

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:

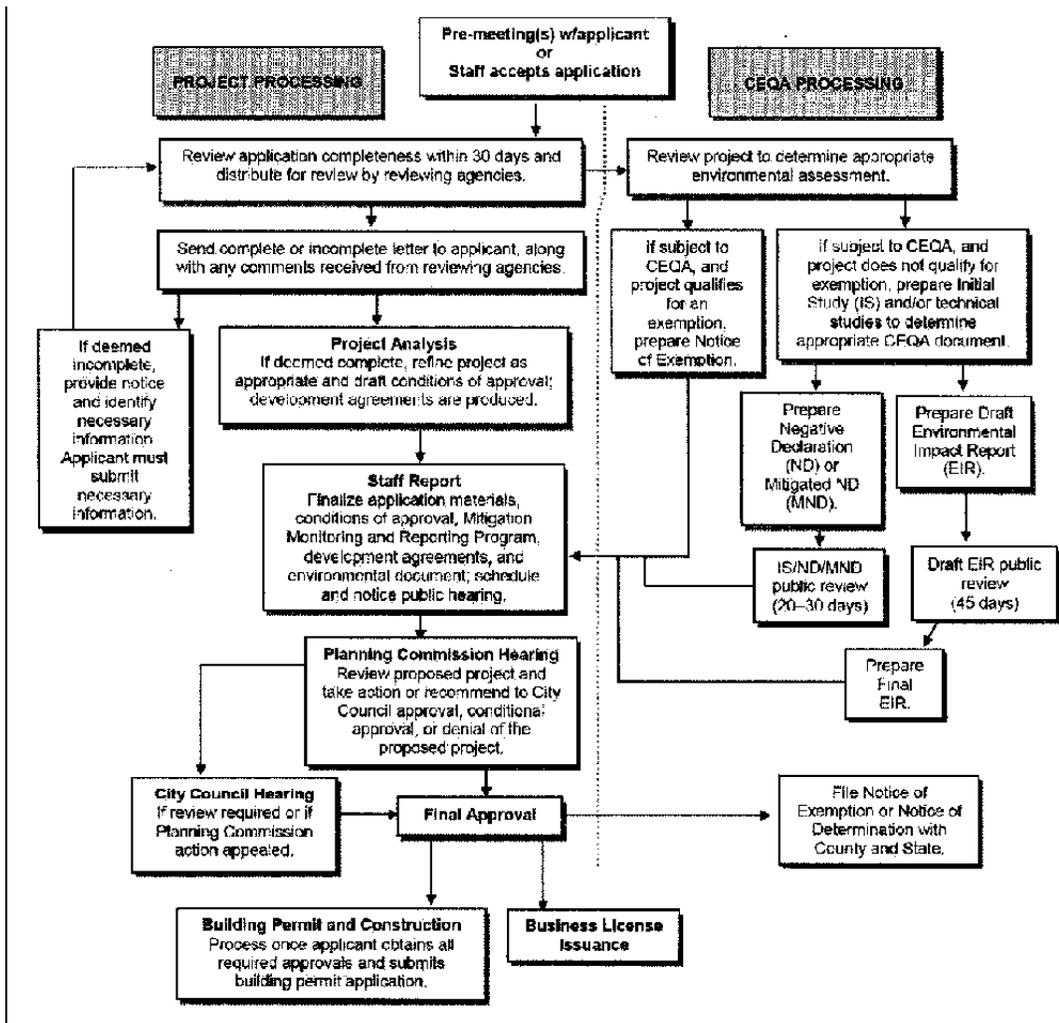
A. Overview Of Process: The entitlement procedures provided in this article are described according to the various stages of the application review process. First, a preapplication meeting may be held between the project applicant and city staff for preliminary review of the project merits and details 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 act¹.

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)². 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 AUTHORITY¹

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 ²
Major site plan and architectural review	Public hearing	Recommending	Final	Appeal ²
Variance	Public hearing	Recommending	Final	Appeal ²
Public convenience or necessity	Public hearing	Recommending	Final	Appeal ²
Highway oriented sign permit	Public hearing	Recommending	Final	Appeal ²
Legislative approvals:				
Planned unit development	Public hearing ³	Recommending	Recommending	Final
Specific plan	Public hearing ³	Recommending	Recommending	Final
Development agreement	Public hearing ³	Recommending	Recommending	Final
Zoning amendment	Public hearing ³	Recommending	Recommending	Final
Prezoning	Public hearing ³	Recommending	Recommending	Final
General plan amendment	Public hearing ³	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.