) shall not be required for a request for reasonable accommodation, but if

- (1) The modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this Zoning Code; and/or
  - (2) The accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling.
- c. The Director may request the applicant or the successor(s)-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities.
  - d. Failure to provide the documentation within 10 days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.
7. **Revocation.** Procedures for revocation shall be as identified in Chapter 20.82 (Enforcement).
- F. **Post decision procedures.** The procedures and requirements in Chapter 20.68 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 (Zoning Code Administration) shall apply following the decision on a Reasonable Accommodation application.

#### 20.66.050 – Modification Permits [REVISED]

- A. **Purpose.** The purpose of this Section is to provide relief from specified development standards of this Zoning Code when so doing is consistent with the purposes of this Code and the General Plan, and does not negatively impact the community, at large or in the neighborhood of the specified development.
- B. **Review authority and allowable modifications.** The Zoning Administrator why capitalized? shall approve, conditionally approve, or deny applications for Modification Permits why capitalizes? for not more than a 10 percent deviation from the standard being modified, and applicable only to the following, subject to the findings identified in Subsection E. (Required findings), below:
1. **Height modifications from exceptions identified in Part 3 (Site Planning and Development Standards).**
    - a. Chimneys, rooftop architectural features, solar equipment, and vents in excess of the exception to the allowed height limits identified in Part 3 (Site Planning and Development Standards);
    - b. Flag poles in excess of the exception to the allowed height limits; and
    - c. Heights of fences, hedges, or walls.
  2. **Setback modifications.**

- a. Encroachments in front, side, or rear setback areas while still maintaining the minimum clearances required by Section 20.30.090 (Setback Regulations and Exceptions). Exceptions include the following:
  - (1) Modifications shall not be allowed for encroachments into alley setbacks; and
  - (2) Modifications shall not be allowed for encroachments into bluff and canyon setback areas.
- c. Structural appurtenances or projections which encroach into front, side, or rear setback areas.

**3. Other modifications.**

- a. Distances between structures located on the same lot;
  - b. Landscaping standards in compliance with Chapter 20.44 (Landscaping Standards);
  - c. Maximum allowed roof area for roof mounted equipment that exceeds the allowed height limits identified in Part 3 (Site Planning and Development Standards); and
  - d. Size or location of parking spaces, access to parking spaces, and landscaping within parking areas.
- C. Application filing and fees.** An application for a Modification Permit shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing). The application shall include the information and materials specified by the Director, together with the required fee in compliance with the City's Master Fee Schedule. The ~~it is the responsibility of the applicant~~ shall ~~to provide~~ evidence in support of the findings required by this Section 20.66. ~~(Subsection E). (Required findings),~~ below.
- D. Notice and hearing requirements.** Notice of ~~the~~ public hearing shall be provided to the public and the hearing shall be conducted in compliance with Chapter 20.76 (Public Hearings).
- E. Required findings.** The Zoning Administrator may approve, ~~or~~ conditionally approve, or deny ~~(Doesn't the ZA have the ability to deny under current code?)~~ a Modification Permit if, on the basis of the application, materials, plans, and testimony (orally and/or in writing) submitted, the Zoning Administrator ~~first~~ finds all of the following:
- 1. The requested modification is ~~will be~~ compatible with existing development in the neighborhood;
  - 2. The granting of the modification is necessary due to the unique physical characteristic(s) of the property ~~and/or structure, and/or characteristics of the use;~~ Why all the rest is the structure and use?

3. There are no alternatives to the Modification Permit, which could provide similar benefits to the applicant with lesser? potential detriment to surrounding owners and occupants, the neighborhood, or to the general public; and
4. The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood or the City or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

PQ: What about all of the other findings required under the current Code? This should be revised to incorporate the earlier 2004 revision to the Code.

#### **F. Duties of the Zoning Administrator.**

##### **1. Review.**

- a. The Zoning Administrator shall review each appropriate application to ensure that the proposal is consistent with the purpose and intent of this Zoning Code, this Section, all applicable regulations and policies, and sound planning practices.
- b. The Zoning Administrator shall refer each application to the Planning Department, Building Department and Public Works Department, and to other City departments as determined to be appropriate by the Zoning Administrator.
- c. Each department shall submit written recommendations to the Zoning Administrator in a timely manner.

##### **2. Rendering of decision.** After the conclusion of the hearing on an application for a Modification Permit, the Zoning Administrator shall render a written decision within 15 days, unless both the applicant and the Zoning Administrator consent to a later date.

##### **3. Referral to Commission.**

- a. The Zoning Administrator may refer a Modification Permit application to the Commission for consideration and final action.
- b. The procedure for notice and hearings held by the Commission on referred applications shall be in compliance with the same provisions as identified in this Section and as specified in Chapter 20.76 (Public Hearings).

#### **G. Post decision procedures.** The procedures and requirements in Chapter 20.68 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 (Zoning Code Administration) shall apply following the decision on a Modification Permit application.

#### **20.66.060 – Planned Development Permits [New]**

- A. Purpose.** The purpose of this Section is to provide a process for approving a Planned Development Permit which is intended to:
1. **Ensure efficient use of land and a better living environment.** Provide a method whereby land may be designed and developed as a unified site by taking advantage of efficient site planning techniques thereby resulting in a more efficient use of land, a better living environment, excellence of design, and related enhanced amenities than is otherwise possible through strict application of the development standards identified in Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards);
  2. **Ensure high standards of environmental quality.** Ensure development which meets high standards of environmental quality, public health and safety, the efficient use of the City's resources, and the purpose, intent, goals, policies, actions, and land use designations of the General Plan, any applicable specific plan, and the certified Coastal Land Use Plan for sites located within the City's Coastal Zone; and
  3. **Provide for enhanced amenities.** Incorporate a program of enhanced amenities (e.g., enhanced landscaping, additional and enhanced open space, improvements to an existing public facility [e.g., park or trail, etc.]) than typically required by this Zoning Code.
- B. Applicability.**
1. **Allowed in all zoning districts.** A Planned Development Permit may be requested for any zoning district.
  2. **Minimum site area.** A Planned Development Permit may only be requested for a site(s) with a minimum of 1 acre.
  3. **Uses only allowed in base zoning district.** A Planned Development Permit may not authorize a use that is not allowed in the base zoning district.
  4. **Adjustment of standards.**
    - a. The permit may adjust, where necessary and justifiable, all applicable development standards identified in this Zoning Code (PQ: Where are the standards for such adjustment? Are they in the specifics of the standards. If so, do we need this section? If not, then shouldn't we have standards by which to apply this adjustment?), with the exception of an increase in the applicable density or intensity. Height adjustments shall be limited to those identified in Section 20.30.050 (Height Limits and Exceptions).
    - b. Residential projects with increased density or intensity standards may only be approved in compliance with Chapter 20.32 (Density Bonus).
- C. Application filing, processing, and fees.** An application for a Planned Development Permit shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing). The application shall include all of the information and materials specified by the Director, together with the required fee in compliance with

**TABLE 5-2  
REVIEW AUTHORITY FOR SITE DEVELOPMENT REVIEW**

Type of Construction Activity	Role of Review Authority (1) (2)	
	Zoning Administrator (Minor Review)	Planning Commission (Major Review)
Residential construction: 5 to 20 dwelling units, without a tentative or parcel map.	Decision	Appeal
Residential construction: 5 or more dwelling units, with a tentative or parcel map and 21 or more dwelling units, without a tentative or parcel map.		Decision
Mixed-Use projects: 1 to 4 dwelling units and nonresidential construction of up to a maximum of 9,999 square feet of gross floor area.	Decision	Appeal
Mixed-Use projects: 5 or more dwelling units and nonresidential construction of 10,000 square feet or more of gross floor area.		Decision
Nonresidential construction: 10,000 to 19,999 square feet of gross floor area.	Decision	Appeal
Nonresidential construction: 20,000 square feet or more of gross floor area.		Decision

**Note:**

- (1) "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 20.78 (Appeals).
- (2) The review authority may defer action and refer the request to the next higher review authority for the final decision. (PQ: Question: do we want the PC to refer anything to the CC? do we want the Director or ZA to refer to the PC?)

**C. Application filing, processing, and review.**

**1. Application filing.**

- a. **Filing.** An application for a Site Development Review shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing).
- b. **Contents.** The application shall include all of the information and materials specified by the Director, together with the required fee in compliance with the City's Master Fee Schedule.
- c. **Evidence.** It is the responsibility of the applicant to establish evidence in support of the findings required by Subsection F. (Findings and decision), below.

**2. Application review.** Each application for a Site Development Review shall be reviewed to ensure that the application is consistent with: the purpose of this Section; applicable development standards of this Zoning Code; the General Plan; and adopted criteria and policies applicable to the use or structure.

- a. A Site Development Review is initiated when the Department receives a complete application package including the required information and materials specified by the Director and any additional information required

3. **Referral to the Commission.** If the Site Development Review application submitted is of significant consequence or magnitude or involves potential public controversy, the Zoning Administrator may defer action and refer the application to the Commission for review and decision.

**E. Public notice and hearing provisions.**

1. **Zoning Administrator.** A public hearing shall not be required for the Zoning Administrator's decision on a Site Development Review application. PQ: This seems odd: given that there is an appeal right from such decisions, how does someone appeal something that is done without the benefit of a public hearing?
2. **Commission.**
  - a. A public hearing shall be required for the Commission's decision on a Site Development Review application.
  - b. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Chapter 20.76 (Public Hearings).

**F. Findings and decision.** The review authority may approve or conditionally approve a Site Development Review application, only after first finding that the proposed development is:

1. Allowed within the subject zoning district;
2. In compliance with all of the applicable criteria identified in Subparagraph C. 2. c., above; and
3. Not detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.

**G. Minor changes by Director.**

1. Minor changes in a Site Development Review that do not involve an increase in structure area or height, an increase in the number of dwelling units, or a change of use may be approved by the Director in compliance with Section 20.68.080 (Changes to an Approved Project).
2. Proposed changes that are not deemed minor shall be subject to review and approval by the original review authority.

**H. Post decision procedures.** The procedures and requirements in Chapter 20.68 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 (Zoning Code Administration) shall apply following the decision on a Site Development Review application.

**20.66.080 – Limited Term Permits [New]**

- A. Purpose.** The purpose of this Section is to consider applicant requests for uses of limited duration (e.g., interim, non-permanent, and/or seasonal in nature) that would be compatible with adjacent and surrounding uses when conducted in compliance with this Section.
- B. Applicability.**
- 1. Limited duration uses.** A Limited Term Permit allows limited duration uses that might not meet the development or use standards of the applicable zoning district, but may otherwise be acceptable because of their temporary or limited nature.
  - 2. Limited Term Permit required.** Limited duration uses shall not be conducted, established, or operated in any manner without the approval and maintenance of a valid Limited Term Permit in compliance with this Section.
- C. Exempt limited duration uses.** The following limited duration uses are exempt from the requirement for a Limited Term Permit. Uses that do not fall within the categories defined below shall comply with Subsection D. (Allowed limited duration uses), below.
- 1. Construction yards - on-site.**
    - a. On-site contractors' construction yard(s), including temporary storage and office trailers, in conjunction with an approved construction project on the same lot.
    - b. One adult caretaker may be present during non-construction hours for security purposes.
    - c. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the Building Permit.
  - 2. Emergency facilities.** Emergency public health and safety needs/land use activities, as determined by the Council or authorized by Municipal Code Title 5.
  - 3. Personal property (e.g., garage and/or yard) sales on private property.** Personal property sales conducted on private property when conducted in compliance with Section 20.60.160 (Personal Property Sales in Residential Districts).
  - 4. Special events.** Special events, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), but only upon the issuance of a Special Event Permit.
- D. Allowed limited duration uses.** The following limited duration uses are allowed, subject to the issuance of a Limited Term Permit, and only when conducted in compliance with Subsection H. (Conditions of approval), below.

1. **Contractors' construction yards - off-site.** Off-site contractors' construction yard(s), in conjunction with an approved construction project. The permit may be effective for up to 12 months, or the expiration of the Building Permit.
2. **Off-site parking for marine activities.** Off-site parking for uses requiring a Marine Activities Permit in compliance with Municipal Code Chapter 17.10 for the duration of the permit or for not more than 12 months, whichever is less.
3. **Seasonal sales.** Seasonal sales including holiday boutiques, Halloween pumpkin sales and Christmas tree sale lots only by businesses holding a valid Business License; provided, the activity may only be held from October 1st through October 31<sup>st</sup>, of the same year for the Halloween pumpkin sales, and from the day after Thanksgiving through December 26<sup>th</sup> for Christmas tree sales.
4. **Limited duration sales and/or work trailers.** A trailer or mobile home may be used for limited duration sales activities (e.g., model home sales, etc.) or as a limited duration work site for employees of a business.
  - a. A trailer or mobile home may be used:
    - (1) During construction or remodeling of a permanent commercial, industrial, and mixed-use structure, when a valid Building Permit is in force; or
    - (2) Upon demonstration by the applicant that the limited duration work site is a necessity, while a permanent work site is being obtained.
  - b. A permit for limited duration trailer(s) may be granted for up to 12 months and may be extended for a longer period in conjunction with a valid Building Permit.
5. **Limited duration structures.** A limited duration classroom, office, or similar portable structure, including a manufactured or mobile unit, may be approved, for a maximum time period of 12 months in the commercial, industrial, and mixed-use zoning districts.
6. **Limited duration use of a vacant lot.** The limited duration use of a vacant lot with non-permanent structural improvements, for a use typically allowed subject to the approval of a Conditional Use Permit or Minor Use Permit, may be approved for a maximum time period of 12 months in the commercial, industrial, and mixed-use zoning districts.
7. **Other similar limited duration uses.** Similar limited duration uses which, in the opinion of the Director, are compatible with the subject zoning district and surrounding uses.

**E. Application filing, processing, and review.**

1. **Filing.** An application for a Limited Term Permit shall be filed with the Department in the following manner:

- a. **Application required.** Applications for a Limited Term Permit shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing).
  - b. **Application before operation.** A complete application shall be filed with the Department at least 30 days before the date that the proposed limited duration use is scheduled to take place.
  - c. **No similar activities for 30 days.** The same or very similar limited duration use shall not be allowed to operate on the same lot for at least 30 days following termination of the previous use.
  - d. **Not within 180 days.** Applications shall not be filed or accepted if final action has been taken within the previous 180 days by the Zoning Administrator to deny an application for the same or substantially the same permit.
2. **Contents.** The application shall include all of the information and materials specified by the Director, together with the required fee in compliance with the City's Master Fee Schedule.
  3. **Evidence.** It is the responsibility of the applicant to establish evidence in support of the findings required by Subsection G. (Findings and decision), below.
  4. **Project review procedures.** Following receipt of a completed application, the Director shall review the facts bearing on the case to provide the information necessary for action consistent with the purpose of this Section.
  5. **Public hearing requirements.**
    - a. **Up to 90 days.** PQ: Except as may be required by the Director for special circumstances, timing or other unique reasons, Aa public hearing shall not be required for a Limited Term Permit application for a limited duration use that is proposed to operate for up to 90 days.
    - b. **90 days or more.**
      - (1) A public hearing shall be required for a Limited Term Permit application for a limited duration use that is proposed to operate for 90 days or more.
      - (2) Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Chapter 20.76 (Public Hearings).

**F. Review authority.**

1. Limited Term Permits may be approved, conditionally approved, or denied by the Zoning Administrator, in compliance with this Section.
2. The Zoning Administrator may instead refer the application for a Limited Term Permit to the Commission for consideration and final action when, in the Zoning

Administrator's judgment, there may be public interest, controversy, or issues requiring a public forum due to the nature of the request.

3. If referred to the Commission, the Commission shall conduct a public hearing on the application. Notice of the hearing shall be given and the hearing shall be conducted in compliance with Chapter 20.76 (Public Hearings).

**G. Findings and decision.** The Zoning Administrator (or the Commission on a referral or appeal?) may approve or conditionally approve a Limited Term Permit application, only after first finding all of the following:

1. The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;
2. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;
3. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;
4. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and
5. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the certified Coastal Land Use Plan for sites located within the City's Coastal Zone, Municipal Code, and other City regulations.

**H. Conditions of approval.** In approving a Limited Term Permit application, the review authority may impose conditions which are deemed necessary to ensure that the permit would be in full compliance with the findings required by Subsection G. (Findings and decision), above. These conditions may address any pertinent factors affecting the operation of the limited duration use, and may include the following:

1. **Fixed period of time.** Unless otherwise stated in the permit, a provision for a fixed period of time not to exceed 30 days for a limited duration use not occupying a structure, including promotional activities, or 12 months for all other limited duration uses or structures, or for a shorter period of time as requested by the applicant and determined appropriate by the Zoning Administrator;
2. **Operating hours and days.** Regulation of operating hours and days;

- C. Review authority.** Conditional Use Permits for uses located in residential zoning districts shall be approved, conditionally approved, or denied by the Hearing Officer.
- D. Conditional Use Permits to continue a nonconforming use.**
1. Any person whose use of property in a residential zoning district has been rendered nonconforming may seek the issuance of a Conditional Use Permit, in compliance with this Section, to continue the use so long as the application for that permit is completed and filed within 90 days following \_\_\_\_\_ ?? \_\_\_\_\_, 2008.
  2. If any person fails to file an application for a Conditional Use Permit within the 90-day period, the permit to continue the use may not be sought or issued.
- E. Application contents.** In addition to the application requirements contained in Subsection 20.66.090.D. (Application filing, processing, and review), above, an application for a Conditional Use Permit for a site located in a residential zone, or in an area where residential uses are provided for in Planned Community Districts or specific plan districts, shall contain all of the following information:
1. **Applicant information.** The name and address of the applicant, including the name and address of the lessee, if the property is to be leased and is someone other than the applicant; and the name and address of the owner of the property for which a Conditional Use Permit is requested. If the applicant and/or lessee or owner is an association, corporation, firm, or partnership, then the applicant/lessee shall provide the additional names and addresses as follows and the persons shall also sign the application:
    - a. Every general partner of the partnership;
    - b. Every owner with a controlling interest in the corporation; or
    - c. The person designated by the officers of a corporation as identified in a resolution of the corporation that is to be designated as the permit holder for the Conditional Use Permit.
  2. **Characteristics of proposed use.** Hours of operation, types of activities, and typical attendance at activities.
  3. **Facility users.** Number and types of users of the facility (including clients, staff, students, visitors, etc., as appropriate).
  4. **List of similar facilities.** A list of addresses of all facilities similar to that for which a Conditional Use Permit is requested in the State of California owned or operated by the applicant(s) within the past five years and whether the facilities have been found by State or local authorities to be operating in violation of State or local law.
  5. **List of similar uses.** A list of other uses of the same type located in the City and the authorized capacity of the use, if any, as determined by a third party entity. The applicant shall provide evidence of the need for the use by the residents of the City based on published sources. The City may complete an independent

- C. Review authority.** A Variance application shall be reviewed and approved, conditionally approved, or denied by the Commission.
- D. Application filing and processing.** An application for a Variance shall be filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing). The application shall include all of the information and materials specified by the Director, together with the required fee in compliance with the City's Master Fee Schedule. It is the responsibility of the applicant to establish evidence in support of the findings required by Subsection F. (Findings and decision), below.
- E. Project review, notice, and hearing requirements.**
1. Each application shall be reviewed by the Director to ensure that the proposal complies with this Section and all other applicable requirements of this Zoning Code.
  2. The review authority shall conduct a public hearing on an application for a Variance before a decision. Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Chapter 20.76 (Public Hearings).
- F. Findings and decision.** The review authority may approve or conditionally approve a Variance only after first making all of the following findings:
1. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) which do not apply generally to other properties in the vicinity under an identical zoning classification;
  2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;
  3. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;
  4. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;
  5. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and
  6. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, any applicable specific plan, or the certified Coastal Land Use Plan for sites located within the City's Coastal Zone.
- G. Precedents.** Each application shall be reviewed on an individual case-by-case basis and the granting of a prior Variance is not relevant or admissible evidence for the granting of a new Variance.

- H. **Post decision procedures.** The procedures and requirements in Chapter 20.68 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 (Zoning Code Administration) shall apply following the decision on a Variance application.

#### 20.66.110 – Zoning Clearances [New]

- A. **Purpose.** Zoning Clearance is the procedure used by the City to verify that a proposed use or structure complies with the list of activities allowed in the applicable zoning district of this Zoning Code, and the development standards and other provisions identified in Section 20.10.030 applicable to the proposed use or structure.

- B. **Applicability.** Where Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards) or another provision of this Zoning Code requires a Zoning Clearance as a prerequisite to establishing a use or structure, a Zoning Clearance shall be required at the time of the Director's review of any of the following:

1. **Initiation of a use.** A Zoning Clearance shall be obtained before the initiation or commencement of any use of land not requiring the construction of a structure.
2. **Change of use.** Whenever a use is proposed to be changed, whether or not the new use involves a new lessee, operator, or owner, a Zoning Clearance shall be obtained.
3. **Building Permit, Grading Permit, or other construction permit.** A Zoning Clearance shall be obtained before the City issues a new or modified Building Permit, Grading Permit, or other construction-related permit required for the alteration, construction, modification, moving, or reconstruction of any structure.

- C. **Review and approval.**

1. The Director Department (see B above: this appears to be a Director function) shall issue the Zoning Clearance after first determining that the request complies with all Zoning Code provisions and other adopted criteria and policies applicable to the proposed use or structure.
2. An approval may be in the form of a stamp, signature, or other official notation on approved plans, a letter to the applicant, or other certification, at the discretion of the Director.

- D. **Referral to Commission.** The ~~Department-Director~~ may defer action and refer the Zoning Clearance request to the Commission for consideration and final action.

- E. **Appeal to Commission.** The Department's action on a Zoning Clearance request may be appealed to the Commission in compliance with Chapter 20.78 (Appeals).

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## Chapter 20.68 – Permit Implementation, Time Limits, and Extensions

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### Sections:

- 20.68.010 – Purpose
- 20.68.020 – Use of Property
- 20.68.030 – Final City Action on Permits within the Coastal Zone
- 20.68.040 – Effective Date of Permits
- 20.68.050 – Applications Deemed Approved
- 20.68.060 – Performance Guarantees
- 20.68.070 – Time Limits and Extensions
- 20.68.080 – Changes to an Approved Project
- 20.68.090 – Resubmittals
- 20.68.100 – Covenants [New]

### 20.68.010 – Purpose

This Chapter provides requirements for the implementation or "exercising" of any the permits and other approvals which are granted or issued pursuant to ~~required by~~ this Zoning Code, including time limits and procedures for granting extensions of time.

### 20.68.020 – Use of Property

Required construction permits (e.g., Building, Grading, and other construction permits) may be issued following the effective date of the permit in compliance with Section 20.68.040, below.

- A. **Compliance required.** Grading shall not be commenced and no structure shall be altered, enlarged, erected, moved, or rebuilt subject to the provisions of this Part, except in compliance with the approved permit and associated conditions.
- B. **Director's determination.** Conformity shall be determined by the Director, or in the case of disagreement with the applicant, by the applicable review authority.

### 20.68.030 – Final City Action on Permits within the Coastal Zone

Final City action on permits for sites located within the City's Coastal Zone shall be documented by the Notice of Final Local Action which the City sends to the Coastal Commission.

### 20.68.040 – Effective Date of Permits

- A. **Non-Coastal Development Permit.** The approval of any permit for a project that is not appealable to the Coastal Commission shall become effective on the 15<sup>th</sup> day following the actual date of application approval by the appropriate review authority, where no appeal of the review authority's action has been filed in compliance with Chapter 20.78 (Appeals).
- B. **Coastal Development Permits** The approval of any permit for a project that is appealable to the Coastal Commission shall become effective upon the expiration of the

Coastal Commission's 10-working-day appeal period which begins the day after the receipt by the office of the California Coastal Commission of the City's Notice of Final Local Action, and where no appeal of the review authority's action has been filed by 2 Coastal Commissioners, the applicant, or any aggrieved person in compliance with the Coastal Act.

### **20.68.050 – Applications Deemed Approved**

A permit application that is deemed approved by operation of law shall be subject to all applicable provisions of this Zoning Code, which shall be satisfied by the applicant before a Building or Grading Permit is issued or a use not requiring a Building Permit is established. (Why are these capitalized?)

### **20.68.060 – Performance Guarantees**

#### **A. Deposit of security.**

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

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

#### **C. Failure to comply.**

1. Upon failure to perform any secured condition, the City may execute the condition, or cause it to be done, and may collect from the applicant, and surety in case of a bond, all costs incurred, including administrative, engineering, legal, and inspection costs.
2. The unused portion of the security shall be refunded to the applicant after deduction of the cost of the work.
3. To the extent that the Director can demonstrate that the applicant willfully breached an obligation in a manner that the applicant knew, or should have known, would create irreparable PQ: substantial ? Why the irreparable harm standard? -harm to the City, the entire amount of the bond or deposit may be

withheld. PQ: Question: this seems extreme. Is this penalty lawful? If an applicant posts a \$20 million bond and defaults but only on a portion of the work, can we take the entire thing?

4. The Director's determination may be appealed to the Council by the applicant by filing an appeal with the City Clerk within 15 days after the decision to withhold the bond, in compliance with Chapter 20.78 (Appeals).

## **20.68.070 – Time Limits and Extensions**

### **A. Time limits.**

1. Unless a condition of approval or other provision of this Zoning Code establishes a different time limit, any permit or approval not exercised within 24 months from the actual date of review authority approval shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below.
2. The permit shall not be deemed "exercised" until at least one of the following has first occurred:
  - a. A Grading Permit has been issued and grading has been substantially completed;
  - b. A Building Permit has been issued and construction has commenced, and has continued to maintain a valid Building Permit by making satisfactory progress as determined by the Building Official;
  - c. A Certificate of Occupancy has been issued;
  - d. The use is established; or
  - e. A time extension has been granted in compliance with Subsection B., below.
3. In cases where a Coastal Development Permit is required, the 24 month time limit shall not begin until the effective date of approval of the Coastal Development Permit.
4. If a project is to be developed in pre-approved phases, each subsequent phase shall be exercised within 24 months from the date that the previous phase was exercised, unless otherwise specified in the permit, or the permit shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below.
5. If the project also involves the approval of a Tentative Map, the phasing shall be consistent with the Tentative Map and the permit shall be exercised before the expiration of the Tentative Map, or the permit shall expire and become void and of no further effect.
6. Once exercised, any use that has been abandoned for at least 180 days or changed shall be deemed void.

- B. Extensions of time.** Upon written request by the applicant, the Director, or the Commission under a referral or appeal, may extend the time for an approved permit or approval to be exercised.
- 1. Filing and review of request.** The applicant shall file a written request for an extension of time with the Department no less than 30 days or more than 90 days before the expiration date of the permit, together with the filing fee required by the City's Master Fee Schedule.
  - 2. Action on extension request.** A permit or approval may be extended as follows for no more than 3 additional 12-month periods beyond the expiration of the original approval; provided, the Director, or the Commission under a referral or appeal, first finds that there have been no changes in the conditions or circumstances of the site or project so that there would have been grounds for denial of the original project.
- C. Effect of expiration.** After the expiration of a permit or approval in compliance with Subsection A. (Time limits), above, no further work shall be done on the site and no further use of the site shall occur until a new permit or approval and any required Building Permit or other City permits or approvals are first obtained.

#### **20.68.080 – Changes to an Approved Project**

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

- A. Application.** An applicant shall request a proposed change in writing, and shall also furnish appropriate supporting information and materials explaining the reasons for the request.
- B. Minor changes approved by the Director without a public hearing.**
- 1.** The Director may authorize one or more minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, where the Director first finds that the changes:
    - a.** Are consistent with all applicable provisions of this Zoning Code;
    - b.** Do not involve a feature of the project that was a basis for or subject of findings or exemptions in a Negative Declaration or Environmental Impact Report for the project;
    - c.** Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval; and
    - d.** Do not result in an expansion or change in operational characteristics of the use.

2. The Director may choose to refer any requested change to the original review authority for review and final action.
- C. Changes approved by original review authority.** A proposed change that does not comply with the criteria identified in Subsection B. (Minor changes approved by the Director without a public hearing), above, may only be approved by the original review authority for the project through a new permit application filed and processed in compliance with Chapter 20.64 (Permit Application Filing and Processing) and the applicable provisions of Chapter 20.66 (Permit Review Procedures).

#### **20.68.090 – Resubmittals**

- A. Resubmittal after denial with prejudice.** For a period of 12 months following the actual date of denial with prejudice by the applicable review authority, or, if appealed, the actual date of denial by the applicable review authority considering the appeal, of a discretionary permit or amendment, no application for the same or substantially similar permit or amendment shall be filed for the same site, or any portion thereof.
- B. Exception to Subsection A., above.** The Director may allow exception to Subsection A., above, based on one or more of the following findings:
1. New evidence material to a revised decision will be presented which was unavailable or unknown to the applicant at the previous hearing(s) and which could not have been discovered in the exercise of reasonable diligence by the applicant.
  2. There has been a substantial and permanent change of circumstances since the previous hearing(s), which materially affects the applicant's real property.
  3. A mistake was made at the previous hearing(s) which was a material factor in the denial(s) of the previous application.
- C. Resubmittal after denial without prejudice.** There shall be no limitation on subsequent applications for a site where a project was denied without prejudice.
- D. Director's determination, appeal.**
1. The Director shall determine whether a new application is for a permit or amendment that is the same or substantially similar to a previously approved or denied permit or amendment, and shall either process or reject the application in compliance with this Section.
  2. The Director's determination may be appealed to the Commission, in compliance with Chapter 20.78 (Appeals).

#### **20.68.100 – Covenants [New]**

- A. Applicability.** When necessary to achieve the land use goals and policies of the General Plan, the City may require a property owner to record a covenant and/or other limitation(s) in favor of the City. A covenant:

1. May be required to provide for necessary emergency access, landscaping, light and air access, open space, parking, public view protection, shoreline and blufftop access, solar access, wetland and ESHA habitat protection, etc., or other limitation(s) or restriction(s) on the use of property as a result of a project approval; and
  2. Shall be imposed as a condition of approval by the review authority.
- B. Form of covenant.** The form of the covenant shall be approved by the City Attorney, and the covenant shall:
1. Describe the real property to be benefitted by the covenant;
  2. Identify the City permit or approval that relied on or required the covenant; and
  3. Identify the purposes of the covenant.
- C. Recordation.** A covenant shall be recorded in the County Recorder's Office.
- D. Effect of covenant.**
1. From and after the time of its recordation, a covenant shall provide notice to all persons to the extent afforded by the recording laws of the State.
  2. The burdens of the covenant shall be binding on, and the covenant shall benefit all successors-in-interest to the real property.
- E. Enforceability.** A covenant shall be enforceable by the successors-in-interest to the real property restricted benefitted by the covenant, and the City. This Section shall not create standing in any person, other than the City, and any owner of the real property burdened or benefitted by the covenant, to enforce or to challenge the covenant or any requested amendment or release. PQ: (The burden/benefit language is very broad: this section appears to refer to the property affected by the covenant as benefitted and burdened by the covenant. This is probably correct. If so, then the language should simply say the property which is the subject of the approval or similar language.)
- F. Release of covenant.** A covenant may be released by the review authority which issued the original approval or permit conditioned by the covenant~~Director, or by another appropriate review authority in the event of an appeal,~~ at the request of any affected person, including the City.
1. **Process for release.** The release of a covenant shall require that the review authority first:
    - a. Conduct a noticed public hearing in compliance with Chapter 20.76 (Public Hearings); and
    - b. Find that the covenant on the site is no longer necessary to achieve the land use goals of the City.

