ARTICLE 9

Land Use Code Administration

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CHAPTER 9.90 -NONCONFORMING USES, STRUCTURES, AND PARCELS

Sections:

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9.90.020 - Nonconforming Uses
9.90.030 - Nonconforming Structures
9.90.040 - Nonconforming Parcels
9.90.050 - Exemptions
9.90.060 - Unlawful Uses and Structures
9.90.070 - Nuisance Abatement

9.90.010 - Purpose and Intent of Chapter

A. Purpose. This Chapter provides regulations for nonconforming uses, structures, and parcels that were lawful before the adoption, or amendment of this Land Use Code, but which would be prohibited, regulated, or restricted differently under the current terms of this Land Use Code, or future amendments.

B. Intent. It is the intent of this Chapter to discourage the long-term continuance of nonconformities, providing for their eventual elimination, while allowing them to exist under the limited conditions identified in this Chapter as long as they do not create a public nuisance.

C. Detrimental to orderly development. The continuance of a nonconforming use or structure is generally detrimental to the orderly development of the City and the general welfare of its residents and is particularly detrimental to the welfare of persons and property in the vicinity of any nonconformity.

D. Illegal use or structure. A use or structure that was established or constructed in violation of the applicable zoning regulations in effect at the time of establishment or construction, and that is not in compliance with the applicable regulations of this Land Use Code, is not a nonconforming use or structure, and is in violation of this Code.

9.90.020 - Nonconforming Uses

A nonconforming use may be continued, transferred, or sold, only in compliance with the provisions of this Section.

A. Replacing a nonconforming use with a similar uses.

1. A nonconforming use may be changed to another nonconforming use, provided that the new nonconforming use does not increase the degree or intensity of the nonconformity as approved through a Use Permit.

2. Where a nonconforming use is changed to another nonconforming use of a more restrictive classification, it shall not thereafter be changed to a use of a less restrictive classification.

B. Enlargement or expansion of a nonconforming use of land or structure. A nonconforming use of land or structure shall not be enlarged or expanded in size or capacity, or extended to occupy a greater area, or increased in intensity or nonconformity.

C. Loss of nonconforming status.

1. If a nonconforming use of land, or a nonconforming use of a conforming structure, is discontinued for a continuous period of at least 12 months, the rights to legal nonconforming status shall terminate.

2. The nonconforming use shall not be resumed once the use has ceased for at least 12 months.

3. A nonconforming use shall be deemed to have ceased when it has been discontinued, either temporarily or permanently, whether or not the discontinuance was with the intent to abandon the use.

4. The Director shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business receipts/records to document continued operation.

5. Without further action by the City, any further use of the site shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this Land Use Code.

9.90.030 - Nonconforming Structures

A nonconforming structure may be continued, transferred, or sold, only in compliance with the provisions of this Section.

A. Nonconforming status. Except as provided by Section 9.90.050.C (Nonconforming single- and multi-family dwelling units), nonconforming status shall terminate if a nonconforming structure is involuntarily damaged or destroyed by accident or natural occurrence, provided that the structure may be repaired and reoccupied only as follows:

1. Relocation. Nonconforming structures cannot be relocated unless they are brought into compliance with this Land Use Code.

2. Structure damaged up to 50 percent. A nonconforming structure involuntarily damaged up to 50 percent of its replacement cost (as defined in Subsection A.6.b., below) may be reconstructed, repaired, restored, and used as before, provided that the restoration is initiated (as defined in Subsection A.6.a., below) within 180 days, it does not increase the nonconformity of the structure, and is substantially completed within 12 months from the date of application for the required Building Permit.

3. Structure damaged more than 50 percent. A nonconforming structure involuntarily damaged to more than 50 percent of its replacement cost (as defined in Subsection A.6.b, below) shall not be reconstructed, repaired, or restored, except in conformity with the applicable requirements of the subject zoning district and building codes, through the Planned Development Permit Process. A nonconforming sign involuntarily damaged to more than 50 percent of its replacement cost (as defined in Subsection A.6.b, below) shall not be reconstructed, repaired, or restored, except in conformity with the applicable requirements of the subject zoning district and building codes, through the Master Sign program process (see Section 9.38.030).

4. Ordinary repair and maintenance allowed. Ordinary and normal repair and maintenance work that may be required to keep a nonconforming structure in sound condition may occur in compliance with this Subparagraph, provided that no structural alterations or repairs shall be made, except those required by law or authorized under Subsection A.2., above. A nonconforming structure may undergo ordinary and normal repair and maintenance only as follows.

   a. Minor repair. A nonconforming structure may undergo minor normal repair and maintenance:

      (1) Provided that no structural alterations are made, and the work does not exceed 50 percent of the replacement cost of the structure during any calendar year;

      (2) For the purposes of this Subsection, the cost of any required foundation work shall not be counted within the 50 percent limitation.

5. Other allowed modifications. The addition, enlargement, extension, reconstruction, or structural alteration of a nonconforming structure may be allowed; provided, the modification is necessary to secure added safety or to reduce the fire hazard and/or to secure aesthetic advantages through the alignment, architecture, or closer conformity to surrounding allowed structures in the immediate neighborhood, and only in compliance with Subsection A.3, above.

6. Definitions.

   a. Restoration is initiated. As used in this Subsection, "restoration is initiated" requires that, at a minimum, a complete Building Permit application has been filed.

   b. Replacement cost.

      (1) As used in this Subsection, "replacement cost" is the construction cost to replace the entire structure immediately before the occurrence of the damage.

      (2) For purposes of administering the provisions of this Subsection, the applicant shall submit three estimates from licensed contractors for the damaged structure with the estimates averaged by the City's Building Official, which determination shall be final, unless appealed in compliance with Chapter 9.76 (Appeals).

9.90.040 - Nonconforming Parcels

A. Legal building site. A nonconforming parcel that does not comply with the applicable area or width requirements of this Land Use Code shall be considered a legal building site if it meets at least one of the following criteria, as documented to the satisfaction of the Director by evidence furnished by the applicant.

   1. Approved subdivision. The parcel was created by a recorded subdivision;

   2. Individual parcel legally created by deed. The parcel is under one ownership and of record, and was legally created by a recorded deed before the effective date of the zoning amendment that made the parcel nonconforming;

3. Variance or lot line adjustment. The parcel was approved through the Variance procedure or resulted from a lot line adjustment;

4. Partial government acquisition. The parcel was created in compliance with the provisions of this Land Use Code, but was made nonconforming when a portion was acquired by a governmental entity so that the parcel size is decreased not more than 20 percent and the yard facing a public right-of-way was decreased not more than 50 percent; or

5. Certificate of Compliance. A Certificate of Compliance has been issued, in compliance with Article 8 (Subdivision Regulations and Procedures), verifying that the parcel complies with the applicable provisions of Article 8 and the Subdivision Map Act.

B. Subdivision or lot line adjustment of a nonconforming parcel. No subdivision or lot line adjustment shall be approved that would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

9.90.050 - Exemptions

A. Historic structure. A nonconforming structure of historical significance may be altered or enlarged without increasing the degree of nonconformity with the approval of the Historic and Design Review Commission (HDRC). A nonconforming structure of historical significance may be altered or enlarged without conforming to current setback provisions with Planned Development Permit approval granted by the Planning Commission in compliance Section 9.72.070 with a recommendation from the HDRC; provided that the historic structure is:

1. Included in a historic district;

2. Designated as a historic landmark or noteworthy structure by the City Council;

3. Listed on the California Register or National Register; or

4. To be restored.

B. Structural Alteration. Where a single-family residence, or its detached accessory structures, is nonconforming only by reason of substandard setbacks, the provisions of this Section shall not apply; provided, any structural alteration of a nonconforming structure shall not increase the size or degree of the nonconformity.

C. Damaged or destroyed residential units.

1. Nonconforming single- and multi-family dwelling units that have been involuntarily damaged or destroyed by accident or natural occurrence, may be reconstructed or replaced with a new structure using the same development standards that applied to the damaged or destroyed structure (e.g., building footprint, building height, density standards, number of dwelling units, setbacks, and square footage); provided that:

a. The applicant provides documentation, satisfactory to the Director, supporting the claim that the damage or destruction occurred involuntarily;

b. No expansion of the gross floor area or number of dwelling units occurs;

c. The replacement structure:

(1) Is in compliance with the California Building Code; and

(2) Would not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the immediate vicinity of the replacement structure.

d. A Building Permit is issued no later than 12 months after the date of destruction, and construction is diligently pursued to completion.

2. If the preceding requirements are not met, the replacement structure shall comply with all of the regulations of the applicable zoning district in effect on the date of application for the required Building Permit.

D. Seismic retrofitting. Alterations, reconstruction, or repairs otherwise required by law (e.g., City adopted Building, Electrical, Plumbing Codes) shall be allowed. Reconstruction required to reinforce unreinforced masonry structures or to comply with California Building Code requirements shall be allowed without cost limitations; provided, the retrofitting and Code compliance are limited exclusively to compliance with earthquake safety standards and other applicable California Building Code requirements.

E. Nonconforming due to a lack of a Use Permit.

1. Previous Use Permits in effect. A use that was authorized by a Use Permit but is not allowed by this Land Use Code in its current location may continue, but only in compliance with the original Use Permit (e.g., if the original Use Permit specified a termination date, then the use shall terminate in compliance with the requirements of the Use Permit).

F. Previous permits. A use or structure that does not conform to the current regulations of the subject zoning district, but for which a Building Permit, or a permit or entitlement approved in compliance with this Land Use Code, was issued and exercised before the applicability of this Land Use Code, may be completed; provided, the work is diligently pursued to completion. Upon completion these uses or structures, or parts thereof, shall be deemed to be nonconforming and shall thereafter be subject to the provisions of this Chapter. For the purposes of this Subsection, the provisions of Section 9.72.070 (Permit Time Limits. Extensions, and Expiration) shall govern the determination of whether the permit or entitlement has been exercised in a timely manner.

G. Public utilities. The provisions of this Chapter, concerning the required removal of nonconforming uses and structures, and the reconstruction of nonconforming structures partially destroyed, shall not apply to public utility structures when the structures pertain directly to the rendering of the service of distribution of a utility (e.g., electric distribution and transmission substations, gas storage, metering, and valve control stations, steam electric generating stations, water wells and pumps, etc.); nor shall any provision of this Chapter be construed to prevent the expansion, modernization, or replacement of the public utility structures, equipment, and features, that are used directly for the delivery of or distribution of the service.

H. Public acquisition.

1. Nonconforming due to public acquisition. Whenever any structure or parcel is rendered nonconforming within the meaning of this Chapter by reason of a reduction in a required parcel area, reduction of off-street parking facilities, or setbacks occurring solely by reason of dedication to, or purchase by, the City for any public purpose, or eminent domain proceedings, which result in the acquisition by the City or any agency authorized for the eminent domain proceedings of a portion of the property, the same shall not be deemed nonconforming within the meaning of this Chapter.

9.90.060 - Unlawful Uses and Structures

Uses and structures which did not comply with the applicable provisions of this Land Use Code or prior planning and zoning regulations when established are violations of this Land Use Code and are subject to the provisions of Chapter 9.96 (Enforcement and Penalties). This Chapter does not grant any right to continue occupancy of property containing an illegal use or structure. The activity shall not be lawfully allowed to continue unless/until permits or entitlements required by this Land Use Code and the Municipal Code are first obtained.

9.90.070 - Nuisance Abatement

A. Not applicable to public nuisances. The provisions of this Chapter shall not apply to a use or a structure which is, or which becomes, a public nuisance.

B. Continuance of public nuisances prohibited. The provisions of this Chapter do not allow, and shall not be interpreted to allow, the continuation of a use or structure which is deemed a public nuisance or which is prohibited or otherwise made unlawful, in whole or in part, by the Municipal Code (including the Building Code, Fire Code, Land Use Code, etc.) or by laws enacted by the State or Federal government which are applicable to this City.

C. Enforcement actions. In the event that a nonconforming use or structure is found to constitute a public nuisance, appropriate action shall be taken by the City, in compliance with the Municipal Code and Chapter 9.96 (Enforcement and Penalties).

CHAPTER 9.92 -AMENDMENTS

Sections:

9.92.010 - Purpose of Chapter
9.92.020 - Processing, Notice, and Hearing
9.92.030 - Planning Commission Action on Amendment
9.92.040 - Council Action on Amendment
9.92.050 - Findings
9.92.060 - Prezoning
9.92.070 - Amendments to the Local Coastal Program

9.92.010 - Purpose of Chapter

This Chapter provides procedures for the amendment of the General Plan, the Zoning Map, this Land Use Code, and the Local Coastal Program whenever the Council determines public necessity and general welfare require an amendment.

9.92.020 - Processing, Notice, and Hearing

A. Who may initiate an amendment.

1. General Plan or Zoning Map. A General Plan or Zoning Map amendment may only be initiated by:

   a. The Council;

   b. The Planning Commission; or

   c. The filing of an amendment application with the Department by the owner or authorized agent of property for which the amendment is sought. If the property is under more than one ownership, all of the owners or their authorized agents shall join in filing the application.

2. Land Use Code. A Land Use Code amendment may only be initiated by:

   a. The Council;

   b. The Planning Commission; or

   c. By Council action to adopt an urgency measure as an interim ordinance in compliance with State law (Government Code Section 65858).

B. Application filing and processing. An application for an amendment shall be completed, filed, and processed in compliance with Chapter 9.70 (Permit Application Filing and Processing). The application shall be accompanied by the information identified in the Department handout for amendment applications. A General Plan amendment shall involve consultation with pertinent Tribal Governments per the requirements of Senate Bill 18 (SB18) of 2004.

C. Public hearings required. The Planning Commission and Council shall each conduct one or more public hearings regarding the amendment application.

D. Notice of hearings. Notice of the public hearings shall be provided, and the hearings shall be conducted in compliance with Chapter 9.74 (Public Hearings).

9.92.030 - Planning Commission Action on Amendment

The Planning Commission shall forward a written recommendation, and reasons for the recommendation, to the Council whether to approve, approve in modified form, or disapprove the proposed amendment, based on the findings identified in Section 9.92.050 (Findings), below.

9.92.040 - Council Action on Amendment

A. Action to approve/disapprove. Upon receipt of the Planning Commission's recommendation, the Council shall approve, approve in modified form, or disapprove the proposed amendment based on the findings identified in Section 9.92.050 (Findings), below.

B. Referral to Planning Commission. If the Council proposes to adopt a substantial modification to the amendment not previously considered by the Planning Commission during its hearings, the proposed modification shall be first referred to the Planning Commission for its recommendation, in compliance with State law (Government Code Sections 65356 [General Plan amendments] and 65857 [Land Use Code /Zoning Map amendments]).

9.92.050 - Findings

An amendment to the General Plan, the Zoning Map, or this Land Use Code may be approved only if all of the following findings are made, as applicable to the type of amendment.

A. Findings for General Plan amendments.

1. The proposed amendment is consistent with all other provisions of the General Plan;

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and

3. The affected site(s) is physically suitable (including absence of physical constraints, access, compatibility with adjoining land uses, and provision of utilities) for proposed or anticipated uses and/or development.

B. Findings for Zoning Map and Land Use Code text amendments.

1. Findings required for all Zoning Map and Land Use Code text amendments:

a. The proposed amendment is consistent with the General Plan; and

b. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

2. Additional finding for Zoning Map amendments: The affected site(s) is physically suitable (including absence of physical constraints, access, compatibility with adjoining land uses, and provision of utilities) for the requested zoning designation and proposed or anticipated uses and/or development.

9.92.060 - Prezoning

A. Purpose.

1. An unincorporated property within the City's sphere of influence may be prezoned for the purpose of determining the zoning that would apply to the property in the event of subsequent annexation to the City.

2. The initiation and the procedures for the prezoning shall be the same procedures which govern the rezoning of property within the City and as identified in this Chapter.

3. Upon the effective date of annexation of property which has been prezoned in compliance with this Section, the zoning designation shall become the official zoning designation for the property and shall be so designated on the City's Official Zoning Map.

B. Applicability.

1. All lands. Except for those lands identified in Subsection B.2, immediately below, all lands shall be subject to the prezoning procedures identified in this Section and within Section 9.94.040.

2. Not subject to resource lands. Resource lands shall not be prezoned, but their specific land use designations shall be considered at the time of annexation.

C. Commission's action on prezoning. The Planning Commission shall make a written recommendation to the Council whether to approve, approve in modified form, or disapprove the proposed prezoning, based on the findings contained in 9.92.050 (Findings), above.

D. Council's action on prezoning.

1. Upon receipt of the Planning Commission's recommendation, the Council shall approve, approve in modified form, or disapprove the proposed prezoning based on the findings contained in 9.92.050 (Findings), above.

2. If the Council proposes to adopt a substantial modification to the prezoning not previously considered by the Planning Commission during its hearings, the proposed modification may be first referred back to the Planning Commission for its recommendation, in compliance with State law (Government Code Section 65857).

9.92.070 - Amendments to the Local Coastal Program

A. Procedure same as other amendments. The certified Local Coastal Program (LCP) or any portion (Land Use Plan or relevant provisions of these regulations) may be amended by the Council in compliance with the provisions of this Chapter for General Plan, Land Use Code, and Zoning Map amendments.

B. Certification by Coastal Commission required. An amendment to the LCP land use designations, or any Land Use Code provision applicable within the Coastal Zone shall not take effect until the amendment has been certified by the Coastal Commission in compliance with the Coastal Act.

C. Compliance with Coastal Act required. Amendments to the LCP approved by the Council in compliance with this Chapter shall be prepared for submittal, filed with the Coastal Commission, processed and decided by the Coastal Commission in compliance with the Coastal Act.

CHAPTER 9.94 -GROWTH MANAGEMENT

Sections:

9.94.010 - Purpose of Chapter
9.94.020 - Effect of Sphere of Influence
9.94.030 - Changes to Sphere of Influence
9.94.040 - Prezoning of Parcels Within Sphere of Influence
9.94.050 - Annexation Procedures
9.94.060 - Annexation Application Requirements
9.94.070 - Criteria for Annexation of Undeveloped Land
9.94.080 - Criteria for Annexation of Land With Existing Urban Development
9.94.090 - Urban Services Boundary
9.94.100 - Extension of Services Outside City Boundary
9.94.110 - Modification of Urban Services Boundary

9.94.010 - Purpose of Chapter

This Chapter provides criteria and procedures for growth management in the City.

9.94.020 - Effect of Sphere of Influence

A. Sphere of Influence defined. The Sphere of Influence adopted by the Local Agency Formation Commission (LAFCo) for the City, is shown on Figure GM-a of the General Plan.

B. City intent. It is the City's intent to maintain an adequate amount of land within the Sphere of Influence to accommodate future growth, consistent with the goals and policies of the General Plan, as well as to protect open space and productive resource uses.

C. Effect of Sphere of Influence. Only parcels that are included within the City's Sphere of Influence shall be eligible for annexation into the City.

9.94.030 - Changes to Sphere of Influence

A. Periodic evaluation. The City shall comprehensively evaluate the Sphere of Influence boundary at least every five years, but more frequently if appropriate.

B. Property owner requests.

1. Any owner of property within the unincorporated area of Humboldt County that is adjacent to the Sphere of Influence may request that the City include their property within the Sphere of Influence.

2. A proposal to change the Sphere of Influence shall identify the requested land use designations and any other necessary or appropriate amendments to the various elements of the General Plan/Local Coastal Plan.

C. Consideration by Planning Commission and Council. A proposed Sphere of Influence amendment shall first be considered by the Planning Commission, which shall provide a written recommendation to the Council, and then acted upon by the Council before any consideration by LAFCo and/or the Coastal Commission.

D. Criteria to be considered. A City decision to change the Sphere of Influence boundary shall be based on the following criteria:

1. The resulting area has an adequate supply of land to accommodate projected housing needs allocated by the Humboldt County Council of Governments.

2. In considering proposed changes, and at each periodic comprehensive evaluation, the Council, upon recommendation of the Planning Commisson, shall determine whether it would serve the public interest to designate additional lands for which to provide municipal services and developed with urban uses, or to protect open space or productive resource uses.

3. An amendment to the Sphere of Influence to include additional lands shall be subject to environmental review in compliance with the California Environmental Quality Act (CEQA) and Chapter 9.78 (Environmental Impact Assessment) and the California Coastal Act, if applicable.

4. A proposal to amend the Sphere of Influence may be considered concurrently with an annexation request.

5. An adjustment to the Sphere of Influence shall incorporate adequate provisions for open space.

9.94.040 - Prezoning of Parcels Within Sphere of Influence

A. Timing of prezoning. Land within the Sphere of Influence shall not be prezoned until the City considers a formal annexation request, and then only in compliance with Section 9.92.060 (Prezoning).

B. Consistency with General Plan. All prezonings shall be consistent with the land use designations of the City's General Plan for the Sphere of Influence, or a General Plan Amendment shall be required, in compliance with Chapter 9.92 (Amendments).

C. Purpose of procedure. The purpose of this procedure shall be to provide maximum latitude to the City to determine the appropriate timing of expansion of the City boundaries, extension of services, and urban development.

9.94.050 - Annexation Procedures

A. Purpose. The City's objective is to provide for the logical annexations of unincorporated lands within the City’s Sphere of Influence only when the existing or proposed development is consistent with community character, and City services can be adequately provided or to protect open spaces and resource uses.

B. Timing of application. The City shall consider prezoning/annexation requests before an annexation application is filed with LAFCo.

C. Procedures. If area property owners or residents request that the City initiate an annexation request to LAFCo, the following procedures shall apply:

1. Initiation.

a. Inhabited lands. If lands are inhabited, a petition needs to be signed by no less than 50 percent of the resident voters, or at least 25 percent of owners of property located within the annexation area;

b. Uninhabited lands. If lands are uninhabited but consist of more than one parcel and owner, a petition needs to be signed by a majority of owners representing more than 50 percent of the annexation area;

c. Single parcel. If a single parcel, a petition needs to be submitted by the owner(s).

2. Planning Commission consideration and recommendation. The Planning Commission shall review and make a written recommendation on the requested annexation to the Council.

3. Council's final action. Final action shall be taken by the Council in the form of a Resolution of Intention for the annexation.

4. Transmittal of annexation request. Following Council approval of an annexation request, including any accompanying General Plan amendment, pre-zoning ordinance, and/or environmental document, the City shall transmit the annexation request to LAFCo for its consideration and decision.

9.94.060 - Annexation Application Requirements

The following shall apply to where the land proposed to be annexed to the City is not developed with urban land uses before the annexation.

A. Annexation study. The City, or consultants under contract to the City, shall prepare a detailed annexation study, as follows.

1. Content of study. An annexation study shall include the following items.

a. A comprehensive and detailed analysis of the fiscal impacts of the annexation, addressing the full range of revenues and expenditures. One-time capital costs of facilities, as well as recurring operating costs and revenues, shall be evaluated.

b. A study and/or proposal for tax-sharing agreements with other taxing entities (e.g., the County).

c. An accompanying General Plan amendment, if requested or appropriate.

d. A proposed preliminary development plan, including phasing if appropriate.

e. An assessment of the City's capacity to provide facilities and services, including: fire protection; parks; police services; stormwater management; streets and circulation; wastewater collection and treatment; water supply and distribution; and other services as appropriate.

f. A prezoning ordinance.

g. The annexation study shall have a determination of consistency with the Arcata General Plan.

2. Cost for preparation of study. The costs of preparing the annexation study, including City administrative costs, shall be paid for by the applicant requesting the City to consider the annexation.

B. Environmental document. An appropriate environmental document shall be prepared in compliance with the California Environmental Quality Act (CEQA) and Chapter 9.78 (Environmental Impact Assessment).

C. Planned Development or specific plan may be required. A Planned Development, prepared and adopted in compliance with Section 9.72.070 (Planned Development Permit), or specific plan may be required prior to the annexation of any property larger than five acres and any vacant residential property of an acre or more.

9.94.070 - Criteria for Annexation of Undeveloped Land

Undeveloped land may be annexed to the City only if the proposed annexation will:

A. Only include parcels within the Urban Services Boundary identified in Section 9.94.090, and adjacent to existing urban development;

B. Not exceed the City's capacity to provide services and infrastructure to accommodate the proposed development;

C. Be timed so that the availability of services and infrastructure is concurrent with the anticipated need;

D. Have either a positive or neutral fiscal impact, or other overriding public benefits;

E. Comply with all applicable General Plan policies; and

F. Not include prime agriculture land (Storie Index of 60 or higher) other than with a designation and prezoning of Agriculture Exclusive (A-E), Natural Resource (NR), or Public Facility (P-F).

9.94.080 - Criteria for Annexation of Land With Existing Urban Development

Land with existing urban development may be annexed to the City only if the proposed annexation will:

A. Only include parcels within the Urban Services Boundary identified in Section 9.94.090, and adjacent to an existing City boundary;

B. Have facilities brought up to City standards before or concurrent with the annexation; and

C. Ensure that all costs for service extensions shall be paid for entirely by the owners of annexing properties and not by existing City taxpayers or ratepayers, or, have a financing mechanism in place before the annexation.

9.94.090 - Urban Services Boundary

A. City's intent. It is the City's intent to provide needed services to urban uses within the Urban Services Boundary when the provision of those services will not exceed the City's planned system capacities.

B. Boundary defined. The Urban Services Boundary serves to define the boundary that limits the extent of City services and urban uses, within the City's incorporated area and Sphere of Influence.

C. Rural residential development. Rural residential development within the City limits may be approved outside the Urban Services Boundary but only if the development would not require the extension of sewer, water, and other public facilities.

9.94.100 - Extension of Services Outside City Boundary

A. The City shall not extend sewer mains or new water mains, or provide new service connections to portions of its Planning Area outside of the City limits except under following conditions:

1. Emergency sanitary sewer connection. The City may provide an emergency sewer line extension provided the following conditions are met:

a. The property is located within the City Urban Services Boundary for water and sewer.

b. The property is adjacent to the City limits.

c. The on-site sewage disposal system has failed.

d. It is not feasible to replace or repair the on-site sewage disposal system as evidenced by a letter from the County of Humboldt Division of Environmental Health.

e. The on-site sewage disposal system failure is considered a health hazard by the County of Humboldt Division of Environmental Health.

f. The owner has submitted a complete application to the City of Arcata for annexation of the property within 18 months from the date that sanitary sewer service was provided.

g. LAFCo has approved the emergency sanitary sewer connection.

h. The sewer connection shall be sized to only accommodate the failed system.

2. Contracts to provide water and/or sewer services to other service districts. The City may contract to provide water and/or sewer services to other service districts subject to the following guidelines:

a. Only those areas with existing contracts as of December 31, 1998 shall be served.

b. No new contracts for services shall be approved.

c. No new connections shall be allowed to the sewer lines in the area located between the City limits and the Arcata Planning Area Boundary except in compliance with Subsection 1, above.

9.94.110 - Modification of Urban Services Boundary

The City may approve an Urban Services Boundary modification only after first finding all of the following:

A. There are existing legal urban uses or urban uses designated on the land use plan map for the area being considered.

B. There is sufficient existing or planned infrastructure capacity to extend police protection, sewer, water, and other services, without reducing service standards for other areas.

C. The area to be served is:

1. Adjacent to existing urban development; and

2. Within the City limits or Sphere of Influence.

D. City service extensions will not adversely impact open space and natural resources in the area.

CHAPTER 9.96 -ENFORCEMENT AND PENALTIES

Sections:

9.96.010 - Purpose of Chapter
9.96.020 - Permits and Licenses
9.96.030 - Official Duty to Enforce
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9.96.090 - Legal Remedies
9.96.100 - Recovery of Costs
9.96.110 - Additional Permit Processing Fees
9.96.120 - Reinspection Fees

9.96.010 - Purpose of Chapter

This Chapter establishes procedures for City responses to violations of this Land Use Code/Arcata General Plan and any conditions of planning permit or subdivision approval, to promote the City's planning efforts, and for the protection of the public health, safety, and welfare.

9.96.020 - Permits and Licenses

Each department, official, and employee of the City who is assigned the authority or duty to issue permits or licenses shall comply with all applicable provisions of this Land Use Code/Arcata General Plan.

A. Permits in conflict with Land Use Code. No permit shall be issued by the City for a use or structure in conflict with the provisions of this Land Use Code/Arcata General Plan.

B. Permits deemed void. Any permit issued in conflict with the provisions of this Land Use Code/Arcata General Plan shall be deemed void.

9.96.030 - Official Duty to Enforce

A. Designated employee. The Zoning Administrator may:

1. Exercise the authority provided in Section 836.5 of the Penal Code as a Code Enforcement Officer; and

2. Issue citations for any violations of this Land Use Code/Arcata General Plan pertaining to the use of any land and the addition, alteration, construction, conversion, erection, moving, reconstruction, or use of any structure.

B. Police Chief. The Police Chief shall render any and all necessary assistance to the Zoning Administrator for the enforcement of this Land Use Code.

9.96.040 - Violations

Any structure constructed or maintained contrary to the provisions of this Land Use Code and any use of land or structures operated or maintained contrary to the provisions of this Land Use Code are hereby declared to be public nuisances.

A. Public nuisance. Any structure or use which is altered, constructed, converted, enlarged, established, erected, maintained, moved, or operated, contrary to the provisions of this Land Use Code or any applicable condition of approval imposed on a permit, is hereby declared to be unlawful and a public nuisance, and shall be subject to the remedies and penalties identified in this Chapter and Title 1, Chapter 3 (Penalty Provisions) of the Municipal Code.

B. Criminal violations. Any person, whether an agent, principal, or otherwise, violating or causing the violation of any provision of this Land Use Code or any permit issued in compliance with this Land Use Code shall be guilty of a misdemeanor or an infraction at the election of the City and/or its prosecuting official, and upon conviction thereof, shall be punishable by the applicable fine established by the Council.

C. Misdemeanors. Any offense that would otherwise be an infraction may, at the discretion of the District Attorney or City Attorney, be filed as a misdemeanor if the defendant has been convicted of two or more violations of any provision of this Land Use Code within the 12 months immediately preceding the commission of the offense, or has been convicted of three or more violations of any provision of this Land Use Code within the 24 months immediately preceding the offense.

D. Stop Work Order.

1. Any construction in violation of this Land Use Code or any conditions imposed on a permit shall be subject to the issuance of a "Stop Work Order."

2. Any violation of a Stop Work Order shall constitute a misdemeanor, subject to the penalties described in Title 1, Chapter 3 (Penalty Provisions) of the Municipal Code.

9.96.050 - Remedies are Cumulative

A. Cumulative, not exclusive. All remedies contained in this Land Use Code for the handling of violations or enforcement of the provisions of this Land Use Code shall be cumulative and not exclusive of any other applicable provisions of City, County, or State law.

B. Other remedies. Should a person be found guilty and convicted of a misdemeanor or infraction for the violation of any provision of this Land Use Code, the conviction shall not prevent the City from pursuing any other available remedy to correct the violations.

9.96.060 - Inspections

A. Preapproval inspections. Every applicant seeking a permit or any other action in compliance with this Land Use Code shall allow the City officials handling the application access to any premises or property which is the subject of the application. An owner's signature on a City Application Form authorizes City of Arcata representatives to enter upon a subject property as reasonably necessary to evaluate a proposed project.

B. Post approval inspections. If the permit or other action in compliance with this Land Use Code is approved, the owner or applicant shall allow appropriate City officials access to the premises in order to determine continued compliance with the approved permit and/or any conditions of approval imposed on the permit.

9.96.070 - Permit Revocation or Modification

A. Procedures. This Section provides procedures for securing punitive revocation or modification of previously granted permits or approvals.

B. Revocations. The City's action to revoke a permit or approval shall have the effect of terminating the permit or approval and denying the privileges granted by the original approval.

C. Modifications.

1. The City's action to modify, rather than revoke, a permit or approval, shall have the effect of changing the operational aspects of the permit or approval.

2. The changes may include the operational aspects related to the duration of the permit or approval, fencing, hours of operation, landscaping and maintenance, lighting, noise, parking, performance guarantees, property maintenance, screening, signs, surfacing, traffic circulation, etc.

D. Hearings and notice.

1. The appropriate review authority that originally approved the permit, shall hold a public hearing to revoke or modify a permit or approval granted in compliance with the provisions of this Land Use Code.

2. At least ten days before the public hearing, notice shall be delivered in writing to the applicant for the permit or approval being considered for revocation, and/or owner of the property for which the permit was granted.

3. Notice shall be delivered by either personal delivery or through certified first class mail, through the United States Postal Service, postage paid, to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property.

E. Review authority action.

1. Permits. A land use permit or approval may be revoked or modified by the review authority (e.g., Zoning Administrator, Historic and Design Review Authority, Planning Commission, or Council) that originally approved the permit, if the review authority first makes any one of the following findings:

   a. Circumstances under which the permit or approval was granted have been changed by the applicant to an extent that one or more of the findings that justified the original approval can no longer be made, and the public health, safety, and welfare require the revocation;

   b. The permit or other approval was granted, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the permit or other approval;

   c. One or more of the conditions of the original approval have not been substantially fulfilled or have been violated;

   d. The approved use or structure has ceased to exist or has been suspended for at least 12 months;

   e. An improvement authorized in compliance with the permit is in violation of any applicable code, law, ordinance, regulation, or statute; or

   f. The improvement/use allowed by the permit has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.

2. Variances. A Variance may be revoked or modified by the review authority which originally approved the Variance, if the review authority first makes either one of the following findings:

   a. Circumstances under which the entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original approval can no longer be made in a positive manner, and the grantee has not substantially exercised the rights granted by the Variance; or

   b. One or more of the conditions of the Variance have not been met, or have been violated, and the grantee has not substantially exercised the rights granted by the Variance.

9.96.080 - Initial Enforcement Action

This Section describes the procedures for initiating enforcement action in cases where the Zoning Administrator has determined that real property within the City is being used, maintained, or allowed to exist in violation of the provisions of this Land Use Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Chapter may be avoided.

A. Notice to responsible parties. The Zoning Administrator shall provide the record owner of the subject site and any person in possession or control of the site with a written Notice of Violation as delivered per Subsection 9.96.070.D.3, which shall include the following information:

1. A description of the violation, and citations of applicable Land Use Code provisions being violated;

2. A time limit for correcting the violation in compliance with Subsection B, below;

3. A statement that the City intends to charge the property owner for all administrative costs associated with the abatement of the violations in compliance with Section 9.96.100 (Recovery of Costs), and/or initiate legal action as described in Section 9.96.090 (Legal Remedies);

4. A statement that the property owner may request and be provided a meeting with the Zoning Administrator to discuss possible methods and time limits for the correction of the violations.

B. Time limit for correction.

1. The Notice of Violation shall state that the violations shall be corrected within 30 days from the date of the notice to avoid further enforcement action by the City, unless the responsible party contacts the Zoning Administrator within that time to arrange for a longer period for correction.

2. The 30-day time limit may be extended by the Zoning Administrator upon a showing of good cause.

3. The Zoning Administrator may also require through the Notice of Violation that the correction occur within less than 30 days if the Zoning Administrator determines that the violation constitutes a hazard to public health or safety.

C. Use of other enforcement procedures. The enforcement procedures of Section 9.96.090 (Legal Remedies) may be employed by the Zoning Administrator after or instead of the provisions of this Section where the Zoning Administrator determines that this Section would be ineffective in securing the correction of the violations within a reasonable time.

9.96.090 - Legal Remedies

The City may choose to undertake any one or all of the following legal actions to correct and/or abate any public nuisances or violations of this Land Use Code.

A. Civil actions.

1. Injunction. The City Attorney, upon order of the Council, may apply to the Superior Court for injunctive relief to terminate a violation of this Land Use Code.

2. Abatement proceedings. Where any person fails to abate a violation after being provided a Notice of Violation in compliance with Section 9.96.080.A and the opportunity to correct or end the violation, the City Attorney, upon order of the Council, shall apply to the Superior Court for an order authorizing the City to undertake actions necessary to abate the violation and require the violator to pay for the cost of the actions.

3. Nuisance abatement. The City may pursue nuisance abatement in compliance with Section Title I, Chapter 3 (Penalty Provisions) of the Municipal Code.

B. Civil remedies and penalties.

1. Civil penalties. Any person who willfully violates the provisions of this Land Use Code or any permit issued in compliance with this Land Use Code, shall be liable for a civil penalty in compliance with the Code Enforcement Fee Schedule for each day that the violation continues to exist.

2. Costs and damages. Any person violating any provisions of this Land Use Code or any permit issued in compliance with this Land Use Code, shall be liable to the City for the costs incurred and the damages suffered by the City, its agents, and agencies as a direct result of the violations.

3. Procedure. In determining the amount of the civil penalty to impose, the Court should consider all relevant circumstances, including the extent of the harm caused by the conduct constituting a violation, the nature and persistence of the conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the defendant, whether corporate or individual, and any corrective action taken by defendant.

C. Criminal actions and penalties. See Section 9.96.040.B (Criminal Violations).

9.96.100 - Recovery of Costs

This Section establishes procedures for the recovery of administrative costs, including Staff and City Attorney time expended on the enforcement of the provisions of this Land Use Code in cases where no permit is required in order to correct a violation. The intent of this Section is to recover City administrative costs reasonably related to enforcement.

A. Record of costs.

1. The Department shall maintain records of all administrative costs, incurred by responsible City departments, associated with the processing of violations and enforcement of this Land Use Code, and shall recover the costs from the property owner in compliance with this Section and Title V, Chapter 5 (Abatement of Nuisances) of the Municipal Code.

2. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Council.

B. Notice. Upon investigation and a determination that a violation of any of the provisions of this Land Use Code is found to exist, the Zoning Administrator shall notify the record owner or any person having possession or control of the property by mail as delivered per Subsection 9.96.070.D.3, of the existence of the violation, the Department's intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have. The notice shall be in a form approved by the City Attorney.

C. Summary of costs and notice.

1. At the conclusion of the case, the Zoning Administrator shall send a summary of costs associated with enforcement to the owner and/or person having possession or control of the property by certified first class mail.

2. The summary shall include a notice in a form approved by the City Attorney, advising the responsible party of their right to request a hearing on the charges for City cost recovery within 10 days of the date of the notice, and that if no request for hearing is filed, the responsible party will be liable for the charges.

3. In the event that no request for hearing is timely filed or, after a hearing the Zoning Administrator affirms the validity of the costs, the property owner or person in control shall be liable to the City in the amount stated in the summary or any lesser amount as determined by the Zoning Administrator.

4. The costs shall be recoverable in a civil action in the name of the City, in any court of competent jurisdiction, or by tax assessment, or by a lien on the property, at the City's election.

D. Request for hearing on costs. Any property owner, or other person having possession and control of the subject property, who receives a summary of costs shall have the right to a hearing before the Zoning Administrator on their objections to the proposed costs.

1. A request for hearing shall be filed with the Department within 10 days of the service by mail of the Department's summary of costs, on a form provided by the Department.

2. Within 30 days of the filing of the request, and on 10 days written notice to the owner, the Zoning Administrator shall hold a hearing on the owner's objections, and determine their validity.

3. In determining the validity of the costs, the Zoning Administrator shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include: whether the present owner created the violation; whether there is a present ability to correct the violation; whether the owner moved promptly to correct the violation; the degree of cooperation provided by the owner; and whether reasonable minds can differ as to whether a violation exists.

4. The Zoning Administrator's decision is appealable to the Council as provided by Chapter 9.76 (Appeals).

9.96.110 - Additional Permit Processing Fees

Any person who establishes a land use, or alters, constructs, enlarges, erects, maintains, or moves any structure without first obtaining any permit required by this Land Use Code, shall pay the additional permit processing fees established by the City's Fee Schedule for the correction of the violations, before being granted a permit for a use or structure on the site.

9.96.120 - Reinspection Fees

A. Amount and applicability of reinspection fee.

1. A reinspection fee shall be imposed on each person who receives a Notice of Violation, notice and order, or letter of correction of any provision of the Municipal Code, adopted Building Code, or State law.

    a. The fee amount shall be established by the City's Fee Schedule.

    b. The fee may be assessed for each inspection or reinspection conducted when the particular violation for which an inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner specified in, the notice or letter.

2. The fee shall not apply to the original inspection to document the violations and shall not apply to the first scheduled compliance inspection made after the issuance of a notice or letter, whether or not the correction has been made.

B. Continuation of the original case.

1. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the provisions of this Land Use Code or the Municipal Code for less than 180 days, the violation shall be deemed a continuation of the original case, and all inspections or reinspections, including the first inspection for the repeated offense, shall be charged a reinspection fee.

2. This fee is intended to compensate for administrative costs for unnecessary City inspections, and is not a penalty for violating this Land Use Code or the Municipal Code.

3. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this Land Use Code or the Municipal Code, or costs incurred by the City for the abatement of a public nuisance.