

**LEMOORE PLANNING COMMISSION  
LEMOORE CITY COUNCIL CHAMBERS – 429 “C” STREET**

**REGULAR MEETING OF JULY 8, 2013**

**THE REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF LEMOORE SCHEDULED FOR MONDAY, JULY 8, 2013 AT 7:00 P.M. HAS BEEN CANCELLED. A SPECIAL MEETING AT 5:00 P.M. ON MONDAY, JULY 8, 2013 HAS BEEN SCHEDULED IN ITS PLACE. PLEASE SEE AGENDA BELOW.**

**LEMOORE PLANNING COMMISSION  
Special Meeting  
AGENDA  
Lemoore Council Chambers  
429 ‘C’ Street  
Monday, July 8, 2013 at 5:00 p.m.**

1. Pledge of Allegiance and Roll Call
2. Public Comments and Inquiries

*If you wish to comment on an item, which is not on the agenda, you may do so under "Public Comment." In order to allow time for all public comments, each individual's comments are limited to five minutes. When addressing the Commission, you are requested to come forward to the speaker's microphone, state your name and address, and then proceed with your presentation.*

3. Approval – Minutes – Regular Meeting June 24, 2013
4. Discussion – Zoning Code Proposed Revisions
5. Planning Director's Report
6. Commission's Report and Request for Information
7. Adjournment

Tentative Future Agenda Items

Discussion - Zoning Code Proposed Revisions

Notice of ADA Compliance: If you or anyone in your party needs reasonable accommodation to attend, or participate in, any City Council Meeting, please make arrangements by contacting City Hall at least 24 hours prior to the meeting. They can be reached by calling 924-6700, or by mail at 119 Fox Street, Lemoore, CA 93245.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the City Clerk's Counter at City Hall located at 119 Fox Street, Lemoore, CA during normal business hours. In addition, most documents will be posted on the City's website at [www.lemoore.com](http://www.lemoore.com).

**CERTIFICATION OF POSTING**

I, Brooke Austin, Chief Deputy City Clerk of the City of Lemoore, do hereby declare that the foregoing Notice of Cancellation for the Lemoore Planning Commission Regular Meeting of Monday July 8, 2013 at 7:00 p.m. and Agenda for the Lemoore Planning Commission Special Meeting of Monday July 8, 2013 at 5:00 p.m. were posted on the outside bulletin board located at City Hall, 119 Fox Street in accordance with applicable legal requirements. Dated this 3<sup>rd</sup> day of July 2013,

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Brooke Austin, Chief Deputy City Clerk

Minutes of the  
LEMOORE PLANNING COMMISSION  
June 24, 2013

MEETING CALLED TO ORDER:

At 7:01 p.m. the meeting was called to order.

ATTENDANCE:

Chairman Meade, Vice-Chairman Garcia, Commissioners Clement, Marvin, Monreal, Wynne; City Planner Brandt, Planning Director Wlaschin, Project Manager Holwell, Chief Deputy City Clerk Austin

PUBLIC COMMENT:

Tony Avila requested a variance in the setback requirements for installing a swimming pool. He was referred to planning staff to apply for a variance.

MINUTES – REGULAR MEETING JUNE 10, 2013:

There was a correction to the minutes in regards to the Ad Hoc Committees. Commissioner Clement, not Meade, was appointed to the Administrative Clean-up Committee.

It was moved by Vice-Chairman Garcia and seconded by Commissioner Clement to approve the minutes of the Planning Commission Regular Meeting of June 10, 2013.

Ayes: Garcia, Clement, Marvin, Monreal, Wynne, Meade

DISCUSSION – 2013 ZONING ORDINANCE REVISIONS – PROPOSED PROCESS AND GENERAL TIMELINE:

City Planner Brandt presented the proposed timeline for the zoning code update. He presented the Commission with an outline of the items to be looked into and noted most problems seem to be in the processes and design regulation sections.

Commissioners indicated a desire to streamline the code to make it more understandable and easier to comply. They would also like to find a balance between allowing flexibility for applicants and protecting the quality of design and construction in the community overall.

Michael Montalbano asked the Commission to come to a consensus on their philosophy and then adopt a revised code reflecting that philosophy. He also stated the 2030 General Plan should be used as a guide for that process.

Brandt stated he would work to revise the ground rules and processes sections of the code and bring back proposed revisions. The design standards sections will require extensive research to make sure any revisions are in line with the 2030 General Plan.

John Gordon spoke regarding a letter that he received from a developer in the past outlining their concerns. He also stated some revisions of the sign ordinance are necessary to reduce fees and frustrations for businesses.

Brandt agreed to meet with the Administrative Clean-up Ad Hoc Committee to see if he could provide better direction for the task at hand.

All agreed to meet again on July 8<sup>th</sup> to review proposed revisions.

#### PLANNING DIRECTOR'S REPORT

Planning Director Wlaschin distributed a key to each Commissioner and explained mailboxes will be located at City Hall for Commissioners to retrieve large documents and maps that are difficult to view electronically.

#### COMMISSIONER REPORTS AND REQUESTS FOR INFORMATION:

Commissioner Clement expressed his concern for the potential of traffic accidents at the corner of "D" and Follett Streets.

#### ADJOURNMENT:

At 8:45 p.m. the meeting adjourned.

Approved the 8<sup>th</sup> day of July, 2013.

Full digital audio recording is available.

Attest:

\_\_\_\_\_  
Dr. Ronald Meade, Chairman

\_\_\_\_\_  
Brooke Austin, Chief Deputy City Clerk

**Mayor**  
William Siegel  
**Mayor Pro Tem**  
Lois Wynne  
**Council Members**  
John Gordon  
Eddie Neal  
Willard Rodarmel



**Public Works/  
Planning**

711 Cinnamon Drive  
Lemoore CA 93245  
Phone(559)924-6704  
FAX(559)924-6708

## Staff Report

ITEM 4

**To: Lemoore Planning Commission**  
**From: Steve Brandt, City Planner**  
**Date: July 3, 2013**  
**Subject: Zoning Code Proposed Revisions**

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### Discussion

This discussion continues from the Planning Commission meeting on June 24<sup>th</sup>. On June 25<sup>th</sup>, Staff met with the Administrative Clean-up Ad Hoc Committee. We discussed how to move forward on reviewing the Zoning Code sections that deal with the processing of planning permit applications. The main sections that deal with planning applications are Chapter 2A, 2B, and 2C, although there are other areas of the Code that also speak to permit processing.

Attached are Chapters 2A, 2B, and 2C, with comments in the right column. These comments are Staff recommendations and are meant for discussion purposes. If the Commission agrees with the approach proposed in a comment, then revised text in underline/~~strikethrough~~ format can be prepared so the Commission can see the actual proposed text changes.

Monday night's meeting is meant to review the general approach to making the Zoning text changes, and to build upon the previous meeting in a similar style of discussion. A number of the comments attached propose ways to limit discretion on projects reviewed by the Planning Director so that they can truly be considered an administrative action. This will improve the certainty of the process for the applicant, the general public, and the City.

One recommendation that is mentioned in a few comments is to consider reorganizing the site plan review process to be a ministerial action performed only by City staff. Many jurisdictions handle site plan review this way so that site plan review can be exempt from CEQA requirements. Making these changes would limit staff's review basically to a confirmation that the proposed site plan is meeting the City's Zoning Code. Versions of this method have been used in Visalia and Tulare for a number of years.

**Recommendation**

It is recommended that the Commission review the proposed comments in the right column of the attached Zoning Code chapters and accept, modify, or redirect the direction that Staff wants to take in making modifications. Any direction from the Commission to Staff at this time is not yet final. The final recommendation would be made at a future public hearing where the actual text changes are shown.

**Attachments:**

Zoning Code Chapters 2A, 2B, and 2C with comments

## CHAPTER 2:

### PROCEDURES AND ENTITLEMENTS

#### ARTICLE A. GENERAL APPLICATION PROCESSING PROCEDURES

##### 9-2A-1: PURPOSE:

##### 9-2A-2: OVERVIEW OF PROCESSING PROCEDURES:

##### 9-2A-3: CONSOLIDATED REVIEW:

##### 9-2A-4: PREAPPLICATION CONFERENCE:

##### 9-2A-5: APPLICATION REQUIREMENTS AND PROCESS:

##### 9-2A-6: PUBLIC NOTICE, HEARINGS, AND DECISIONS:

##### 9-2A-7: RECOMMENDING, APPROVAL, AND APPEAL AUTHORITY:

##### 9-2A-8: APPEALS:

##### 9-2A-9: PERMIT TIME LIMITS, EXTENSIONS, AND EXPIRATION:

##### 9-2A-1: PURPOSE:

This article describes the general procedures that apply to land use entitlement applications. The implementation of these procedures is consistent with the requirements of the California Government Code, including chapter 2.7 (public hearings), chapter 3 article 6 (preparation, adoption, and amendment of the general plan), chapter 3 article 8 (specific plans), chapter 4 (zoning regulations), and chapter 4.5 (review and approval of development projects, also known as the permit streamlining act), and division 13 of the California Public Resources Code (the California environmental quality act). (Ord. 2012-01, 4-17-2012)

##### 9-2A-2: OVERVIEW OF PROCESSING PROCEDURES:

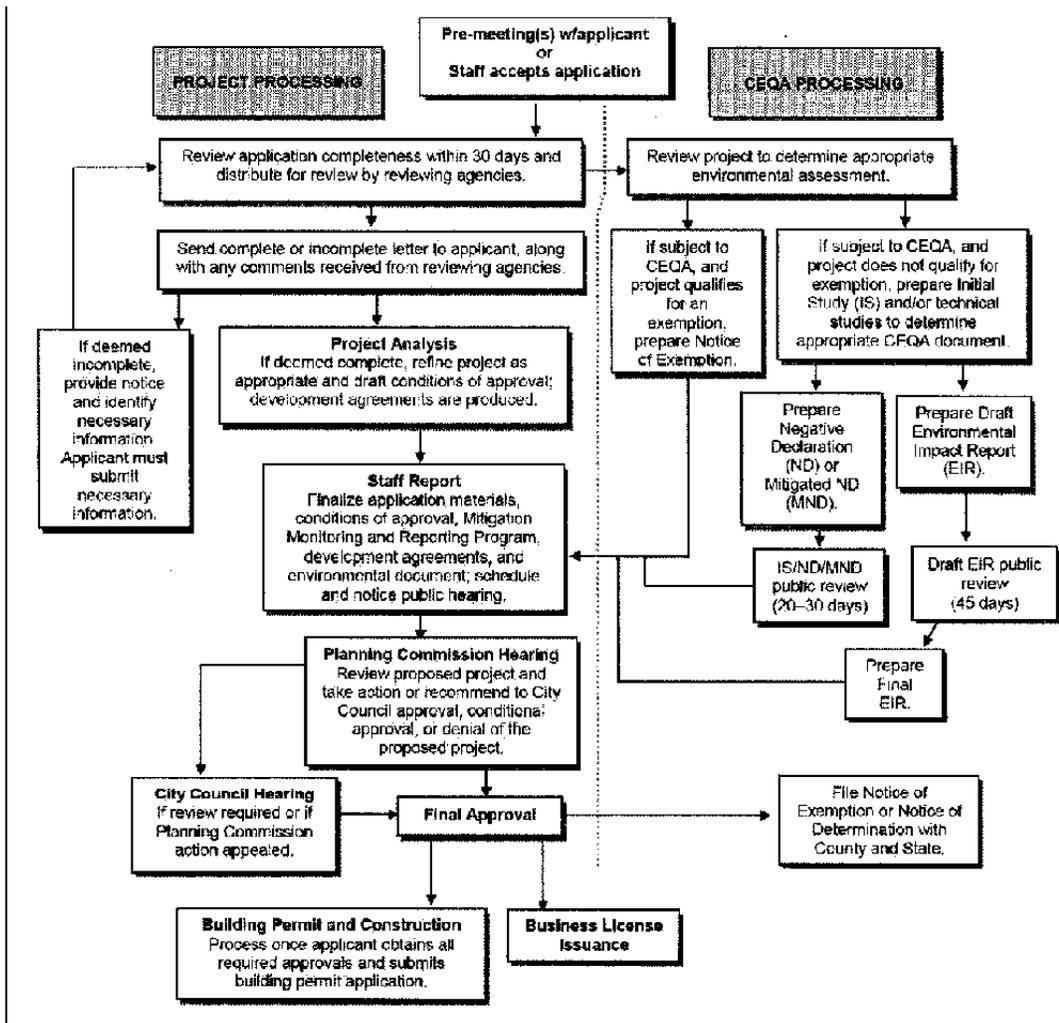
A. Overview Of Process: The entitlement procedures provided in this article are described according to the various stages of the application review process. First, a preapplication meeting may be held between the project applicant and city staff for preliminary review of the project merits and details prior to submittal of a complete application. From there, an application is formally submitted to the city, the application is reviewed by staff for compliance with adopted plans and policies, environmental review is completed, a public hearing is held on the project (with public notice provided) if required, and a decision is made by the designated approving authority. Unless the decision is final with the city council, there is an opportunity to appeal the decision of the designated approving authority.

While the details of this process vary between the types of planning permits and entitlements, figure 9-2A-2-1, "General Development Review Process", of this section illustrates the overall steps in the process in a flow chart. The intent of this figure is to help in the understanding of the steps in the process and is not meant to supersede the provisions of this article. It is purely for illustrative purposes.

FIGURE 9-2A-2-1  
GENERAL DEVELOPMENT REVIEW PROCESS

Comment [SB1]: Remove Section 9-2A-2 A. The text is commentary, not law. Place into Procedures Booklet.

Comment [SB2]: Remove Figure 9-2A-2-1. The table is more for describing the general process, and may not be confused with mandating a certain process. Place into Procedures Booklet.



B. Types Of Planning Permits And Entitlements: Each planning permit or entitlement administered by the city is categorized as one of three (3) types. These types are listed below. Section 9-2A-7, table 9-2A-7-1, "Planning Permit And Entitlements And Review And Appeal Authority", of this article lists the various planning permits and entitlements in Lemoore, identifies the type of permit required, and lists the designated approving authority and appeal authority for each.

1. Administrative decisions are those that require limited or no interpretation or exercise of judgment in evaluating approval criteria because the decision is made according to specific criteria. Examples include zoning clearance for consistency with adopted zoning regulations as part of an application for a building permit. Administrative permits include, but are not limited to, zoning clearance, temporary use permits, reasonable accommodation, similar use determination, official zoning interpretation, and minor and major home occupation permit.

**Comment [SB3]:** Remove text. Other sections describe which permits are ministerial.

2. Quasi-judicial decisions typically involve some level of discretion or policy determination on the part of the approval authority and generally require findings to be made in order to approve planning permits or entitlements. A public hearing is held, evidence is weighed, and conclusions are drawn. Quasi-judicial permits and entitlements include, but are not limited to, conditional use permit, major site plan and architectural review, variance, public convenience and necessity, and highway oriented sign permit.

**Comment [SB4]:** Remove text. Other sections describe which permits are quasi-judicial.

3. Legislative decisions must be made by the city council. Legislative land use decisions apply to the general population and prescribe policy and require the greatest amount of discretion and evaluation of subjective approval criteria. A public hearing is required. Legislative decisions include, but are not limited to, planned unit development, specific plan, development agreement, zoning amendment, rezoning, and general plan amendment. (Ord. 2012-01, 4-17-2012)

**Comment [SB5]:** Remove text. Other sections describe which permits are legislative.

### 9-2A-3: CONSOLIDATED REVIEW:

A. Multiple Planning Permits And Entitlements: Where a proposal involves more than one planning permit or entitlement for the same property, the application shall be reviewed and approved, conditionally approved, or denied by the highest approving authority. For example, a conditional use permit and site plan and architectural review are both decided by the planning commission. However, when combined with a rezone request that requires city council decision, the planning commission shall provide a recommendation for the city council to make the final decision on all three (3) permits or entitlements together.

**Comment [SB6]:** Remove text. This example is more commentary than code.

B. Planning Permit Or Entitlement And Subdivision Permit: When a planning application is accompanied concurrently with an application for a subdivision permit (e.g., lot line adjustment, tentative subdivision map, tentative parcel map, vesting tentative map) as provided in title 8, chapter 7, "Land Division", of the municipal code all of the applications shall be processed concurrently and final action shall be taken by the highest level designated approving authority for all such requested permits. (Ord. 2012-01, 4-17-2012)

### 9-2A-4: PREAPPLICATION CONFERENCE:

A. Requirement For Preapplication Conference: A preapplication conference is required prior to application submittal for quasi-judicial and legislative planning permits and entitlements. Preapplication conferences are not required for administrative decisions made by the planning director.

B. Purpose Of Preapplication Conference: The purpose of the preapplication conference is to acquaint applicants with the requirements of this code, the general plan, and other relevant criteria and to have a preliminary discussion about the merits and details of a proposed project. Additionally, this process serves to outline the city's entitlement process, identify

possible project alternatives or modifications, identify the information and materials the city will require with the application, and delineate any necessary technical studies and information required relative to the environmental review of the project.

- C. Scheduling Of Preapplication Conference: To schedule a preapplication conference, the applicant shall submit a written request and corresponding materials as required on application forms provided by the planning department. The planning director shall schedule the preapplication conference with planning staff or with a project review team composed of department and/or agency representatives as appropriate.
- D. Effect Of Conference: Neither the preapplication review nor the provision of information and/or pertinent policies shall be construed as a recommendation for approval or denial of the application or project by any city staff. Any failure by city staff to identify all required studies or all applicable requirements does not constitute a waiver of those requirements. (Ord. 2012-01, 4-17-2012)

**Comment [SB7]:** Remove Section 9-2A-4 regarding preapplication conferences. If the applicant desires to meet with City staff, or vice versa, it can be done informally.

**9-2A-5: APPLICATION REQUIREMENTS AND PROCESS:**

All applications for planning permits and entitlements shall be submitted to the planning department with the following materials and are subject to the procedures listed below.

- A. Application Contents: Form shall include applicant signature(s), agent authorization (as appropriate), and property ownership certification. Application form shall be submitted along with:
  - 1. Any fee or deposit for services based on the entitlement(s) requested as adopted by resolution of the city council;
  - 2. Plans, maps, and any other information deemed necessary by the city to provide the approving authority with adequate information to make informed decisions; and
  - 3. Materials listed on the planning permit or entitlement application form related to the requested entitlement(s).
- B. Determination Of Application Completeness:
  - 1. Application Completeness With Notification: Within thirty (30) days of application submittal, the planning director shall determine whether or not the application is complete and shall notify the applicant that either:
    - a. All the submittal requirements have been satisfied and the application has been accepted as complete; or
    - b. Specific information is still necessary to complete the application. The letter may also identify preliminary information regarding the areas in which the submitted plans are not in compliance with city standards and requirements.

**Comment [SB8]:** Remove text. Planning Dept. should get a completed application before making written determinations about an application's compliance or noncompliance. The new information could change that determination.

2. Application Completeness Without Notification: If the written determination is not made within thirty (30) days after receipt, the application shall be deemed complete for purposes of this section.
3. Resubmittal: Upon receipt and resubmittal of any incomplete application, a new thirty (30) day period shall begin during which the planning director shall review materials and determine the completeness of the application.
4. Incomplete Application: If additional information or submittals are required and the application is not made complete within six (6) months of the completeness determination letter, the city shall have the discretion to deem the application as withdrawn. No further action will be taken on the application. Unexpended fees, as determined by the city, will be returned to the applicant. If the applicant subsequently wishes to pursue the project, a new application, including fees, plans, exhibits, and other materials, must then be filed in compliance with this code.
5. Right To Appeal: The applicant may appeal the determination in accordance with section 9-2A-8, "Appeals", of this article and the permit streamlining act<sup>1</sup>.

C. Ministerial Application: In order to expedite the determination of completeness for ministerial permits and administrative actions issued or decided by the planning director (e.g., zoning clearance), such applications shall be deemed complete within ten (10) working days unless the applicant is otherwise notified in writing within that time period of additional information necessary to complete the application.

**Comment [SB9]:** Remove text. The question of completeness or incompleteness should not apply to ministerial actions.

D. Environmental Assessment:

1. Completion Of Environmental Review: After determination of a complete application, the planning director shall review the project as required by the California environmental quality act (CEQA)<sup>2</sup>. The planning director shall consult the state CEQA guidelines (division 6 of chapter 3 of title 14 of the California Code Of Regulations) as necessary. As part of this review, the planning director shall determine, and document as appropriate, whether the proposed activity:
  - a. Is exempt from CEQA, in compliance with section 15061 of the state CEQA guidelines. If exempt, a notice of exemption shall be prepared in compliance with section 15062, and a notice filed with the Kings County clerk and, if applicable, with the state office of planning and research. Possible CEQA exemptions include, but are not limited to, the following:
    - (1) The activity is not a "project" as defined in section 15378 of the state CEQA guidelines;
    - (2) The activity is exempt under the "general rule" that CEQA applies only to projects which have the potential for causing a significant effect on the environment, as specified in section 15061(b)(3) of the state CEQA guidelines; or
    - (3) The project/activity qualifies for a "statutory" exemption (section 15260 et seq., of the state CEQA guidelines) or a "categorical" exemption (section 15300 et seq. of the state CEQA guidelines).

b. Is adequately addressed through a previously adopted negative declaration or mitigated negative declaration or certified environmental impact report, or other agency environmental review. Previous environmental documents that the planning director determines do not adequately address the environmental consequences of a project shall require a formal update and review process, which may require a new environmental document.

c. Requires formal review consistent with the procedures and standards of CEQA.

2. Supplemental Application Information For Environmental Review: In addition to the necessary information for review of the project and to deem the application complete, the planning director shall require the applicant to submit any additional information needed for completion of the environmental review.

**Comment [SB10]:** Replace Environmental Assessment section with a shorter, more general acknowledgement that many planning applications require CEQA. Restating state law in a local ordinance is not necessary, and could cause problems if the local ordinance is found to be unintentionally in conflict with state law.

E. Application Review, Report, Determination, And Conditions:

1. Review: The planning director, or designee, shall review all applications to determine compliance with provisions of this title and other applicable provisions (e.g., subdivision code, other sections of the municipal code, general plan). The project review will include any required environmental review as required by CEQA and described in subsection C, "Ministerial Application", of this section.

2. Project Routing: The planning director shall route the project to other departments and outside agencies as appropriate prior to the preparation of a staff report.

3. Staff Report: When this code requires planning commission and/or city council action, the planning director shall provide a written recommendation to the approving authority to approve, deny, or approve with conditions the requested entitlement.

a. Each staff report shall be furnished to the applicant and property owner at the same time as it is provided to the review authority prior to consideration of the entitlement request.

b. The staff report may be amended as necessary at any time prior to the hearing to address issues or information not reasonably known at the time the report is due.

4. Determination: The designated approving authority shall notice and hold a public hearing (if required) and take action to approve, deny, or conditionally approve the land use permit or entitlement.

5. Conditions Of Approval: The approving authority shall have the authority to impose reasonable conditions of approval to ensure that all applicable criteria are, or can be, met. Failure to comply with any condition of approval shall be grounds for revocation of the planning permit(s) or entitlement(s) and grounds for instituting code enforcement proceedings.

F. Withdrawal Of Application: The following procedure allows for the withdrawal of applications:

1. Request: The planning director may withdraw any application at the request of the applicant, prior to the final written decision on the entitlement.

2. Incomplete Applications: See subsection B4, "Incomplete Application", of this section.

3. Fees Refunded: Fees for withdrawn applications shall be refunded, less the actual costs incurred by the city in processing the application through the date of withdrawal.

**Comment [SB11]:** Revise the text so that the authority to withdraw a application (or place it on hold) remains with the applicant, not the planning director.

G. Modification:

1. Any person holding a permit granted under this code may request a modification or amendment to that permit. For the purpose of this section, the modification of a permit may include modification of the terms of the permit itself, project design, or the waiver or alteration of conditions imposed in the granting of the permit.

2. If the city determines that a proposed project action is not in substantial conformance with the original approval, the applicant shall be notified of the requirement to submit a permit modification application for consideration and action by the same approving authority as the original permit. A permit modification may be granted only when the approving authority makes all findings required for the original approval and the additional finding that there are changed circumstances sufficient to justify the modification of the approval. (Ord. 2012-01, 4-17-2012)

**Comment [SB12]:** Relocate text to a section that deals with findings for approval.

**9-2A-6: PUBLIC NOTICE, HEARINGS, AND DECISIONS:**

This section establishes procedures for noticing public hearings. Pursuant to section 65905 of the California Government Code, a public hearing shall be provided for all discretionary development permits, including quasi-judicial and legislative permits and entitlements. Notice shall be provided as described below. These noticing requirements are consistent with sections 65090 through 65094 of the California Government Code.

A. Notice Of Hearing For Quasi-Judicial And Legislative Permits And Entitlements: When this title requires a public hearing before the planning commission or city council, notice shall be provided not less than ten (10) days before the scheduled date of a hearing in the manner listed below. The notice shall state the date, time, and place of hearing, identify the hearing body, and provide a general explanation of the matter to be considered and a general description of the real property (text or diagram), if any, which is the subject of the hearing.

1. Notice of public hearing shall be published in at least one newspaper of general circulation in the city.

2. Except as otherwise provided herein, notice of the public hearing shall be mailed, postage prepaid, to the owners of property within a radius of three hundred feet (300') of the exterior boundaries of the property involved in the application, using for this purpose the last known name and address of such owners as shown upon the current tax assessor's records. If the number of owners exceeds one thousand (1,000), the city may, in lieu of mailed notice, provide notice by placing notice of at least one-eighth (1/8) page in one newspaper of general circulation within the city.

3. Notice of the public hearing shall be mailed, postage prepaid, to the owner of the subject real property or the owner's authorized agent and to each local agency expected to provide water, sewerage, streets, roads, schools, or other essential facilities or services to the proposed project.

4. Notice of the public hearing shall be posted at city hall.

5. Notice of the public hearing shall be mailed to any person who has filed a written request for notice as identified in subsection B, "Requests For Notification", of this section.

B. Requests For Notification: Any person who requests to be on a mailing list for notice of hearing shall submit such request in writing to the city clerk. The city may impose a reasonable fee for the purpose of recovering the cost of such notification.

C. Receipt Of Notice: Failure of any person or entity to receive any properly issued notice required by law for any hearing required by this code shall not constitute grounds for any court to invalidate the actions of a designated approving authority for which the notice was given.

D. Hearing Procedure: Hearings as provided for in this article shall be held at the date, time, and place for which notice has been given as required. The approving authority shall conduct the public hearing and hear testimony from interested persons. The summary minutes shall be prepared and made part of the permanent file of the case. Any hearing may be continued to a date certain. If the hearing is not continued to a specific date/time, then the hearing shall be renoticed.

**Comment [SB13]:** Simplify Section 9-2A-6 to state that hearings and noticing procedures shall conform to the applicable sections of state law. Move the more detailed text to the Procedures Booklet.

E. Action/Determination Procedures:

1. Recommendation: Where a recommending body other than the planning director makes a recommendation to a higher body (e.g., planning commission recommendation to the city council), the recommendation shall be recorded in a resolution of the recommending body. The recommendation shall include all required findings for final action. In the case of the planning director, the recommendation is provided in the staff report.

2. Decision: The approving authority shall declare and document their decision at the conclusion of a scheduled hearing.

3. Notice Of Decision: After final action has been taken by the approving authority, notice of the decision shall be mailed to the applicant and to the property owner, as applicable.

4. Effective Date: A decision of the approving authority is final and effective on the eleventh day following the decision unless an appeal is filed. (Ord. 2012-01, 4-17-2012)

**Comment [SB14]:** Some sentences could be confusing to interpret. Rewrite to be more direct.

### 9-2A-7: RECOMMENDING, APPROVAL, AND APPEAL AUTHORITY:

A. Authorities: Table 9-2A-7-1, "Planning Permit And Entitlements And Review And Appeal Authority", of this section summarizes the recommending, approving, and appeal authorities for the various planning permits and entitlements listed in article B, "Planning Permits And Entitlements", of this chapter. It also identifies the type of permit or entitlement as described

in subsection 9-2A-2B, "Types Of Planning Permits And Entitlements", of this article.

The terms in the table have the following meaning:

1. Notice/Hearing Requirement:

- a. "None" indicates that no hearing or notice is required.
- b. "Public hearing only if requested" indicates that a public hearing for a permit for a major home occupation may be requested by the public as described in section 9-2B-9, "Home Occupation Permit", of this chapter.
- c. "Public hearing" indicates that a hearing and public hearing notice as described in subsection 9-2A-6A, "Notice Of Hearing For Quasi-Judicial And Legislative Permits And Entitlements", of this article is required.

Comment [SB15]: Remove this option.

2. Authority:

- a. "Recommending" means that the identified authority makes a recommendation on the application to another body.
- b. "Final" means that the identified authority is the designated approving authority for the application.
- c. "Appeal" means that the identified authority is the designated appeal authority for the application in the event that an appeal is filed pursuant to section 9-2A-8, "Appeals", of this article.

B. Elevation:

1. Elevation To Planning Commission: At any point in the application review process, the planning director may elevate (transfer) decision making authority for any permit or entitlement within the director's jurisdiction to the planning commission because of policy implications, unique or unusual circumstances, or the magnitude of the project. The planning director may only do so when at least one of the following are true:
  - a. Approval of the project would require the application of conditions of approval in order to ensure consistency with this title, the general plan, or to otherwise protect the public health, safety, and general welfare.
  - b. A significant number of individuals have contacted the city, either through written correspondence or documented phone calls, and identified concerns with the project. For purposes of this section, a "significant number of individuals" shall mean more than one-half of one percent (0.5%) of the population of the city.
  - c. Pursuant to section 15300.2 of the state CEQA guidelines, the project does not qualify for a categorical exemption from CEQA and there are no applicable statutory exemptions or other prior environmental review(s) that satisfy the requirement for review of the project under CEQA.

2. Public Hearing: An elevated application shall be considered at a noticed public hearing.
3. Elevation Is Not An Appeal: An elevation to another decision maker is not an appeal and requires no appeal application or fee.
4. Subsequent Applications: The approval authority of an elevated application shall consider subsequent amendments, time extensions, or revocations of the referred application.

**Comment [SB16]:** Remove procedures to elevate a ministerial permit to Planning Commission. Projects will remain either ministerial and approved at staff level or will be discretionary and approved at planning commission or council.

TABLE 9-2A-7-1  
 PLANNING PERMIT AND ENTITLEMENTS AND  
 REVIEW AND APPEAL AUTHORITY<sup>1</sup>

Planning Permit Or Entitlement	Notice/Hearing Requirement	Authority		
		Planning Director	Planning Commission	City Council
Administrative permits:				
Zoning clearance (e.g., building permit, signs, business license)	None	Final	-	Appeal
Temporary use permit	None	Final	-	Appeal
Tree permit for trees on private property	None	Final	-	Appeal
Reasonable accommodation	None	Final	-	Appeal
Similar use determination	None	Final	-	Appeal
Official zoning interpretation	None	Final	-	Appeal
Home occupation permit:				
Minor home occupation permit	None	Final	-	Appeal
Major home occupation permit	Public hearing only if requested	Final	-	Appeal
Administrative use permit	None	Final	-	Appeal
Minor deviation	None	Final	-	Appeal

**Comment [SB17]:** Consider revising/removing Major home occupation procedures.

Minor site plan and architectural review	None	Final	-	Appeal
Sign program	None	Final	-	Appeal
Quasi-judicial permits and entitlements:				
Conditional use permit	Public hearing	Recommending	Final	Appeal <sup>2</sup>
Major site plan and architectural review	Public hearing	Recommending	Final	Appeal <sup>2</sup>
Variance	Public hearing	Recommending	Final	Appeal <sup>2</sup>
Public convenience or necessity	Public hearing	Recommending	Final	Appeal <sup>2</sup>
Highway oriented sign permit	Public hearing	Recommending	Final	Appeal <sup>2</sup>
Legislative approvals:				
Planned unit development	Public hearing <sup>3</sup>	Recommending	Recommending	Final
Specific plan	Public hearing <sup>3</sup>	Recommending	Recommending	Final
Development agreement	Public hearing <sup>3</sup>	Recommending	Recommending	Final
Zoning amendment	Public hearing <sup>3</sup>	Recommending	Recommending	Final
Prezoning	Public hearing <sup>3</sup>	Recommending	Recommending	Final
General plan amendment	Public hearing <sup>3</sup>	Recommending	Recommending	Final

**Comment [SB18]:** Consider modifying site plan review process to be a ministerial process that is handled at staff level.

**Comment [SB19]:** Make Highway Oriented signs and ministerial action to be approved by Planning Director.

**Notes:**

1. See title 8, chapter 7, "Land Division", of the municipal code for subdivision permits.
2. The appeal for this permit requires a noticed public hearing.
3. A noticed public hearing shall be held for both the planning commission and city council review.

(Ord. 2012-01, 4-17-2012)

**9-2A-8: APPEALS:**

This section establishes procedures for the appeal of planning permits and entitlements. Planning permits and entitlements that are eligible for appeal and the corresponding appeal

authority are listed in section 9-2A-7, table 9-2A-7-1, "Planning Permit And Entitlements And Review And Appeal Authority", of this article.

A. Standing To File An Appeal: An appeal may be filed by any of the following persons:

1. Any person affected by a determination where an appeal is available as indicated in section 9-2A-7, table 9-2A-7-1 of this article, including the applicant; or
2. Any person who, in person or through a representative, presented testimony at a public hearing in connection with the decision being appealed, or who otherwise informed the city in writing of the nature of their concerns prior to the hearing.

B. Timing And Form Of Appeal: Appeals shall be filed with the planning department within ten (10) calendar days following the final date of the determination being appealed. All appeals shall be submitted in writing, together with the name, address, phone number, and signature of the appellant, and the required filing fee. The written appeal shall specifically state the pertinent facts of the case and the basis for the appeal.

C. Multiple Actions: In the event an appeal is filed regarding a decision on one of multiple planning permits or entitlements granted concurrently for a single project, all concurrently granted planning permits or entitlements for the project shall be automatically appealed and shall be considered and acted upon together in compliance with this section.

D. Processing:

1. Scheduling And Notice Of Hearing: After an appeal has been received, the matter shall be scheduled for the next available hearing according to the procedure for public notice and hearing listed in section 9-2A-6, "Public Notice, Hearings, And Decisions", of this article.
2. Report: After the hearing has been scheduled, the planning director shall prepare a report on the matter and forward the report to the appropriate appeal authority.
3. Consolidation Of Multiple Appeals: If more than one party files an appeal on a land use action, the appeals shall be consolidated and noticed and heard as one proceeding.
4. Withdrawal Of An Appeal: An appeal may be withdrawn by an appellant at any time prior to the rendering of a final decision. The appeal proceedings shall terminate as of the date the withdrawal request is received by the city.
5. Appeal Hearing And Review: Each appeal shall be considered a de novo (new). The appeal authority shall review the matter in full as though it were being reviewed and decided for the first time.
6. Decision: After a public hearing, the appeal authority may:
  - a. Approve, modify, or disapprove the planning permit or entitlement, either in whole or in part, based on the record and the evidence received at the hearing;

**Comment [SB20]:** Consider revising to provide for more flexibility while at the same time not unduly delaying the process.

**Comment [SB21]:** Is this the desired policy? It appears to say that the appeal authority (usually the Council) is not required to take the Planning Commission's deliberations or decision into account in its own deliberations.

- b. Adopt additional conditions of approval deemed reasonable and necessary; or
- c. Disapprove the planning permit or entitlement approved by the approving authority, even if the request was to modify the project or to modify or eliminate one or more of the conditions of approval.
- d. When the appeal authority is the city council, the appeal authority may, in its sole discretion, refund any appeal fees or deposit paid by the appellant if such a request is made by the appellant.

E. Rights: Pending a decision on an appeal, all rights emanating from the planning permit or entitlement, including licenses, building permits, or other city action, that is the subject of the appeal and all relevant time periods shall be suspended. (Ord. 2012-01, 4-17-2012)

#### **9-2A-9: PERMIT TIME LIMITS, EXTENSIONS, AND EXPIRATION:**

The following time parameters apply to planning permits and entitlements:

A. Time Limits: Unless a condition of approval or other provision of this title establishes a different time limit, any administrative or quasi-judicial planning permit or entitlement not exercised (as described in subsection B, "Exercising Permits", of this section) within two (2) years of approval shall expire and become void, except where an extension of time is approved in compliance with subsection C, "Permit Extensions", of this section. Once exercised, a permit runs with the land unless otherwise provided in this section.

B. Exercising Permits: The exercise of a permit occurs when the property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon such permit(s). A permit may be otherwise exercised pursuant to a condition of the permit or corresponding legal agreement that specifies that other substantial efforts or expenditures constitutes exercise of the permit. Unless otherwise provided, permits that have not been exercised prior to a zoning amendment, which would make the permitted use or structure nonconforming, shall automatically be deemed invalid on the effective date of the zoning amendment.

Once a permit or entitlement has been exercised, the permit or entitlement shall run with the land. Any deviations from the approvals shall require an amendment to the prior approvals or approval of a new permit or entitlement(s) as determined by the city.

C. Permit Extensions: The approval of an extension extends the expiration date for two (2) years from the original permit date. After this initial permit extension, a final one year extension of time (for a maximum period of 3 years) may be granted pursuant to the same process as set forth in this section.

1. Process: The same approving authority that took final action in granting the original permit shall consider extending the period within which the exercise of a permit must occur. Notice and public hearing shall be provided in the same manner as for the original permit. An application for extension shall be filed not less than thirty (30) days prior to the expiration date of the permit, along with appropriate fees and application submittal materials. The city may waive this requirement if deemed necessary due to unique

circumstances. The filing of an application for an extension shall stay the expiration, but no subsequent permits (e.g., building permit) shall be issued during the stay period.

2. Conditions: The permit, as extended, may be conditioned to comply with any development standards that may have been enacted since the permit was initially approved.
3. Permit Extension Findings: The extension may be granted only when the designated approving authority finds that the original permit findings can be made and there are changed circumstances or there has been diligent pursuit to exercise the permit that warrants such extension.

D. Expiration: Permits and entitlements shall expire as follows:

1. Permits That Have Not Been Exercised: If a permit or entitlement has not been exercised and the time limits are reached with no extension requested, or a requested extension is denied or expires, the permit expires.
2. Permits That Have Been Exercised: Generally, if a permit or entitlement has been exercised within the allowed time limit, the permit shall run with the land and the corresponding use or structure authorized by the permit may continue to operate in perpetuity. Excluded from this shall be uses that require the issuance of a use permit as required by chapter 4, "Use Regulations", of this title and that are subsequently abandoned or discontinued. In those cases, the requirements of article C, "Nonconforming Uses, Structures, And Properties", of this chapter shall apply.

E. Revocation:

1. Revocation of a previously approved planning permit or entitlement shall be considered in the event an applicant, or the applicant's successor in interest, fails to comply with any of the conditions of entitlement approval. In this case the city council, planning commission, or planning director may institute revocation proceedings if it is determined there is substantial likelihood that any of the following situations exist:
  - a. One or more conditions of approval have not been implemented or have been violated; or
  - b. The activities, or the use itself, are substantially different from what was approved.
2. Unless otherwise provided in this code, revocation of a previously approved entitlement shall be considered and decided by the city council. The planning director or any private complaining party shall have the burden to prove, based on substantial evidence in the whole record, that the applicant or the applicant's successor has violated the city's approval.

F. Permit To Run With Land, Transfer Of Approval Rights: Unless stated otherwise in the city's entitlement decision, any approval granted under this title runs with the land and is transferred with ownership of that land. Any conditions, time limits, or other restrictions imposed with a planning permit or entitlement approval shall bind all subsequent owners of the property for which the entitlement was granted. (Ord. 2012-01, 4-17-2012)

**Comment [SB22]:** Section 9-2A-9 is important to the overall code and needs to be retained, but could be rewritten to be more clear.

## CHAPTER 2:

### PROCEDURES AND ENTITLEMENTS

#### ARTICLE B. PLANNING PERMITS AND ENTITLEMENTS

- 9-2B-1: PURPOSE AND APPLICABILITY:
- 9-2B-2: APPLICATION PROCESSING PROCEDURE:
- 9-2B-3: ZONING CLEARANCE:
- 9-2B-4: TEMPORARY USE PERMIT:
- 9-2B-5: TREE PERMIT FOR TREES ON PRIVATE PROPERTY:
- 9-2B-6: REASONABLE ACCOMMODATION:
- 9-2B-7: SIMILAR USE DETERMINATION:
- 9-2B-8: OFFICIAL ZONING INTERPRETATION:
- 9-2B-9: HOME OCCUPATION PERMIT:
- 9-2B-10: ADMINISTRATIVE USE PERMIT:
- 9-2B-11: MINOR DEVIATION:
- 9-2B-12: MINOR SITE PLAN AND ARCHITECTURAL REVIEW:
- 9-2B-13: SIGN PROGRAM:
- 9-2B-14: CONDITIONAL USE PERMIT:
- 9-2B-15: MAJOR SITE PLAN AND ARCHITECTURAL REVIEW:
- 9-2B-16: VARIANCE:
- 9-2B-17: PUBLIC CONVENIENCE OR NECESSITY:
- 9-2B-18: HIGHWAY ORIENTED SIGN PERMIT:
- 9-2B-19: PLANNED UNIT DEVELOPMENT:
- 9-2B-20: SPECIFIC PLAN:
- 9-2B-21: DEVELOPMENT AGREEMENT:
- 9-2B-22: ZONING AMENDMENT:
- 9-2B-23: PREZONING:
- 9-2B-24: GENERAL PLAN AMENDMENT:

#### 9-2B-1: PURPOSE AND APPLICABILITY:

The purpose of this article is to establish procedures for administering all planning related permits and entitlements required and regulated by the city.

Each permit and entitlement type is described in this article in terms of purpose and applicability, approving authority, and processing provisions. Exemptions to permit requirements are listed throughout. General processing procedures are established in article A, "General Application Processing Procedures", of this chapter. (Ord. 2012-01, 4-17-2012)

#### 9-2B-2: APPLICATION PROCESSING PROCEDURE:

The procedure for processing each planning permit and entitlement listed in this article shall be as provided in article A, "General Application Processing Procedures", of this chapter, unless otherwise specified herein.

A. Application Content: Subsection 9-2A-5A, "Application Contents", of this chapter identifies the requirements for submittal of any application to the city for planning permits and entitlements. This includes a completed application on a form as prescribed by the city, any

required information listed on the application form for the type of permit, an application fee as established by city council resolution, and any other relevant information as may be requested by the city in order to provide the designated approving authority with adequate information on which to base a decision.

B. Appeals: Any appeal of a decision for any permit or entitlement provided in this article shall be pursuant to sections 9-2A-7, "Recommending, Approval, And Appeal Authority" and 9-2A-8, "Appeals", of this chapter.

C. Expiration: All approved permits and entitlements are subject to the provisions set forth in section 9-2A-9, "Permit Time Limits, Extensions, And Expiration", of this chapter. (Ord. 2012-01, 4-17-2012)

**Comment [SB1]:** Remove Section 9-2B-2. It is not needed. There are no new requirements specified, only reference to other sections.

### **9-2B-3: ZONING CLEARANCE:**

A. Purpose: The purpose of the zoning clearance process is to ensure that all new and modified uses and structures comply with applicable provisions of this title, using administrative procedures.

B. Applicability: Zoning clearance is required for the following actions:

1. All structures that require a building permit (e.g., new structures greater than 120 square feet) except permits for interior work only;
2. Signs;
3. Business licenses;
4. All planning entitlement and permit approvals to ensure compliance with applicable conditions of approval; and
5. Other city applications that may be subject to the provisions of this title, including, but not limited to, encroachment permits and grading and improvement plans as deemed necessary.

C. Approving Authority And Procedure: The planning director shall be the designated approving authority for zoning clearance. The procedures shall be as follows:

1. Generally: No application form is necessary for zoning clearance. This process will be conducted by the planning director as part of the building permit application review. Zoning clearance shall be granted only when the planning director finds the proposal to be in conformance with all applicable provisions of this title. The planning director may modify plans in whole or in part, apply conditions of approval, or require guarantees to ensure compliance with applicable provisions of this title. Building permits shall not be issued without approval of zoning clearance.
2. Signs: The process for reviewing signs shall be as generally provided above, except that additional information describing the existing signs on the project site and the new proposed signs shall be required on a form provided by the planning department.

D. Public Hearing And Notice: Public notice and public hearing is not required for zoning clearance.

E. Approval Findings: Zoning clearance shall be granted only when the planning director finds the proposal to be in conformance with all applicable provisions of this title. Any permit or application listed in subsection B, "Applicability", of this section shall not be issued without approval of zoning clearance. (Ord. 2012-01, 4-17-2012)

**Comment [SB2]:** Section 9-2B-3 is a more formal way of describing the method for the Planning Director to enforce the zoning ordinance on building permits and business licenses. The text is okay as is, but changes can be made administratively as to how the ordinance is interpreted.

#### **9-2B-4: TEMPORARY USE PERMIT:**

A. Purpose: A temporary use permit provides a mechanism for administrative review and determinations for proposed and qualifying short term activities and to ensure that such activities are consistent with the general plan and provisions of this title.

B. Applicability: A temporary use permit is required for short term activities listed in chapter 4, article C, "Temporary Uses", of this title.

C. Approving Authority: The designated approving authority for temporary use permits shall be the planning director.

D. Public Hearing And Notice: The issuance of a temporary use permit is an administrative function of the planning director, and no public hearing or notice is required.

E. Approval Findings: The planning director shall make all of the following findings to approve or conditionally approve a temporary use permit:

1. The proposed use is a temporary use and will be limited to a specific duration of time, as established in the temporary use permit.
2. The establishment, maintenance, or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the proposed use.
3. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.
4. The use, as described and conditionally approved, will not function or be located in a manner that restricts access to any required parking spaces.
5. Approved measures for the removal of the use and site restoration have been required to ensure that no changes to the site would limit the range of possible future land uses otherwise allowed by this title.
6. The approval includes provisions to ensure that each site occupied by a temporary use shall be cleaned of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used in compliance with the provisions of this zoning code. The approving authority may require appropriate security before initiation of the use to ensure proper cleanup after the use is terminated.

7. The proposed temporary use is consistent with the general plan, applicable specific plans, and the provisions of this title.

F. Conditions Of Approval: The planning director may place conditions on the temporary use permit, such as, but not limited to, buffers, hours of operation, landscaping and maintenance, lighting, off site improvements, parking, performance guarantees, property maintenance, signs, surfacing, time limits, and traffic circulation. Conditions must be deemed reasonable and necessary to the specific temporary use permit request. (Ord. 2012-01, 4-17-2012)

**9-2B-5: TREE PERMIT FOR TREES ON PRIVATE PROPERTY:**

A. Purpose: The purpose of a tree permit for trees on private property (hereinafter referred to as a "tree permit") is to provide a process for the review and consideration of the removal of trees on private property and not considered street trees under title 7, chapter 5, "Street Trees", of the municipal code, and that are of an important nature to the community. The city has a desire to protect trees on private property through the development review process and require mitigation for the loss of trees as established in the general plan.

**Comment [SB3]:** It is likely difficult to comprehensively enforce this code for all trees. Is the City still interested in this level of oversight for trees on private property?

B. Applicability: A tree permit shall be required prior to work within the critical root zone or the cutting down, removal, topping, or relocation of a landmark tree, heritage tree, or protected tree on private property as defined in section 9-5D1-4, "Tree Preservation", of this title. Exemptions to this requirement are:

1. Street trees as defined and regulated in title 7, chapter 5, "Street Trees", of the municipal code, which shall comply with the tree permit requirements of that chapter;
2. Trees of local importance on developed private property;
3. Removal and pruning work by utility providers; and
4. In case of emergency caused by the tree being in a hazardous or dangerous condition requiring immediate action for the safety of human life or buildings or structures, such tree may be removed by permission of the planning or public works director.

C. Approving Authority: The designated approving authority for tree permits shall be the planning director.

D. Public Hearing And Notice: The issuance of a tree permit is an administrative function of the planning director, and no public hearing or notice is required.

E. Approval Findings: The planning director shall make all of the following findings to approve or conditionally approve a tree permit:

1. For a development project, every effort has been made to incorporate the tree(s) into the design of the project and the only appropriate alternative is the removal of the tree;
2. For requests not associated with a development project, the tree presents a threat to public health and safety and must be removed; and

3. The removal of the tree will not have a negative impact on the health, safety, or viability of surrounding trees, nor will it negatively impact the aesthetics or general welfare of the surrounding area.

F. Standards: Work authorized under an approved tree permit shall be conducted in accordance with the standards of this title, specifically including section 9-5D1-4, "Tree Preservation", of this title.

G. Mitigation: Mitigation for the loss of the tree as allowed under an approved tree permit shall be mitigated in accordance with the requirements of this title, specifically including section 9-5D1-4, "Tree Preservation", of this title. (Ord. 2012-01, 4-17-2012)

**9-2B-6: REASONABLE ACCOMMODATION:**

A. Purpose: The purpose of allowing reasonable accommodation is to provide a process for individuals with disabilities to make requests for reasonable accommodation for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the city. Typical improvements considered to be ministerial in nature would include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's handicap. It is the policy of the city, pursuant to the federal fair housing act (as amended) and the California fair employment and housing act, to provide persons with disabilities reasonable accommodation in rules, policies, and procedures that may be necessary to ensure equal access to housing.

**Comment [SB4]:** This allowance for Reasonable Accommodation is appropriate and commendable, as many codes are silent about conflicts between zoning standards and needs of those with disabilities. That said, Section 9-2B-6 can be shortened considerably. The code would be revised so that zoning related decisions would be made administratively by the Planning Director, and building code related decisions would be made by the Chief Building Official.

B. Requesting Reasonable Accommodation:

1. In order to make specific housing available to an individual with a disability, a disabled person or representative may request reasonable accommodation(s) relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the city.
2. If an individual needs assistance in making the request for reasonable accommodation(s) or appealing a determination regarding reasonable accommodation(s), the planning director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant.
3. A request for reasonable accommodation(s) with regard to city regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the city at the time that the accommodation may be necessary to ensure equal access to housing.

C. Specific Application Requirements: The applicant shall provide the following information when requesting reasonable accommodation:

1. A completed city application indicating the applicant's name, address, and telephone number;
2. Address of the property for which the request is being made;
3. The current actual use of the property;

4. The zoning code provision, regulation, or policy from which reasonable accommodation is being requested;
5. The basis for the claim that the person(s) for whom the reasonable accommodation is sought is/are considered disabled under the fair housing act and why the accommodation is reasonably necessary to make specific housing available to the person(s); and
6. Such other relevant information as may be requested by the city.

D. Approval Authority:

1. The planning director shall have the authority to consider and take action on requests for reasonable accommodation. When a request for reasonable accommodation is filed with the planning department, it will be referred to the planning director for review and determination. The planning director shall issue a written determination of his or her action within fifteen (15) days of the date of receipt of a completed application and may:
  - a. Grant or deny the accommodation request; or
  - b. Grant the accommodation request subject to specified nondiscriminatory condition(s).
2. All written determinations of actions of the planning director shall give notice of the right to appeal and the right to request reasonable accommodation on the appeals process (e.g., requesting that city staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.
3. If necessary to reach a determination or action on the request for reasonable accommodation, the planning director may request further information from the applicant specifying in detail what information is required. In the event a request for further information is made, the fifteen (15) day period to issue a written determination shall be stayed until the applicant fully and sufficiently responds to the request.

E. Considerations: The city may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;
2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;
3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;

4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting;
  5. The city may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the city's zoning code:
    - a. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
    - b. Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
    - c. Whether granting the requested accommodation would substantially undermine any express purpose of either the city's general plan or an applicable specific plan;
    - d. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.
- F. Approval Findings: In making a determination regarding the reasonableness of a requested reasonable accommodation, the approving authority shall make the following findings:
1. The housing which is the subject of the request for reasonable accommodation will be used for an individual protected under the fair housing act.
  2. The request for reasonable accommodation is necessary to make specific housing available to an individual protected under the fair housing act.
  3. The requested reasonable accommodation does not impose an undue financial or administrative burden on the city and does not fundamentally alter city zoning, development standards, policies, or procedures.
  4. The requested accommodation will not result in a fundamental alteration in the nature of the city's zoning, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
  5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or physical damage to neighboring property. (Ord. 2012-01, 4-17-2012)

**9-2B-7: SIMILAR USE DETERMINATION:**

- A. Purpose And Applicability: All possible land uses may not be listed within the provisions of this title, and new uses may evolve over time. When a particular use is not specifically listed in this zoning code and it is unclear whether the use is permitted, the provisions established in this section allow the approving authority, by formal action, to determine whether or not a

proposed use is similar to a permitted or conditionally permitted use and whether such proposed use may be permitted in a particular zoning district.

B. Approving Authority: The planning director shall be the designated approving authority for similar use determinations.

C. Public Hearing And Notice: The issuance of a similar use determination is an administrative function of the planning director, and no public hearing or notice is required.

D. Approval Findings: In determining "substantial similarity", the approving authority shall make all of the following findings:

1. The characteristics of and activities associated with the proposed use are equivalent to one or more of the listed uses and will not involve a higher level of activity or population density than the uses listed in the zoning district (e.g., traffic, hours of operation, intensity of use, population density);
2. The proposed use will be consistent with the purposes of the applicable zoning district; and
3. The proposed use will be consistent with the general plan, any applicable specific plan, and this zoning code.

E. Documentation Of Determinations: Determinations shall be made in writing and shall contain the facts that support the determination. The city shall maintain all such determinations on record for review by the general public upon request. The decision shall be provided, in writing, to the applicant, interested parties, and decision makers. The notice shall include:

1. A brief statement explaining the criteria and standards considered relevant to the decision;
2. A statement of the standards and facts relied upon in rendering the decision; and
3. Statement of appeal rights and appeal deadlines.

F. Keeping Of Similar Use Determinations: The planning director shall maintain a complete record of all similar use determinations available for public review. (Ord. 2012-01, 4-17-2012)

#### **9-2B-8: OFFICIAL ZONING INTERPRETATION:**

A. Applicability And Authority To Prepare: Whenever the planning director determines that an ambiguity in a zoning regulation exists, or a formal request for an interpretation is made by an applicant, property owner, or interested party to the planning director, an official zoning interpretation shall be prepared as described herein.

**Comment [SB5]:** Consider changing the Similar Use process in Section 9-2B-7 from something that sounds like an entitlement to a code that gives the Planning Director authority to interpret the Use Table and make determinations as needed, but not to require formal documentation. Many uses not listed involve unique circumstances and the decisions made are often not useful as precedents.

B. Official Zoning Interpretation Defined; Threshold For Preparation Of Official Zoning Interpretation: An "official zoning interpretation" is a recorded decision on the meaning and/or application of the development standards, allowed use regulations, or other standards contained within this title. An official zoning interpretation is only prepared to address an ambiguity and is not prepared as part of the normal application of the code in review of development applications and zoning clearance. It is not used to determine if a proposed use is similar to another use listed in the code as such determinations are made through the similar use determination process described in section 9-2B-7, "Similar Use Determination", of this article.

C. Content Of Official Zoning Interpretation: Official zoning interpretations shall be prepared by the planning director, in writing, and shall cite the provisions being interpreted, together with any explanation of the meaning or applicability of the provision(s) in the particular or general circumstances that caused the need for the interpretation.

D. Procedure For Interpretations: Official zoning interpretations shall be prepared as follows:

1. Action By The Planning Director: The planning director shall prepare an official zoning interpretation within ten (10) days from the date of request. A copy of the official zoning interpretation shall be provided by the planning director to the city manager, city attorney, city council, and to the applicant, property owner, or interested party requesting the interpretation within five (5) days of being prepared.
2. Referral To The Planning Commission: The planning director may, in his or her sole discretion, refer a request for an official zoning interpretation to the planning commission for review and interpretation. The matter shall be heard by the planning commission at the next available regular meeting after submission of the request for the interpretation.

E. Keeping Of Official Zoning Interpretations: The planning director shall maintain a complete record of all official interpretations available for public review, indexed by the chapter number of this title that is the subject of the interpretation.

F. Codification Of Official Zoning Interpretations: To the extent practical, official zoning interpretations shall be incorporated into this title by amendment as soon as is practical. (Ord. 2012-01, 4-17-2012)

**Comment [SB6]:** Suggest that the Official Zoning Interpretation process in Section 9-2B-8 be substantially changed. This process seems overly burdensome on the Planning Director. Interpretations can be made daily. If a pattern emerges, then the Planning Department can recommend an ordinance change to resolve recurring issues.

**9-2B-9: HOME OCCUPATION PERMIT:**

A. Purpose: The purpose of the home occupation permit is to provide a process for the review and permitting of home occupations prior to their establishment.

B. Applicability: All home occupations as described in chapter 4, "Use Regulations", of this title shall obtain a home occupation permit prior to the issuance of a business license and the establishment of the home occupation. There are two (2) types of home occupation permits as follows:

1. Minor Home Occupation Permit: A minor home occupation permit is a ministerial approval that is conducted to ensure home occupations are conducted consistent with the development standards of section 9-4D-5, "Home Occupations", of this title.

2. Major Home Occupation Permit: A major home occupation permit is intended for the review and discretionary approval of those home occupations that may generate significant vehicular and pedestrian traffic and thereby have the potential to adversely impact the surrounding residential neighborhood.

**Comment [SB7]:** Consider eliminating Major Home Occupations, and converting them into use permits. This will avoid confusion between the two types.

C. Approval Authority: The designated approving authority for home occupation permits shall be the planning director.

D. Public Notification: The public notification of an application for a home occupation permit shall be made as follows:

1. Minor Home Occupation Permit: Minor home occupation permits are ministerial in nature. No public notification shall be required.
2. Major Home Occupation Permit: Major home occupation applications shall require the planning department to mail written notices to the property owners within three hundred feet (300') of the subject property informing them about the applicant's request. This notification shall state that unless any written objection is filed with the planning department within ten (10) days, the department may grant the home occupation application. If no written objection to the applicant's request is received within the stated period and the application meets all the standards stated in section 9-4D-5 of this title, the planning director shall grant the application. If written objection from any property owner within three hundred feet (300') of the subject property is received within the stated period, the application shall, thereupon, be elevated to the planning commission for review and decision, subsequent to public notice being provided as described in section 9-2A-6, "Public Notice, Hearings, And Decisions", of this title.

**Comment [SB8]:** Remove. See note above.

E. Approval Findings: A home occupation permit shall be granted only when the designated approving authority determines that the proposed home occupation complies with all of the following findings:

1. The proposed home occupation is consistent with the general plan, any applicable specific plan, and all applicable provisions of this title (e.g., section 9-4D-5 of this title); and
2. The establishment, maintenance, or operation of the home occupation applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use or to the general welfare of the city.

F. Postapproval Implementation: Requirements for implementation of an approved home occupation permit shall be provided as follows:

1. Minor Home Occupation Permit: A minor home occupation permit is ministerial in nature. As such, the planning director may not impose conditions on the issuance of the permit. However, the applicant may be provided with a list of items necessary for compliance and conformance with this title and the general plan.

2. Major Home Occupation Permit: The designated approving authority may impose conditions and/or require guarantees in order to ensure compliance with this title and to prevent adverse or detrimental impact to the surrounding neighborhood. (Ord. 2012-01, 4-17-2012)

**9-2B-10: ADMINISTRATIVE USE PERMIT:**

- A. Purpose: The purpose of an administrative use permit is to allow for the individual review of land uses having unique or unusual site development features or operating characteristics to ensure consistency with this title and the general plan. These land uses benefit from focused, administrative review outside of the general business license and zoning clearance process.
- B. Applicability: An administrative use permit is required prior to the establishment of any use for which an administrative use permit is required by this title. See section 9-4B-2, table 9-4B-2, "Allowed Uses And Required Entitlements For Base Zoning Districts", of this title, which identifies specific land uses that require an administrative use permit prior to issuance of subsequent permits (e.g., building permit, business license). Examples include, but are not limited to, child daycare facility - family daycare home, large; dwelling, second unit in the DMX-2 zoning district; dwelling, two-family in the RLD zoning district; crop production in the RLD zoning district; and assembly uses.
- C. Approval Authority: The planning director shall be the designated approving authority for administrative use permits.
- D. Process: No public hearing or notice is required for an administrative use permit unless elevated to the planning commission as provided in subsection 9-2A-7B, "Elevation", of this chapter.
- E. Approval Findings: An administrative use permit shall be granted only when the designated approving authority determines that the proposed use or activity complies with all of the following findings:
1. The proposed use is consistent with the general plan, any applicable specific plans, and all applicable provisions of this title; and
  2. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use or to the general welfare of the city.
- F. Postapproval Implementation: An administrative use permit is ministerial in nature. As such, the planning director may not impose conditions on the issuance of the permit. However, the applicant may be provided with a list of items necessary for compliance and conformance with this title and the general plan. Conditions may only be imposed in the event the necessary findings cannot be made without the conditions and only after a public hearing by the planning commission. (Ord. 2012-01, 4-17-2012)

**Comment [SB9]:** Remove. The Planning Director should not be setting conditions. If that's the case, then a regular use permit should be used instead.

**9-2B-11: MINOR DEVIATION:**

- A. Purpose: The purpose of the minor deviation is to allow some flexibility in project design with regard to specific development standards.
- B. Applicability: To achieve more flexible standards, the designated approving authority may grant minor deviations to the building height, setback, lot coverage, and parking provisions, not to exceed ten percent (10%) of the respective development standards in the underlying zoning district for the subject parcel. All other deviations require approval of a variance application. Minor deviations do not apply to the use of property.
- C. Approval Authority: The designated approving authority for minor deviations is the planning director.
- D. Process: No public hearing or notice is required for a minor deviation unless elevated to the planning commission as provided in subsection 9-2A-7B, "Elevation", of this chapter.
- E. Approval Findings: A minor deviation shall be granted only when the designated approving authority makes all of the following findings:
  - 1. The deviation(s) improves the site, architectural, and/or overall project design; and
  - 2. The deviation(s) is materially consistent with the project and is compatible with surrounding uses and structures.
- F. Postapproval Implementation: A minor deviation is ministerial in nature. As such, the planning director may not impose conditions on the issuance of the permit. However, the applicant may be provided with a list of items necessary for compliance and conformance with this title and the general plan. Conditions may only be imposed in the event the necessary findings cannot be made without the conditions and only after a public hearing by the planning commission. (Ord. 2012-01, 4-17-2012)

**Comment [SB10]:** Remove. The Planning Director should not be setting conditions. If that's the case, then a regular variance should be used instead.

**9-2B-12: MINOR SITE PLAN AND ARCHITECTURAL REVIEW:**

- A. Purpose: The purpose of minor site plan and architectural review is for the review of the design and layout of new development in the city to ensure that it is consistent with the regulations of this title prior to the issuance of subsequent permits, such as improvement plans and building permits.
- B. Applicability: Minor site plan and architectural review shall be required prior to the issuance of any ministerial building permits or site improvement plans and prior to or in conjunction with discretionary action of corresponding development applications (e.g., conditional use permit, variance).
  - 1. Review Required: Minor site plan and architectural review is required for all of the following activities:

- a. New nonresidential or mixed use developments of less than ten thousand (10,000) gross square feet;
  - b. Additions of less than ten thousand (10,000) square feet to existing commercial, office, and industrial buildings;
  - c. Custom single-family homes in the neighborhood residential (RN) district and within planned unit developments;
  - d. Changes to the exterior facade of existing buildings (other than single-family residential) anywhere in the city (including downtown), such building materials and structural changes affecting at least fifty percent (50%) of the facade;
  - e. The establishment of new signs in the downtown as required by subsection 9-6-3E, "Signs", of this title;
  - f. Painting outside the historic color palette within the downtown; and
  - g. Conceptual plan for a mixed use center as required by chapter 7, "Mixed Use Development Standards", of this title.
2. Exemptions: The following activities are specifically exempt from minor site plan and architectural review. However, such structures may require additional permits, such as a ministerial building permit, to ensure compliance with adopted building code standards and applicable zoning regulations.
- a. Single-family custom homes, except in the neighborhood residential (RN) zoning district or within planned unit developments;
  - b. Additions to or the exterior remodels of single-family residential homes within normal setbacks;
  - c. Accessory structures consistent with the provisions of section 9-5A-8, "Residential Accessory Structures", of this title;
  - d. Changes to the exterior facade of existing buildings (other than single-family residential) anywhere in the city (including downtown), such as building materials and structural changes affecting less than fifty percent (50%) of the facade;
  - e. Painting existing buildings in the DMX zoning districts with historic color palettes as described in subsection 9-6-4C, "Colors And Painting", of this title;
  - f. Repairs and maintenance to the site or structure that do not add to, enlarge, or expand the area occupied by the land use, or the floor area of the structure and that employ the same materials and design as the original construction;
  - g. Interior alterations that do not increase the gross floor area within the structure, or change/expand the permitted use of the structure (including solar collectors); and

h. Construction, alteration, or maintenance by a public utility or public agency of underground or overhead utilities intended to service existing or nearby approved developments (e.g., water, gas, electric or telecommunication supply or disposal systems, including wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and similar facilities and equipment).

C. Approval Authority: The designed approval authority for minor site plan and architectural design review shall be the planning director.

D. Process: No public hearing or notice is required for a minor site plan and architectural review unless elevated to the planning commission as provided in subsection 9-2A-7B, "Elevation", of this chapter.

E. Approval Findings: A minor site plan and architectural review permit, or any modification thereto, shall be granted only when the designated approving authority makes a finding that the proposed project is consistent with the objectives of the general plan and complies with applicable zoning regulations, specific plan provisions, and improvement standards adopted by the city.

F. Postapproval Implementation: A minor site plan and architectural design review permit is ministerial in nature. As such, the planning director may not impose conditions on the issuance of the permit. However, the applicant may be provided with a list of items necessary for compliance and conformance with this title and the general plan. Conditions may only be imposed in the event the necessary findings cannot be made without the conditions and only after a public hearing by the planning commission. (Ord. 2012-01, 4-17-2012)

#### **9-2B-13: SIGN PROGRAM:**

A. Purpose: A sign program provides a process for the city's review of, and decisions related to, requests for signs for multi-tenant projects. The intent of a sign program is to allow for the integration of a project's signs with the design of the structures to achieve a unified architectural statement and to approve common sign regulations for multi-tenant projects. No deviations from city sign standards are allowed through a uniform sign program.

B. Applicability: A sign program shall be required for all new multi-tenant shopping centers, office parks, and other multi-tenant, mixed use, or otherwise integrated developments of three (3) or more separate tenants/uses that share buildings, public spaces, landscape, and/or parking facilities.

C. Specific Application Requirements: As part of the application, the applicant shall submit a draft sign program that shall include criteria for building-attached signs, freestanding building signs, and the integrated development itself to establish consistency of sign type, location, center logo, and/or letter height, lines of copy, illumination, and construction details of signs for the project.

- D. Approval Authority: The designated approving authority for sign programs shall be the planning director.
- E. Public Hearing And Notice: No public hearing or notice is required for a sign program unless elevated to the planning commission as provided in subsection 9-2A-7B, "Elevation", of this chapter.
- F. Approval Findings: A sign program, or revisions thereto, may be approved only when the designated approving authority makes all of the following findings:
1. That the proposed sign program is consistent with the development standards for signs as provided in chapter 5, article F, "Signage", of this title; and
  2. The design, location, and scale of proposed signs for the integrated development are in keeping with the architectural character of the development.
- G. Postapproval Implementation: A sign program is ministerial in nature. As such, the planning director may not impose conditions on the issuance of the permit. However, the applicant may be provided with a list of items necessary for compliance and conformance with this title and the general plan. Conditions may only be imposed in the event the necessary findings cannot be made without the conditions and only after a public hearing by the planning commission. (Ord. 2012-01, 4-17-2012)

**Comment [SB11]:** Remove text. See notes above.

#### **9-2B-14: CONDITIONAL USE PERMIT:**

- A. Purpose: The purpose of a conditional use permit is for the individual review of uses, typically having unique or unusual site development features or operating characteristics. A use permit is intended to ensure compatibility with surrounding areas and uses where such uses are deemed essential or desirable to the various elements or objectives of the general plan.
- B. Applicability: A conditional use permit is required prior to the establishment of any use for which a conditional use permit is required by this title.
- C. Approval Authority: The planning commission shall be the designated approving authority for conditional use permits.
- D. Public Hearing And Notice: Public hearing and notice are required for a conditional use permit pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- E. Approval Findings: A conditional use permit shall be granted only when the designated approving authority determines that the proposed use or activity complies with all of the following findings:
1. The proposed use is consistent with the general plan, any applicable specific plans, and all applicable provisions of this title;
  2. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general

welfare of persons residing or working in the neighborhood of such use or to the general welfare of the city;

3. The site of the proposed use is physically suitable for the type, density, and intensity of the use and related structures being proposed; and
4. It will not be contrary to the specific intent clauses, development regulations, or performance standards established for the zoning district in which it is located. The proposed use and related structures are compatible with other land uses, transportation, and service facilities in the vicinity.

F. Conditions Of Approval: The designated approving authority may impose conditions and/or require guarantees in order to ensure compliance with this title and to prevent adverse or detrimental impact to the surrounding neighborhood. (Ord. 2012-01, 4-17-2012)

#### **9-2B-15: MAJOR SITE PLAN AND ARCHITECTURAL REVIEW:**

A. Purpose: The purpose of major site plan and architectural review is for the review of the design and layout of new development in the city to ensure that it is consistent with the regulations of this title and will not result in a detriment to the city or the environment. The city desires to maintain and enhance Lemoore's sense of place; design commercial and mixed use centers to be of pedestrian scale so people can feel comfortable and congregate in these areas; promote visually appealing architecture and high quality developments that promote a small town atmosphere; and protect and accentuate Lemoore's environmental assets, its surrounding natural landscape, agricultural farmland, open canals, and wetlands.

**Comment [SB12]:** Site Plan reviews could be made into ministerial permits approved at the staff level. It would require changes to a number of code sections, including a review of the pre-plotting procedures.

B. Applicability: Major site plan and architectural review shall be required prior to the issuance of any ministerial building permits or site improvement plans and prior to or in conjunction with discretionary action of corresponding development applications (e.g., conditional use permit, variance).

1. Review Required: A major site plan and architectural review is required for the following items:
  - a. New nonresidential or mixed use developments of ten thousand (10,000) gross square feet or more;
  - b. Additions of ten thousand (10,000) square feet or more to existing commercial, office, and industrial buildings;
  - c. New multi-family residential developments (e.g., apartments, condominiums, townhomes);
  - d. Any new construction of buildings (e.g., new stores) of any size in the downtown;
  - e. The design and layout of new residential subdivisions as part of the tentative subdivision map process as provided in title 8, chapter 7, "Land Division", of the municipal code;

- f. Master home plans for, and preplotting placement of, residential units within single-family residential subdivisions (e.g., planned unit developments);
    - g. Demolition or exterior alterations and additions to nonresidential buildings that are more than seventy five (75) years old.
  - 2. Exemptions: Those activities exempt from minor site plan and architectural design review as provided in subsection 9-2B-12B2 of this article shall also be exempt from major site plan and architectural design review.
- C. Approval Authority: The designed approval authority for major site plan and architectural design review shall be the planning commission.
- D. Public Hearing And Notice: Public hearing and notice are required for a major site plan and architectural review pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- E. Approval Findings: A major site plan and architectural review permit, or any modification thereto, shall be granted only when the designated approving authority makes all of the following findings:
  - 1. The proposed project is consistent with the objectives of the general plan and complies with applicable zoning regulations, specific plan provisions, and improvement standards adopted by the city;
  - 2. The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community;
  - 3. The architecture, including the character, scale and quality of the design, relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements, establishes a clear design concept and is compatible with the character of buildings on adjoining and nearby properties;
  - 4. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation; and
  - 5. In the case of proposed alterations, additions, or demolitions to nonresidential buildings that are more than seventy five (75) years old:
    - a. Alterations And Additions: The project design is compatible with secretary of the interior standards for the treatment of historic properties and with the downtown revitalization plan.
    - b. Demolitions: The applicant has demonstrated that the existing use cannot generate a reasonable rate of return; the existing building constitutes a hazard to public safety and is economically infeasible to rehabilitate, the design quality of the replacement building will be superior to the existing building and will be compatible with adjacent

buildings and the character of downtown Lemoore, or the proposed demolition or removal is necessary to allow a project that will have public benefits outweighing the public benefits of retaining the existing building.

F. Conditions Of Approval: The designated approving authority may impose conditions and/or require guarantees in order to ensure compliance with this title and to prevent adverse or detrimental impact to the surrounding neighborhood. (Ord. 2012-01, 4-17-2012)

**9-2B-16: VARIANCE:**

A. Purpose And Applicability: In accordance with California Government Code section 65906, variances provide relief from the strict application of development standards and provisions of this title if specified findings can be made. A variance from the zoning code may not be granted to:

1. Allow a land use not otherwise permitted in the zoning district;
2. Increase the maximum allowed residential density except as allowed by state law;
3. Waive or reduce parking requirements by more than thirty percent (30%); or
4. Waive or modify a procedural requirement.

B. Approving Authority: The designated approving authority for a variance shall be the planning commission. The planning director provides a recommendation and the planning commission approves, conditionally approves, or denies the variance in accordance with the requirements of this title.

C. Public Hearing And Notice: Public hearing and notice are required for a variance pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.

D. Approval Findings: The approving authority may approve and/or modify any variance application in whole or in part, with or without conditions, only if the applicant can demonstrate that the circumstances of their particular case can justify making all of the following findings:

1. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, topography, or other conditions), so that the strict application of this zoning code denies the property owner privileges enjoyed by other property owners in the vicinity and within the same zoning district;
2. Granting the variance is necessary for the preservation and enjoyment of substantial property rights enjoyed by other property owners in the same vicinity and zoning district and denied to the property owner for which the variance is sought;
3. Granting the variance will not adversely affect the interests of the public or the interests of residents and property owners in the vicinity of the premises in question; and

4. The variance is consistent with the general plan, any applicable specific plan or development agreement, and the intent of this title.

E. Conditions Of Approval: In approving a variance, the designated approving authority:

1. Shall impose conditions to ensure that the variance does not grant special privileges inconsistent with the limitation on other properties in the vicinity and the zoning district in which the property is located;
2. May impose any reasonable conditions (e.g., the placement, height of structures, buffers, landscaping and maintenance, off site improvements, performance guarantees, screening, surfacing, hours of operation) to ensure that the approval complies with the findings required by this section. (Ord. 2012-01, 4-17-2012)

**9-2B-17: PUBLIC CONVENIENCE OR NECESSITY:**

A. Purpose And Applicability: In 1994, section 23958.4 was added to the state Business And Professions Code to give cities and other local agencies the authority, but not the obligation, to make public convenience or necessity determinations in certain proceedings for issuance of alcoholic beverage licenses within the city. Pursuant to section 23958.4, the council may delegate this authority to a city department, officer, or other employee. The purpose of this section is to make such delegation and to establish a procedure for processing and considering requests for determinations of public convenience or necessity for issuance of such licenses.

Any person whose application for any alcohol license is subject to a determination of public convenience or necessity by the city pursuant to section 23958.4 of the Business And Professions Code shall submit an application to the city for a determination whether or not the public convenience and necessity would be served by the granting of such license.

B. Approving Authority: Determinations of whether public convenience or necessity would be served by issuance of those alcoholic beverage licenses specified in paragraph (b)(2) of section 23958.4 of the Business And Professions Code shall be made by the planning commission.

C. Process: A public hearing before the designated approving authority shall be required prior to determining if the application provides for the public convenience or necessity. Notice of the hearing shall be provided as described in section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.

D. Review Of Applications: The designated approving authority shall review the application, along with all information submitted by the applicant, as well as the recommendations of the chief of police, the planning director, and other departments of the city. The designated approving authority shall consider all other relevant documents and other written information submitted by the applicant or other interested persons, shall receive, hear and consider relevant oral and written testimony by the applicant and other interested persons; and shall consider any other information, including, without limitation, written or oral testimony, that the designated approving authority deems necessary to make the determination of public convenience or necessity. (Ord. 2012-01, 4-17-2012)

**9-2B-18: HIGHWAY ORIENTED SIGN PERMIT:**

- A. Purpose: The purpose of the highway oriented sign permit is to provide a process for the review and discretionary approval of commercial signs that are oriented to the highway as defined in this title. The intent of requiring discretionary review is to ensure that the siting, size, and design of a highway oriented sign is in keeping with the character of the surrounding environment, that it does not create an unsafe condition for motorists, and that it does not create a public nuisance.
- B. Applicability: A highway oriented sign permit shall be obtained prior to the establishment of a "highway oriented sign" as defined in this title and as provided in chapter 5, article F, "Signage", of this title.
- C. Approval Authority: The designated approving authority for a highway oriented sign permit is the planning commission.
- D. Public Hearing And Notice: Public hearing and notice are required for a highway oriented sign permit pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- E. Approval Findings: In approving a highway oriented sign permit, the designated approving authority shall make all of the following findings:
1. The proposed sign is consistent with the general plan and all applicable provisions of this title;
  2. The establishment, maintenance, or operation of the highway oriented sign will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use, or the general welfare of the city;
  3. Should the applicant request, and the approving authority grant, additional height beyond that allowed in subsection 9-5F-5D, "Highway Oriented Signs", of this title to a maximum of eighty feet (80'), the approving authority shall also make the following additional findings:
    - a. That the additional height is necessary to ensure safe viewing from the highway; and
    - b. That approval of the additional height will not be contrary to the specific intent of the signage regulations established in chapter 5, article F, "Signage", of this title.
  4. Should the applicant request, and the approving authority grant, a reduced spacing of signs than that required in subsection 9-5F-5D, "Highway Oriented Signs", of this title, the approving authority shall also make the following additional finding:
    - a. The reduced distance between highway oriented signs will not cause a safety impact or create sign clutter contrary to a small town atmosphere.

**Comment [SB13]:** Highway signs could become a ministerial permit approved by staff if desired.

F. Conditions Of Approval: The designated approving authority may impose conditions and/or require guarantees in order to ensure compliance with this title and to prevent adverse or detrimental impact to the surrounding neighborhood. (Ord. 2012-01, 4-17-2012)

**9-2B-19: PLANNED UNIT DEVELOPMENT:**

- A. Purpose: The purpose of the planned unit development is to provide a process to allow diversity in the relationship between buildings and open spaces to create interesting physical environments and to maximize the development potential of underutilized or problematic land areas. This land use entitlement is intended to demonstrate that the development plan with any proposed deviations is consistent with the general plan and will result in a quality project that is compatible with surroundings, preserves site resources, minimizes hazards, and provides a public benefit.
- B. Applicability: To qualify for a planned unit development designation, projects must include developed or undeveloped property with one or more contiguous parcels totaling a minimum of two (2) acres in size. Projects of less than two (2) acres may be considered when determined that the development area is underutilized or problematic (e.g., infill, reuse, redevelopment) and that the surrounding area will be better served by the project.
- C. Approving Authority: The designated approving authority for a planned unit development is the city council.
- D. Public Hearing And Notice: Public hearing and notice are required for adoption and amendments to planned unit developments pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- E. Deviations From Development Standards: The approving authority may grant requests to deviate from the development standards (e.g., minimum lot area, yard requirements, building heights), but shall not grant exceptions to the allowed land use or density of the base zoning district. Physical development standards may be modified if the plan includes examples of superior design, environmental preservation, and public benefit amenities, and the approving authority makes all of the required findings herein.
- F. Approval Findings: The approving authority shall make the following findings to approve a planned unit development application:
1. The proposed project does not exceed the total density allowed under the base zoning district or the general plan land use designation.
  2. The proposed project is superior to development that could occur under the development standards of the base district in at least two (2) of the following ways:
    - a. Greater open space and common areas than required.
    - b. Greater landscaping than required that enhances the public street appearance (including street trees, benches, lights, special paving, water fountains, etc.) or increases landscape buffers with adjacent properties.

- c. Superior site design. Utilization of the applicable design guidelines to achieve a superior site design.
- d. Superior subdivision design. Utilization of the applicable residential design standards to achieve a superior subdivision design.
- e. Greater connectivity to surrounding public streets, bike paths, pedestrian walkways, and public open spaces than required by zoning or subdivision regulations.
- f. Enhanced environmental preservation by clustering development to preserve sensitive plant or wildlife habitat, biological resources, or contiguous open space.
- g. Reduced impacts on surrounding properties, in terms of privacy, access to sunlight, shadow, views, building bulk, noise, or other types of negative impacts, beyond what would be achieved under existing requirements.

3. The proposed project shall not be substantially detrimental to adjacent property, and will not materially impair the purposes of this title or the public interest.

G. Delineation Of Planned Unit Development Areas: On the zoning map, a planned unit development shall be delineated as an overlay zoning district and shall be listed in this title as provided in chapter 9, article B, "Planned Unit Development (PUD) Overlay Zoning Districts", of this title. (Ord. 2012-01, 4-17-2012)

**9-2B-20: SPECIFIC PLAN:**

- A. Purpose: The purpose of a specific plan is to provide a vehicle for implementing the city's general plan on an area specific basis. The specific plan is intended to serve as a regulatory document, consistent with the general plan. In the event there is an inconsistency or conflict between an adopted specific plan and comparable provisions of this title, the specific plan shall prevail. This section is consistent with California Government Code section 65450 et seq. This section describes the process for adopting and amending specific plans, and approving subsequent development under a specific plan.
- B. Applicability: The city's general plan encourages preparation of specific plans and identifies certain areas of the city which require specific plans for development. Specific plan zoning may be considered for other areas of the city.
- C. Approval Authority: The designated approving authority for specific plans is the city council, which shall hold a public hearing prior to taking action. The planning commission shall review specific plans, hold a public hearing, and make recommendations regarding the content of the plan, or any amendments. The city council shall approve or deny any specific plan or amendment thereto.
- D. Specific Application Requirements: In addition to the minimum content requirements of California Government Code section 65451, the specific plan application shall include the following items:

- 1. Statement of the relationship of the specific plan to the general plan;

2. Policies for development and standards for regulating development within the plan area;
3. The proposed land uses for all areas covered by the plan;
4. The types and configurations of buildings to be included in all developments within the plan area;
5. The location of and types of streets;
6. Public facilities and infrastructure required to serve developments within the specific plan area;
7. A parking and circulation plan for off street parking areas showing the location of parking lots, the approximate number of spaces, and the approximate location of entrances and exits;
8. Proposed conservation, open space, and/or recreation areas, if any; and
9. Any other programs, guidelines, or standards appropriate for the area covered by the plan.

E. Environmental Review: It is anticipated that under the California environmental quality act (CEQA) and state CEQA guidelines most specific plans will require preparation of an environmental impact report (EIR). Once certified, the EIR for a specific plan may be relied upon for further entitlements sought subsequent to adoption of the specific plan to the extent allowed by CEQA. Unless otherwise exempt, an initial study shall be prepared for all subsequent applications to determine whether additional CEQA review is required.

**Comment [SB14]:** Remove text. Predetermining the required CEQA document is not supported by CEQA guidelines.

F. Public Hearing And Notice: Public hearing and notice are required for a specific plan pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.

G. Approval Findings: Specific plans and any amendment thereto shall be approved only when the city council makes all of the following findings:

1. The proposed specific plan is consistent with the general plan goals, policies, and implementation programs;
2. The land use and development regulations within the specific plan are comparable in breadth and depth to similar zoning regulations contained in this title; and
3. The administration and permit processes within the specific plan are consistent with the administration and permit processes of the zoning code.

H. Adoption: Adoption of the specific plan shall be by ordinance of the city council and shall constitute final action and approval of the specific plan. Authorization for construction in accordance with the specific plan may only be granted after the effective date of the adoption.

- I. Delineation Of Specific Plan Areas: On the zoning map, a specific plan zoning district shall be delineated in a manner similar to that of any other zoning district, except that each specific plan zoned area shall also bear a number, text, or other symbol which distinguishes it from other specific plan areas. See chapter 8, "Specific Plan Zoning Districts", of this title.
- J. Application Of Specific Plan Development Requirements: Where conditions of the specific plan are more restrictive than the zoning code development standards, the conditions of the specific plan shall apply. Where a standard is not addressed in the specific plan, the zoning code shall apply. (Ord. 2012-01, 4-17-2012)

**9-2B-21: DEVELOPMENT AGREEMENT:**

A. Purpose: This section establishes procedures and requirements for the review and approval of development agreements when applied for as part of a land use entitlement in compliance with the provisions of California Government Code sections 65864 through 65869.5. The city council finds and declares the use of development agreements is beneficial to the public, in that:

1. Development agreements increase the certainty in the approval of development projects, thereby preventing the waste of resources, reducing the cost of development to the consumer, and encouraging investment in and commitment to comprehensive planning, all leading to the maximum efficient utilization of resources at the least economic cost to the public.
2. Development agreements provide assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, thereby strengthening the public planning process, encouraging private participation in comprehensive planning, and reducing the economic costs of development.
3. Development agreements enable the city to plan for and finance public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, thereby removing a serious impediment to the development of new housing.

Note that development agreements are substantially different than disposition and development agreements, which are agreements between a private party and the city's redevelopment agency.

- B. Applicability Of Regulations: Only a qualified applicant, a person who has legal or equitable interest in the real property which is the subject of the development agreement (or his or her authorized agent), may submit an application for a development agreement.
- C. Approving Authority: The designated approving authority for development agreements is the city council, which shall hold a public hearing prior to taking action. The planning commission shall hold a public hearing on the proposed development agreement and make a recommendation to the city council.

- D. Flexibility Of Development Regulations: To the extent permitted by law, any development agreement if adopted by the city may modify development rules, regulations, and policies governing permitted uses of land and density, and governing design, improvements, construction standards and specifications, and phasing applicable to development of the property involved in the agreement. Nothing contained in these regulations shall prevent the developer or the city from proceeding with normal tentative map or final map processes on any phase of a development which is the subject of a development agreement at any time during its term.
- E. Application Contents: The contents of a development agreement shall be as set forth in Government Code sections 65865.2, 65867.5(c) if applicable, and 65868.5.
- F. Public Hearing And Notice: Public hearing and notice are required for a development agreement pursuant to section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- G. Approval Findings: A development agreement may only be granted when the city council makes all of the following findings specifying that the development agreement:
1. Is consistent with the objectives, policies, and general land uses specified in the general plan and any applicable specific plans;
  2. Is compatible and in conformity with public convenience, general welfare, and good land use and zoning practice;
  3. Will not be detrimental to the health, safety, and general welfare of the city;
  4. Will not adversely affect the orderly development of property or the preservation of property values.
- H. Amendment And Cancellation Of Agreement: Any party to the agreement may propose an amendment to or cancellation in whole or part of the development agreement, the procedure for which is the same as the procedure for entering into the agreement initially. Notice of intention to amend or cancel any portion of the development agreement shall be given as provided in section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- I. Recordation: Within ten (10) days after the city enters into the development agreement or any amendment thereof, the city clerk shall cause the agreement or amendment to be recorded with the county recorder. Additionally, the city clerk shall be the official custodian of the development agreement file. Said file shall include an executed copy of the agreement and the originals of all exhibits, reports of periodic review, amendments, and/or cancellations to the development agreement.
- J. Periodic Review: The planning director shall review the development agreement every twelve (12) months from the date the development agreement is entered into and provide a written report to the city council. The burden of proof is on the applicant to provide necessary information verifying good faith compliance with the terms of the development agreement. The applicant shall also bear the cost of such review in accordance with the fee established by city council resolution. If the planning director finds that any aspect of the development project is not in good faith compliance with the terms of the development agreement, the

planning director may schedule the matter before the appropriate approving authority for review for possible amendment or revocation. (Ord. 2012-01, 4-17-2012)

**9-2B-22: ZONING AMENDMENT:**

- A. Purpose: The purpose of a zoning amendment is to allow modification to any provisions of this title (including the adoption of new regulations or deletion of existing regulations), or to rezone or change the zoning designation on the zoning map for any parcel(s). This section is consistent with California Government Code section 65853.
- B. Approval Authority: The designated approving authority for zoning amendments is the city council, which shall hold a public hearing on the planning commission recommendation prior to taking action. The planning commission shall hold a public hearing and then shall provide a recommendation, which recommendation shall include the reasons for the recommendation and the relationship of the proposal to the general plan and the specific plans. The city council approves or denies the zoning amendment in accordance with the requirements of this title.
- C. Initiation Of Amendment: A zoning amendment to this title may be initiated by motion of the planning commission or city council, by application by property owner(s) of parcel(s) to be affected by zoning amendment, or by recommendation of the planning director to clarify text, address changes mandated by state law, maintain general plan consistency, address boundary adjustments affecting land use designation(s), or for any other reason beneficial to the city.

When an application is filed by a property owner (or authorized representative), the submittal requirements for applications of subsection 9-2A-5A, "Application Contents", of this chapter shall be observed. This includes a completed application on a form as prescribed by the planning director, any required information listed on the application form for the type of permit, an application fee as established by city council resolution, and any other relevant information as may be requested by the planning director in order to provide the designated approving authority with adequate information on which to base a decision.

- D. Approval Findings: Zoning amendments shall be granted only when the city council finds that the zoning amendment (text or map) is consistent with the general plan goals, policies, and implementation programs.
- E. Adoption: Adoption of the zoning amendment by ordinance of the city council shall constitute final action and approval of the amendment. Authorization for construction or occupancy in accordance with the amendment may only be granted upon or after the effective date of the action. (Ord. 2012-01, 4-17-2012)

**9-2B-23: PREZONING:**

- A. Purpose: The purpose of prezoning is to establish the designation of land use by zoning district for unincorporated property adjoining the city, within the sphere of influence, prior to annexation.
- B. Process: The method of accomplishing prezoning shall be the same as for zoning amendment as provided in section 9-2B-22, "Zoning Amendment", of this article. Such

zoning shall become effective at the time annexation becomes effective. (Ord. 2012-01, 4-17-2012)

**9-2B-24: GENERAL PLAN AMENDMENT:**

- A. Purpose: The purpose of a general plan amendment is to allow for modifications to the general plan text (e.g., goals, policies, or implementation programs) or to change the general plan land use designation on any parcel(s).
- B. Approval Authority: The designated approving authority for general plan amendments is the city council, which shall hold a public hearing prior to taking action. The planning commission shall hold a public hearing and provide a recommendation. The city council approves or denies the general plan amendment in accordance with the requirements of this title.
- C. Frequency Of Amendment: Pursuant to Government Code section 65358, no mandatory element of the general plan may be amended more frequently than four (4) times during any calendar year. Subject to that limitation, an amendment may be made at any time and may include more than one change to the general plan.
- D. Initiation Of Amendment: A general plan amendment may be initiated by the planning commission or city council, by application by property owner(s) of parcel(s) to be affected by the general plan amendment, or by recommendation of the planning director to clarify text, address changes mandated by state law, maintain internal general plan consistency, address boundary adjustments affecting land use designation(s), or for any other reason beneficial to the city.

When an application is filed by a property owner (or authorized representative), the submittal requirements for applications of subsection 9-2A-5A, "Application Contents", of this chapter shall be observed. This includes a completed application on a form as prescribed by the planning director, any required information listed on the application form for the type of permit, an application fee as established by city council resolution, and any other relevant information as may be requested by the planning director in order to provide the designated approving authority with adequate information on which to base a decision.

- E. Public Hearing And Notice: The city shall provide notice and a public hearing for the approval, modification, revocation, or appeal of an application for a general plan amendment in accordance with section 9-2A-6, "Public Notice, Hearings, And Decisions", of this chapter.
- F. Approval Findings: The city council may approve a general plan amendment upon finding that the amendment is in the public interest and that the general plan as amended will remain internally consistent. In the event that a general plan amendment is requested by a private property owner, the applicant shall demonstrate to the city council that there is a substantial public benefit to be derived from such amendment and how the proposed amendment furthers the goals of the general plan.
- G. Adoption: Adoption of the general plan amendment by the city council shall constitute final action and approval of the amendment. (Ord. 2012-01, 4-17-2012)

## CHAPTER 2:

### PROCEDURES AND ENTITLEMENTS

#### ARTICLE C. NONCONFORMING USES, STRUCTURES, AND PROPERTIES

##### 9-2C-1: PURPOSE AND APPLICABILITY:

##### 9-2C-2: DECLARATION OF NONCONFORMING:

##### 9-2C-3: CONTINUATION:

##### 9-2C-4: MAINTENANCE:

##### 9-2C-5: MODIFICATION AND EXPANSION:

##### 9-2C-6: ABANDONMENT OR DISCONTINUANCE OF NONCONFORMING USE:

##### 9-2C-7: RESTORATION OF DAMAGED USES AND STRUCTURES:

##### 9-2C-8: NONCONFORMING SIGNS:

##### 9-2C-1: PURPOSE AND APPLICABILITY:

This article establishes special regulations for nonconforming land uses and structures that were lawful before the adoption or amendment of this zoning code, but which would be prohibited, regulated, or restricted differently under the current terms of this zoning code or future amendments. It is the intent of these regulations to allow the continuation of nonconformities under limited conditions outlined herein and reconstruction in the event of natural disaster. (Ord. 2012-01, 4-17-2012)

##### 9-2C-2: DECLARATION OF NONCONFORMING:

- A. Nonconforming Use: Any use that is not permitted under the provisions of this title (or any amendments thereto) but was legally in place, with licenses and permits in current status, at the effective date of the ordinance codified in this article or any subsequent ordinance, shall be deemed to be a nonconforming use.
- B. Nonconforming Structure: Any structure, including signs, that is not permitted under the provisions of this title (or any amendments thereto) but was legally in place, with licenses and permits in current status, at the effective date of the ordinance codified in this article or any subsequent ordinance, shall be deemed to be a nonconforming structure.
- C. Nonconforming Property: Any property or lot that is less than the minimum lot size required by this title, or has less than the minimum lot dimensions required by this title, shall be deemed to be a nonconforming property.
- D. Legally Nonconforming: A use, structure, or property shall be deemed to be legal nonconforming if the use, structure, or property was legally established prior to the change in this title that made it nonconforming. (Ord. 2012-01, 4-17-2012)

##### 9-2C-3: CONTINUATION:

- A. Use: A nonconforming use may continue to operate in perpetuity, be transferred, or be sold, provided that the use shall not be enlarged or intensified, nor be expanded to occupy a greater area than it lawfully occupied before becoming nonconforming. Likewise, plans for any use approved as of the date the ordinance codified in this chapter becomes effective

may be carried out as approved. Any extension of such approval for which the applicant was entitled to apply as of the effective date may be granted according to the regulations in effect prior to the effective date; if granted, such extension will be considered the same as an approval granted before the effective date. The person asserting the nonconforming use must present evidence that the use existed before the enactment of the zoning code provision prohibiting the use.

- B. Structure: A structure lawfully occupying a site on the effective date of this title, or of amendments hereto, which does not conform with the standards of coverage, front yard, side yards, rear yard, or distances between structures prescribed in the regulations for the district in which the structure is located shall be deemed to be a nonconforming structure and may be used and maintained, except as otherwise provided in this article.
- C. Property: Except as otherwise provided in this article, a property or site having an area, frontage, width, or depth less than the minimum prescribed for the district in which the site is located, which is shown on a duly approved and recorded subdivision map, or for which a deed or valid contract of sale was of record prior to the adoption of this title, and which had a legal area, frontage, width, and depth at the time that the subdivision map, deed, or contract of sale was recorded, may be used for any permitted use listed for the district in which the site is located, but shall be subject to all other regulations for such district. (Ord. 2012-01, 4-17-2012)

#### **9-2C-4: MAINTENANCE:**

A nonconforming structure or site may be maintained or improved as follows:

- A. Maintenance And Repair: A nonconforming structure may be maintained and repaired. Maintenance may include repair work necessary to keep the building or structure in sound condition, but maintenance shall not include the replacement of a building or structure.
- B. Seismic Retrofitting And Building Code Compliance: Repairs, alterations, or reconstruction to reinforce unreinforced masonry structures or to comply with building code requirements shall be allowed, provided that the work is exclusively to comply with applicable earthquake safety standards and the building code.
- C. Safety Improvements: Structural alteration of a nonconforming structure to improve safety or to reduce fire hazard. (Ord. 2012-01, 4-17-2012)

#### **9-2C-5: MODIFICATION AND EXPANSION:**

- A. Use: A nonconforming use shall not be expanded or modified.
- B. Structure: No nonconforming structure shall be altered, enlarged or reconstructed so as to increase the discrepancy between existing conditions and the standards of coverage, front yard, side yards, rear yard, height of structure, or distances between structures prescribed in the regulations for the district in which the structure is located. No nonconforming structure shall be moved unless the new location shall conform to the standards prescribed in the regulations prescribed for the district in which the structure is located. (Ord. 2012-01, 4-17-2012)

**9-2C-6: ABANDONMENT OR DISCONTINUANCE OF NONCONFORMING USE:**

A. Abandonment Or Discontinuance Generally: Whenever a nonconforming use has become abandoned or discontinued for a continuous period of twelve (12) months, the nonconforming use shall not be reestablished and the use of the site or structure thereafter shall be in conformity with the regulations for the district in which it is located; provided, however, that a similar type nonconforming use may be established within the twelve (12) month period. A determination that a use has been abandoned requires both: 1) evidence of an intention to abandon, and 2) an act or failure to act which shows or implies that the owner does not continue to claim or retain an interest in the nonconforming use. Evidence may include, but is not limited to, removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business records to document continued operation. Maintenance of a valid business license shall of itself not be considered a continuation of the use. Without further action by the city, any subsequent use of the site or structure shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this zoning code.

It is the intent of this section to prohibit the addition of a new nonconforming use with functions and characteristics which clearly are different from those of the preexisting nonconforming use. The term "similar type" means similarity in type and intensity of operations or activities and shall not be construed so as to allow uses which would be more incompatible with conforming uses within the vicinity. As examples, one type of business use may be permitted to replace another type of business use, and one type of contracting service may be allowed to replace another type of contracting service; provided, that such uses are of same or less general intensity as to traffic generation and other operational characteristics associated with the previous nonconforming use.

B. Extension Of Residential Uses In Nonresidential Zoning Districts: The city recognizes that there are existing single-family residential uses in nonresidential zoning districts. It is the intent of the city that, in the future, property owners will proceed with development of their property consistent with the general plan and this title at such time as they choose. Until such time, should an existing legal nonconforming single-family residential dwelling in a nonresidential zoning district become vacated for more than twelve (12) months, the dwelling may be reoccupied upon issuance of a temporary use permit as provided in section 9-2B-4, "Temporary Use Permit", of this chapter.

C. Extension Of Nonconforming Period: A legal nonconforming use may be reestablished after twelve (12) months of discontinuance upon approval of a temporary use permit as provided in section 9-2B-4, "Temporary Use Permit", of this chapter. Approval of the temporary use permit shall be conditioned upon the physical improvement of the property to bring it into conformance with the requirements of the general plan and this title, including, but not limited to, necessary right of way dedications and streetscape improvements. (Ord. 2012-01, 4-17-2012)

**Comment [SB1]:** Recommend that this be changed from temporary use permit to regular use permit.

**9-2C-7: RESTORATION OF DAMAGED USES AND STRUCTURES:**

Whenever a nonconforming use or a nonconforming structure is damaged or destroyed by fire or other calamity, or by an act of God, or by public enemy, the following standards shall apply. The extent of damage to any structure shall be determined by the building official and shall be based upon the ratio of the estimated cost of restoring the use or structure to its condition prior

to such damage to the estimated cost of duplicating the entire structure as it existed prior thereto.

- A. Less Than Seventy Five Percent Damage: To the extent that less than seventy five percent (75%) of the structure is damaged or destroyed, the structure may be restored and the nonconforming use may be resumed, provided that restoration is started within one year and diligently pursued to completion.
- B. At Least Seventy Five Percent Damage: To the extent that seventy five percent (75%) or more of the structure is damaged or destroyed, or shall be voluntarily razed, or shall be required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located, and the nonconforming structure or use shall not be resumed. (Ord. 2012-01, 4-17-2012)

**9-2C-8: NONCONFORMING SIGNS:**

Standards for nonconforming signs are provided in subsection 9-5F-2F, "Nonconforming Signs", of this title. (Ord. 2012-01, 4-17-2012)