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Planning Permit Procedures [2]

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CHAPTER 9.70 - PERMIT APPLICATION FILING AND PROCESSING

Sections:

9.70.010 - Purpose of Chapter
9.70.020 - Authority for Land Use and Zoning Decisions
9.70.030 - Application Preparation and Filing
9.70.040 - Application Fees
9.70.050 - Recreation Fee For New Construction
9.70.060 - Initial Application Review
9.70.070 - Project Evaluation and Staff Report

9.70.010 - Purpose of Chapter

This Chapter provides procedures and requirements for the preparation, filing, and initial processing of applications for the planning permits required by this Land Use Code.

9.70.020 - Authority for Land Use and Zoning Decisions

Table 7-1 (Review Authority) identifies the review authority responsible for reviewing and making decisions on each type of application required by this Land Use Code.

9.70.030 - Application Preparation and Filing

A. Pre-application conference. A prospective applicant is encouraged to contact the Department to request a pre-application conference before completing and filing an application. The purpose of the conference is to generally:

1. Inform the applicant of City requirements as they apply to the proposed project;

2. Review the City's approval process, possible project alternatives or modifications;

3. Identify the information and materials the City will require with the application, and any necessary technical studies and information relating to the environmental review of the project; and

4. Provide the opportunity for the applicant to ask questions involving the concerns of multiple City departments before developing detailed plans.

Neither a pre-application conference nor information and/or pertinent policies provided by the Department shall be construed as either a recommendation for approval or disapproval of a project by any City staff. A failure by City staff to identify all required studies or all applicable requirements does not constitute a waiver of those requirements.

B. Application contents. Each application for a planning permit, amendment, or other matter pertaining to this Land Use Code shall be filed with the Department on a City application form, together with required fees and/or deposits, and all materials (e.g., drawings, exhibits, maps, other information) required by the application content requirements "handout" provided by the Department for the specific type of application (e.g., Use Permit, Variance, or others).

1. **Consolidation of applications.** Application forms for more than one permit may be consolidated if practical.

2. **Verification of required contents.** Applicants are encouraged to contact the Department before submitting an application to verify which materials are necessary for filing a complete application.

C. Eligibility for filing. An application may only be filed by the owner of the subject property, or an authorized agent with the written consent of the property owner. An application filed by or on behalf of one or more property owners shall be verified by at least one owner, or authorized agent, attesting to the truth and correctness of all facts, statements, and information presented.

D. Preliminary Planning Commission Review.

1. **Request for advice.** An application for preliminary review may be filed to request the comments of the Planning Commission before filing an application for formal City action or permit issuance for major projects. The Preliminary Review process shall not be used for issues related to Historic Preservation or Design Review as identified in Subsection 9.72.040.E. of this Land Use Code.

2. **Planning Commission discretion.** The Planning Commission may choose not to provide a Preliminary Review on a major project.

3. **Effect of review.** A Planning Commission Preliminary Review is advisory only and shall not be considered as a formal approval or disapproval.

9.70.040 - Application Fees

A. Fee Schedule. The Council shall establish a schedule of fees for the processing of the applications required by this Land Use Code, hereafter referred to as the City's Fee Schedule.

B. Multiple applications. The City's processing fees are cumulative. For example, if a project requires both a Use Permit and a Variance, both fees will be charged. All application fees are a deposit subject to an hourly rate.

C. Timing of payment. No application shall be deemed complete, and processing shall not commence or continue on any application until all fees required by the City have been paid in full.

D. Exemptions. A municipal agency shall be exempt from the payment of fees normally required by this Land Use Code.

E. Refunds.

1. **Disapproval.** Required application fees cover City costs for public hearings, mailings, staff time, and the other activities involved in processing applications. Therefore, no refund due to a disapproval shall be allowed.

2. **Withdrawal.** If an application is withdrawn, the Director may authorize a partial refund of application fees based upon the pro-rated costs to-date and the status of the application at the time of withdrawal.

Table 7-1 - Review Authority

Type of Decision	Procedure is in Section:	Role of Review Authority (1)			
		Zoning Administrator	Historic & Design Review Commission	Planning Commission	City Council
Administrative and Legislative					
Land Use Code Amendment	9.92			Recommend	Decision
General Plan Amendment	9.92			Recommend	Decision
Historic Designations	9.53		Recommend	Recommend	Decision
Interpretation	9.10.050	Decision (2)		Appeal	Appeal
Local Coastal Program Amendment	9.92			Recommend	Decision
Zoning Map Amendment	9.92			Recommend	Decision
Planning Permit/Development Approval					
Alterations & Demolitions	9.53		Decision	Appeal	Appeal
Coastal Permit (CP)	9.72.030	Decision (3)		Decision	Appeal (4)
Design Review (DR)	9.72.040		Decision	Decision/ Appeal (5)	Appeal
Emergency Permit	9.72.050	Decision (2)		Appeal	Appeal
Hillside Development Permit	9.52.070	Decision(2)		Appeal	Appeal
Master Sign Plan	9.38.030	Recommend	Decision		Appeal
Minor Use Permit (MUP)	9.72.080	Decision (2)		Appeal	Appeal
Tree Removal Permit	9.58.050	Decision (2)		Appeal	Appeal
Planned Development Permit (PD)	9.72.070	Decision (2)		Decision	Appeal
Sign Permit	9.38.030	Decision (2)	Decision		Appeal
Use Permit (UP)	9.72.080	Recommend		Decision	Appeal
Variance	9.72.090		Decision	Decision	Appeal
Zoning Clearance	9.72.100	Issuance		Appeal	Appeal

Notes:

(1) "Recommend" means that the review authority makes a recommendation to a higher decision making body; "Decision" means that the review authority makes the final decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Chapter 9.76 (Appeals).

(2) The Zoning Administrator may defer action and refer the request to the Planning Commission, so that the Planning Commission may instead make the decision.

(3) The Zoning Administrator may act on a Coastal Permit application that is not required to have a public hearing, in compliance with Section 9.72.030 (Coastal Permits).

(4) Coastal Permits are either approved by the City or the California Coastal Commission or both depending on the location of the project. Some City decisions on Coastal Permits can be appealed to the Coastal Commission.

(5) Refer to Section 9.72.040.C for the decision making body.

9.70.050 - Recreation Fee for New Construction

A. **Title.** This Section may be cited as the "Arcata Recreation Fee for New Construction Ordinance."

B. **Purpose**. The fee imposed under this Section is solely for the purpose of raising revenue for park acquisition and improvements. This Section is not enacted for regulatory purposes. This Section is intended to supplement the Park Land Dedication procedure in the Subdivision Ordinance (see Section 9.86.030), and it is applicable only for projects not subject to parkland in lieu requirements.

C. **Imposition of fee.** The Recreation Fee, at the rates identified in the City's Fee Schedule, is hereby imposed upon every person who constructs, or causes to be constructed, any residential, commercial, or industrial structure or portion thereof, including any mobile home pad, in the City, in which a person has an equity, title, or other interest either as owner, lessee, or otherwise.

D. **Fee rates.** The fee rates on residential, commercial, or industrial construction, including the construction of mobile home pads, imposed under this Section shall be identified in the City's Fee Schedule. The fee rate for residential, commercial, or industrial units shall be based on the valuation of the units being constructed.

E. **Time of payment.** The amount of fee imposed for the construction of any residential, commercial, or industrial structure, or portion thereof, shall be due and payable at the time a Building Permit is issued authorizing construction, and the amount of fee imposed for the construction of any mobile home pad shall be due and payable at the time a permit is issued to construct and install electrical or plumbing equipment to service the mobile home pad (whichever permit is issued first).

F. **Refund.** There shall be a refund of the fee in the event the Building Permit expires, or is revoked, before the facilities for which it was issued are constructed or installed.

G. Place of payment. Fees imposed by this Section shall be paid to the City's Building Official at the office of the City's Building Division.

H. Exemptions. The fee imposed by this Section shall not apply to the following:

1. **Governmental agencies.** The City, the United States, or any agency or instrumentality thereof, the State or any county, city and county, district, or any political subdivision of the State, or any other governmental agency.

2. **Remodeling / alteration.** Remodeling and/or alteration of a structure, without adding any additional residential units, but only if the total floor area is not increased.

3. **Involuntarily damaged or destroyed.** Reconstruction of a structure which was involuntarily damaged or destroyed by earthquake, fire, flood, or other cause over which the owner had no control (provided that compliance with any Building Code or other ordinance requirement of the City or of any other applicable law shall not be deemed a cause over which the owner has no control), but only if the total floor area in the structure is not increased. If the total floor area is increased, the Recreation Fee shall be imposed only upon the increased floor area.

4. **Park land/fee payment.** Construction of dwelling units on parcels which were part of a subdivision for which park land, or fee payment in lieu, has been dedicated to the City in compliance with the Park Land Dedication procedure contained in the Subdivision Ordinance (see Section 9.86.030).

I. Use of fee revenue. All of the fees collected by this Section shall be expended for the acquisition, alteration, construction, enlargement, furnishing, modification, reconstruction, remodeling, renovation, replacement, and/or re-furnishing of the following improvements:

1. **City public park, playground, and recreation facilities.** City public park, playground, and recreation facilities, including land and interests in land, baseball grounds, basketball, tennis, and volleyball courts, children's play areas, community center structures, recreation structures, sprinkler systems, swimming pools, turf, trails and other facilities, properties, structures, and works necessary or convenient for public park, playground, and recreation purposes; and also including any of the above-described facilities constructed or installed within or upon any public playground for recreation purposes.

2. **City maintenance yards.** City maintenance yards for park, playground, and recreation facilities, including land and interests in land, structures, and other structures or works necessary or convenient for the maintenance of the City's parks, playgrounds, and recreation facilities.

J. Fee construction fund. For the purposes identified above, all fees collected by this Section shall be placed in a special construction fund which is hereby created and which shall establish and keep the accounts as may be necessary to account for and control the expenditure of revenues in compliance with this Section.

9.70.060 - Initial Application Review

After acceptance of a complete application, the project shall be reviewed as required by the California Environmental Quality Act (CEQA) and Chapter 9.78 (Environmental Impact Assessment).

A. Review for completeness. The Director shall review each application for completeness and accuracy before it is accepted as being complete and officially filed. The Director's determination of completeness shall be based on the City's list of required application contents (see Section 9.70.030.B - Application contents, above), and any additional instructions provided.

1. **Notification of applicant.** As required by State law (Government Code Section 65943), within 30 calendar days of application filing, the applicant shall be informed in writing, either that the application is complete and has been accepted for processing, or that the application is incomplete and that additional information, specified in the Director's letter, shall be provided. If the application is complete, a written determination is not required, because the application will automatically be deemed complete 30 days after the receipt of the application.

2. **Appeal of determination.** Where the Director has determined that an application is incomplete, and the applicant believes that the application is complete and/or that the information requested by the Director is not required, the applicant may appeal the determination in compliance with Chapter 9.76 (Appeals).

3. **Time for submittal of additional information.** When an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness shall occur. The time available to an applicant for submittal of additional information is limited by Subsection A.4.

4. **Expiration of application.** If an applicant fails to provide the additional information specified in the Director's letter within 180 days after the first filing with the Department, the application shall expire and be deemed withdrawn. Upon a request by the applicant, the Director may grant one 180-day extension. After the expiration of an application, project approval shall require the submittal of a new, complete application.

5. **Environmental information.** After an application has been accepted as complete, the Director may require the applicant to submit additional information needed for the environmental review of the project in compliance with Chapter 9.78 (Environmental Impact Assessment).

B. Determination of Coastal Permit notice and hearing procedures. For projects proposed within the Coastal Zone, the Zoning Administrator shall make the determination required by Section 9.72.030.D.2 (Coastal Permits - Determination of permit category) as to whether the development is categorically excluded, non-appealable, or appealable for the purposes of notice, hearing, and appeal procedures, at the same time that completeness review occurs in compliance with Subsection A., above.

C. Referral of application. At the discretion of the Zoning Administrator, or where otherwise required by this Land Use Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project.

9.70.070 - Project Evaluation and Staff Report

A. **Staff evaluation.** The Director shall review all discretionary applications filed in compliance with this Article to determine whether they comply and are consistent with the provisions of this Land Use Code, other applicable provisions of the Municipal Code, the General Plan, and any applicable specific plan.

B. **Staff report.** The Director shall provide a written recommendation to the Zoning Administrator, Planning Commission, and/or Council (as applicable) on whether the application should be approved, approved subject to conditions, or disapproved.

C. **Report distribution.** Each staff report shall be furnished to the applicant at the same time as it is provided to review authority before a hearing on the application.

CHAPTER 9.72 - PERMIT APPROVAL OR DISAPPROVAL

Sections:

9.72.010 - Purpose of Chapter
9.72.020 - Certificate of Occupancy
9.72.030 - Coastal Permit
9.72.040 - Design Review
9.72.050 - Emergency Permit
9.72.070 - Planned Development Permit
9.72.080 - Use Permit and Minor Use Permit
9.72.090 - Variance
9.72.100 - Zoning Clearance

9.72.010 - Purpose of Chapter

A. **Permit review procedures.** This Chapter provides procedures for the review, and approval or disapproval of the planning permit applications established by this Land Use Code.

B. **Subdivision review procedures.** Procedures and standards for the review and approval of subdivision maps are found in the Article 8 (Subdivision Regulations and Procedures).

C. **Application filing and initial processing.** Where applicable, the procedures of this Chapter are carried out after those described in Chapter 9.70 (Permit Application Filing and Processing), for each application.

9.72.020 - Certificate of Occupancy

A. **Purpose.** A Certificate of Occupancy is intended to ensure that a new use of land or structure complies with this Land Use Code and any other applicable City requirements. The Zoning Administrator, Planning Commission, and/or Council may establish policies, rules, and regulations that further define these procedures.

B. **Applicability.** A legal use or occupancy of a structure existing at the time this Land Use Code, or applicable amendment became effective may be continued, but shall not be changed unless a Certificate of Occupancy for a new use is issued by the Building Official.

C. **Certificate of Occupancy required.** A Certificate of Occupancy shall be required for:

1. **Occupancy of any use.** The occupancy of any use except for agricultural purposes of vacant land in any zoning district established under the provisions of this Land Use Code;

2. **Occupancy of any structure.** The occupancy of any use of a new, or structurally altered or moved, structure into or within any zoning district;

3. **Change in character or use.** Any change in the character or use of an existing structure including:

   a. The division of a single-family dwelling unit into two or more dwelling units;

   b. The conversion of a residential structure into a commercial use; or

   c. Changes in character or use of a building except as specified in Section 3405 of the California Building Code.

D. Application. An application for a Certificate of Occupancy shall be filed with the Building Official before land or a structure is occupied or used.

E. Issuance. A Certificate of Occupancy shall be issued within three days after written notice has been filed by the Building Official that the premises are ready for occupancy or use and that the inspection indicated that the structure or use is in conformity with this Land Use Code, Building and Housing Codes and other applicable City ordinances relating to the health and safety of the residents.

1. **Contents.** A Certificate of Occupancy shall contain the following information:

   a. The Building Permit number;

   b. The address of the structure;

   c. The name and address of the owner;

   d. A description of that portion of the structure for which the Certificate was issued; and

   e. The name of the Building Official.

2. **Temporary Certificate of Occupancy.** A "temporary" Certificate of Occupancy may be issued by the Building Official for the use of a portion of a new structure before the completion of the structure, or in the case of an existing structure, for a portion of the entire unit before completion of all work required.

3. **Posting of Certificate.** The Certificate of Occupancy shall be posted in a conspicuous place of the premises and shall not be removed except by the City's Building Official.

F. Revocation. A Certificate of Occupancy or Temporary Certificate may be revoked after written notice for:

1. A use not specifically authorized by the Certificate of Occupancy;

2. The discovery of any false statement or misrepresentation by the permittee;

3. Continued existence of substandard conditions as defined by applicable City ordinances; or

4. Any condition that jeopardizes public health or safety.

G. Record of approved Certificates. A record of all Certificates of Occupancy shall be kept on file in the Building Division and copies shall be furnished on request to any person having a proprietary or tenancy interest in the subject use, structure, or land.

9.72.030 - Coastal Permit

A. Purpose. This Section provides procedures for the review of the configuration, design, location, and potential impacts of proposed development, a new land use, or subdivision, to evaluate its compliance with the City's Local Coastal Program (LCP).

B. Applicability - Coastal Permit required. A Coastal Permit shall be required for all of the following when proposed within the Coastal Zone, unless exempted by Subsection C. (Exempt projects):

1. Allowable uses and structures. Coastal Permit approval shall be required for all proposed uses and structures allowed in the applicable zoning district by Article 2 (Zoning Districts and Allowable Land Uses) for which a Building Permit is required, and for any proposed subdivision.

2. Alterations to existing structures. Coastal Permit approval shall be required for:

a. Alterations subject to conditions of approval. Any improvement to a structure where the permit issued for the original structure by the City or Coastal Commission required permit approval for any future improvements;

b. Alterations within appealable areas. Within an area where a City Coastal Permit decision may be appealed to the Coastal Commission, any addition to an existing structure that would increase the interior floor area by 10 percent or more; or an addition of 10 percent or less, where an improvement to the structure had previously occurred in compliance with this Section; and/or the construction of an additional story (including a loft) in an existing structure;

c. Changes in intensity. Any improvement to a structure which increases or decreases the intensity of use of the structure, as determined by the Zoning Administrator;

d. Conversions. Any improvements in conjunction with the conversion of an existing structure from a multi-family residential rental or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold, including a condominium conversion, stock cooperative conversion, or motel/hotel time-sharing conversion; and

e. Historic structures. Any alteration, addition, to or demolition of any designated historic structure, or structure within a designated historic area that would require a Building Permit. Maintenance or repair to restore the structure to its original architectural character shall not require a Coastal Permit.

3. Demolition. Coastal Permit approval may be required for the demolition of existing residential, commercial, and other principal structures located in environmentally sensitive areas determined by the Zoning Administrator.

4. **Landform alteration.** Coastal Permit approval shall be required for any significant alteration of land forms including removal or placement of vegetation on a beach wetland or sand dune, or within 100 feet of the edge of a coastal bluff or stream, or in areas of natural vegetation designated by the LCP as a land habitat of extreme, high, or moderate sensitivity.

5. **Reconstruction.** An existing dwelling damaged or destroyed by natural disaster or as a result of an emergency may be rebuilt; provided, the floor area of the new structure shall not exceed that of the destroyed structure by more than 10 percent, and the new structure is in the same location as the destroyed structure. A floor area increase of more than 10 percent or a change in the location of the structure shall require a Coastal Permit to ensure that improvements are sited and designed to minimize impacts on coastal resources. The new structure shall not exceed the height of the previous structure, or the maximum height allowed by the applicable zoning district, whichever is more restrictive.

6. **Shoreline structures.** Coastal Permit approval shall be required for improvements to any structure on a beach, stream, wetland, or seaward of the mean high waterline as established by the U.S. Coast and Geodetic Survey, and for repair and maintenance activities involving seawalls and similar shoreline structures.

7. **State and local agency projects, other projects.** Coastal Permit approval shall be required for all projects including those of State and local public agencies not exempted by this Section or not otherwise requiring a Coastal Permit.

C. Exempt projects. The following projects shall not require a Coastal Permit.

1. **Alterations to existing structures.** The following improvements and additions to existing structures are exempt from Coastal Permit requirements, except as provided in Subsection B., above.

   a. Fixtures and other structures, including decks, directly attached to the structure;

   b. Residential accessory uses on the same site as an approved residential use, including, garages, fences and storage sheds, swimming pools; but not including guest houses over 400 square feet, or self-contained residential units;

   c. Landscaping on the lot; and

   d. Additions resulting in an increase of less than 10 percent of the interior floor area of an existing structure.

2. **Categorical exclusions.**

   a. Projects specifically designated as categorically excluded from the requirement for a Coastal Permit by Coastal Act Sections 30610(d) and (f) and implementing regulations are exempt from Coastal Permit requirements.

   b. The Zoning Administrator shall maintain a list of projects determined to be categorically excluded from the requirements of this Section for a Coastal Permit.

c. The list shall be available for public inspection and shall include the applicant's name, project description and location, and the date of the Zoning Administrator's determination, and at a minimum, the list shall include the following:

(1) Permit uses in all zones;
(2) Ministerial projects;
(3) Modifications up to 10% of their original requirement; one per five year period per site;
(4) Minor public works projects costing less than $90,000 (2006 base) with allowances for inflation;
(5) Grading except in Environmentally Sensitive Habitat Areas;
(6) Lot line adjustments;
(7) Parcel mergers;
(8) Agricultural accessory structures; and
(9) Temporary events.

3. **Repair and maintenance.** A Coastal Permit shall not be required for repair and maintenance activities that do not result in the addition to or enlargement or expansion of the object of repair or maintenance, except that the repair and maintenance of shoreline structures shall require a Coastal Permit.

4. **Subdivisions.** A Coastal Permit shall not be required for Tentative Maps brought about in connection with the purchase of land by a public agency for recreational purposes which are consistent with Coastal Act Section 30106.

D. Coastal Permit filing and initial processing.

1. **Application filing and processing.** An application for a Coastal Permit 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 Coastal Permit applications. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F. (Decision on Coastal Permits), below.

2. **Determination of permit category.** The Zoning Administrator shall determine if the proposed project requires a Coastal Permit and, if so, determine whether the project is categorically excluded, is non-appealable, or does or does not require a public hearing.

a. **Categorical exclusion.** A determination that a project is categorically excluded shall comply with Subsection C.2 (Exempt Projects - Categorical Exclusions).

b. **Public hearing applications.** A public hearing shall be required when:

(1) These regulations, or other applicable provision of the Municipal Code requires a public hearing or other discretionary action on the permit application by the review authority; or

(2) The project is defined as appealable by Coastal Act Section 30603(a).

3. **Appeal of permit category determination.** The Zoning Administrator's determination of Coastal Permit category in compliance with this Subsection may be appealed in compliance with Chapter 9.76 (Appeals), and California Code of Regulations Section 13569.

4. **Non-hearing applications.** A public hearing shall not be required when these regulations or other applicable provision of the Municipal Code does not require a public hearing or other discretionary action on the permit application by the review authority, or is not appealable as defined by Coastal Act Section 30603(a).

E. Project review, notice, and hearing. Each Coastal Permit application shall be analyzed by the Zoning Administrator to ensure that the application complies with this Section.

1. When a public hearing is required by this Section, the Planning Commission or Council, as applicable, shall conduct a public hearing on an application for a Coastal Permit before the approval or disapproval of the permit.

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

F. Decision on Coastal Permits.

1. **Review authority.**

   a. **Zoning Administrator.** A non-hearing Coastal Permit application shall be approved or disapproved by the Zoning Administrator. The Zoning Administrator may instead defer action and refer the application to the Planning Commission.

   b. **Commission or Council.** A Coastal Permit application that is required by this Section to have a public hearing shall be approved or disapproved by the Planning Commission or Council, as applicable.

2. **Findings.** The review authority shall approve a Coastal Permit only after first finding that:

   a. The project complies with all applicable provisions of the Local Coastal Program and these regulations; and

   b. The applicant has provided written proof of current availability of water and sewer service from the applicable providers.

   The findings shall reference applicable policies of the Local Coastal Program where appropriate.

G. Conditions of approval. In approving a Coastal Permit, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Subsection F. (Decision on Coastal Permits).

H. Post decision procedures. The procedures and requirements in Chapters 9.76 (Appeals) and 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to revocation in Article 9 (Land Use Code Administration), shall apply following the decision on a Coastal Permit application.

9.72.040 - Design Review [2]

A. Purpose. Design Review is intended to ensure that the design of proposed development and new land uses assists in maintaining and enhancing the natural beauty, historic, and rural character of the community. Therefore, the goals and purposes of these procedures and requirements are to:

1. Promote the orderly and harmonious development of the City;

2. Create design guidelines for new and historic buildings;

3. Ensure that new development is designed to preserve important natural features and scenic resources;

4. Promote building designs that are well suited to their functions and sites;

5. Initiate and review a City-wide historic resource inventory;

6. Create visual environments which are of high aesthetic quality and variety;

7. Achieve maximum benefit from natural environmental settings;

8. Ensure that new buildings are designed to fit appropriately within the existing neighborhood context;

9. Encourage diversity in building design, rather than repetitive design in new subdivisions;

10. Promote stability of land values and desirability of investment in the City;

11. Incorporate green building concepts and features (e.g., maximum use of energy efficiency, insulation, native landscaping, natural lighting, permeable surfaces around structures, recycled materials and recycling, solar access, use of toxic-free materials, and minimizing construction waste generation) into new and renovated structures; and

12. Recognize and preserve historic resources within the City.

B. Applicability. Design Review shall be required in addition to all of the other planning permit or approval requirements of this Land Use Code and the Municipal Code. The provisions of this Section and the requirements for Design Review shall apply to proposed projects in the following manner.

1. New construction[2]. Design Review shall be required for all new construction in the City, including all structural modifications in exterior appearance, including paved areas, revegetation plans, and all other exterior work and signs which require a permit from the City, except as exempted in Subsection 9.72.040(B)(7) of this Land Use Code.

2. **Historic districts and structures.** Design Review shall be required for any changes to a: HL designated historic resource, noteworthy structure, or a building within the Period of Significance that has been determined historically significant by the City, but not limited to:

   a. Any exterior alterations, including changes in materials.

   b. Interior alterations that would affect the exterior appearance.

   c. Any addition to a structure.

   d. Any construction on a parcel with a designated Historic Landmark.

3. **Neighborhood Conservation Area (NCA).** The Design Review process shall be required for each structure proposed within a Neighborhood Conservation Area (NCA), including single-family houses, historic structures, and existing structures with exterior alterations or renovations except as exempted in Subsection 9.72.040(B)(7)(b) of this Land Use Code. Before approval, the Historic and Design Review Commission shall make a finding that the design will be compatible with the existing character of the NCA.

4. **Recycling, solid waste, and outdoor storage.** Design Review shall be required for all outside storage including recycling and solid waste areas as specified in Section 9.30.100 (Solid Waste/Recyclable Materials Storage).

5. **Loading areas.** Design Review shall be required for all new or altered loading areas.

6. **Other projects requiring Design Review.** The Director, Building Inspector, or Director of Public Works may choose to submit any application for development to the Historic and Design Review Commission when they determine that the proposed construction, land use, or parcels may cause a significant effect upon solar access or the aesthetic character of the City, area, or neighborhood.

7. **Exemptions.** The following projects shall be exempt from the requirements for Design Review as noted:

   a. Exemption for single-family structures and secondary units. A new single-family structure, secondary unit, or an addition or alteration to an existing single-family structure or secondary unit shall be exempt from the requirements for Design Review, except as required in Subsection 9.72.040(B)(2) and (3) or within a Coastal Scenic Area.

   b. Minor repairs consisting of inkind one to one replacements.

   The above exemptions shall not apply if the Zoning Administrator determines that the proposed construction may require modification to fit in with the site or existing unit, and / or neighborhood.

C. Review authority for Design Review. Design Review shall be conducted by the Historic and Design Review Commission (HDRC) or Planning Commission as established by the Council.

1. Type "A" Design Review. Type "A" Design Review shall be approved or disapproved by the HDRC provided that:

a. The proposed project is exempt from CEQA or only the "No Impact" box is checked for all categories with the exception of Section V (Cultural Resources) on the Initial Study for a project. If the proposed project is not statutorily or categorically exempt from CEQA, the application shall be referred to the Planning Commission for hearing and decision; or

b. The HDRC may choose to defer action and refer any Design Review application to the Planning Commission for hearing and decision.

2. Type "B" Design Review[2]. Type "B" Design Review shall be approved or disapproved by the Planning Commission for all projects not determined to be Type "A." As per Section 9.72.040(H)(2), the HDRC shall provide a recommendation to the Planning Commission for all Type "B" Design Review applications.

D. Application filing and processing. An application for a Design Review shall be prepared, 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 Design Review applications.

E. Preliminary Design Review.

1. Request for advice. An application for Preliminary Design Review may be filed to request the advice of the Historic and Design Review Commission before filing an application for formal City action or permit issuance.

2. Design Review authority discretion. The Historic and Design Review Commission may choose to not provide Preliminary Design Review.

3. Effect of review. Preliminary Design Review is advisory only and shall not be considered as a formal approval or disapproval.

F. Standards for Design Review. In addition to the purposes of this Section identified in Subsection A., above, the Historic and Design Review Commission shall ensure that the project complies with this Section and Subsection 9.28.060 (D) (1) (Considerations for review within the NCA) by:

1. Providing architectural design, building height and massing, and scale appropriate to and compatible with other structures on the site and in the immediate vicinity of the site;

2. Providing attractive and desirable site layout and design, including, but not limited to, building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting, signs, etc;

3. Providing efficient and safe public access, circulation, and parking;

4. Providing appropriate open space and landscaping, including the use of water efficient landscaping;

5. Showing consistency with the General Plan, Local Coastal Program, and any applicable specific plan; and

6. Complying with any applicable design guidelines or design review policies.

G. Project review and noticing [2]. Each application for Design Review shall be reviewed by the HDRC to ensure that the proposal complies with all applicable requirements of this Land Use Code. Each project will be listed on an agenda that will be posted at City Hall at least 72 hours in advance of the meeting. Any project referred to the HDRC as a result of subsections B2 or B3 shall require the applicant to post a notice of a pending permit at least 72 hours in advance of the meeting, on site and along public streets within 100 feet of the subject site's boundaries and in at least three public places in the City, in compliance with the Department's handout on public hearing requirements. Otherwise, the following projects shall be noticed in compliance with Chapter 9.74 (Public Hearings).

1. **Type "B: Design Review projects.** Any Design Review projects referred to the Planning Commission per Subsection 9.72.040(C)(2) of this Land Use Code.

2. **Subsection B6 projects.** Any project referred to Design Review per Subsection 9.72.040(B)(6) of this Land Use Code.

3. **Director determination.** Any Design Review project determined by the Director to have potential to cause an adverse effect upon the aesthetic character of a Neighborhood Conservation Area or a building within the Period of Significance that has been determined historically significant by the City.

H. Historic and Design Review Commission action.

1. **Approval or disapproval**. For projects not subject to review by the Planning Commission or City Council, the HDRC may approve or disapprove the design as submitted, or suggest alterations, changes, or modifications as appropriate, or impose conditions, all in compliance with the standards identified in this Section, and additional standards as may be adopted and published by the HDRC from time to time.

2. **Recommendation**. For projects subject to review and approval by the Planning Commission or City Council (e.g. Planned Developments, Conditional Use Permits, and Subdivisions), the HDRC shall provide a recommendation to the decision-making body. HDRC review shall be conducted prior to review by the Planning Commission or City Council. If the Planning Commission or City Council determines that significant changes have occurred to a major development, the project will be referred back to the HDRC for final recommendations prior to action by the decision-making body.

3. **Deadline for Design Review authority action**. The HDRC shall act upon each application within two meetings or 30 days, whichever comes later, from the first consideration of the proposal, unless the applicant consents to further continuances.

I. Conditions of approval. The Historic and Design Review authority may impose any conditions deemed reasonable and necessary to carry out the purpose of this Section. The violation of any condition so imposed shall constitute a violation of this Section and may constitute grounds for revocation.

J. Post decision procedures. The procedures and requirements in Chapter 9.76 (Appeals), Chapter 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to revocation in Article 9 (Land Use Code Administration), shall apply following the decision on an application for Design Review.

9.72.050 - Emergency Permit

A. Purpose. This Section provides procedures for the issuance of Emergency Permits in compliance with the Coastal Act and with the City of Arcata's Emergency Operation Plan.

B. Applicability. In the event of an emergency (see definition for "Emergency"), the Zoning Administrator may issue a permit to authorize emergency work in compliance with this Section, Coastal Act Section 30624, and California Code of Regulations Section 13329.

1. The Zoning Administrator shall not issue an Emergency Permit for any work on any submerged lands, tidelands, or public trust lands, whether filled or unfilled.
2. A request for emergency work on any submerged lands, tidelands, or public trust lands shall be referred to the Executive Director of the Coastal Commission.

C. Application. An application for an Emergency Permit shall be filed with the Zoning Administrator in writing if time allows, or in person or by telephone if time does not allow.

D. Required information. The applicant shall report to the Zoning Administrator the following information, either during or as soon after the emergency as possible:

1. The date, nature and location of the emergency;
2. The cause of the emergency, insofar as this can be established;
3. The remedial, protective, or preventative work required to deal with the emergency; and
4. The circumstances during the emergency that appeared to justify the courses of action taken, including the probable consequences of failing to take action.

E. Verification of emergency. The Zoning Administrator shall verify the facts, including the existence and nature of the emergency, as time allows. A Level Three Emergency precludes the requirements of this section and the need for Emergency Permits.

F. Public notice required. The Zoning Administrator shall provide public notice of the proposed emergency work, with the extent and type of notice determined on the basis of the nature of the emergency.

G. Findings and decision. The decision to issue an Emergency Permit is at the sole discretion of the Zoning Administrator; provided, that subsequent land use, Building, and Grading Permits required for the project shall comply with all applicable provisions of these regulations. The Zoning Administrator may grant an Emergency Permit if an emergency exists as defined in Article 10 (Glossary), and if the Zoning Administrator first finds that:

1. An emergency exists that requires action more quickly than allowed by the procedures of this Land Use Code for the permits that would otherwise be required, and the work can and will be completed within 30 days unless otherwise specified by the Emergency Permit;

2. Public comment on the proposed emergency action has been reviewed, if time allows;

3. The work proposed is consistent with the Local Coastal Program and with Coastal Act Section 36011 or superceding section; and

4. The emergency occurred within 30 days of the request for an Emergency Permit, and the emergency was not caused by deferred maintenance.

H. Emergency Permit contents. If granted, the Emergency Permit shall be subject to reasonable terms and conditions, including:

1. Language indicating that the work accomplished under an Emergency Permit is considered temporary unless a regular permit is issued for the work;
2. An expiration date for Emergency Permit; and

3. A condition specifying the necessity for the submittal of a regular permit application within 30 days of the effective date of the Emergency Permit.

I. Expiration. An Emergency Permit shall expire and become void within seven days of issuance if it is not exercised, or if the emergency ceases to exist.

J. Report to Council. For informational purposes only, the Zoning Administrator shall provide the Council with a written report describing the nature of the emergency and the work involved at the Council's first scheduled meeting after the Emergency Permit has been issued. Copies of the report shall be available at the meeting and shall be mailed to the Executive Director of the Coastal Commission and to all persons who have requested this notification in writing.

K. Normal permits required. Within 30 days of the date of issuance of the Emergency Permit, the applicant shall apply for all planning permits required by these regulations, and any other permits required by the Municipal Code. Failure to file the applications and obtain the required permits shall result in enforcement action in compliance with Chapter 9.96 (Enforcement and Penalties).

9.72.070 - Planned Development Permit

A. Purpose. This Section provides procedures for the review of Planned Development Permits. Planned Development Permits are intended to:

1. Provide a method whereby land may be designed and developed as a single unit by taking advantage of modern site planning techniques thereby resulting in a more efficient use of land and a better living environment than is otherwise possible through strict application of the development standards identified in Article 2 (Zoning Districts and Allowable Land Uses); and

2. Ensure that approved development meets high standards of environmental quality, public health and safety, the efficient use of the City's resources, and the purpose, intent, goals, policies, programs, and land use designations of the General Plan, the Local Coastal Program, and any applicable specific plan.

B. Applicability.

1. Minimum site area. A Planned Development Permit may be requested for any residential,

commercial, industrial, or mixed-use development. A Planned Development Permit shall be required for any residential development on sites one acre and larger. All properties that have a :PD Combining Zone overlay shall require an approved Planned Development Permit prior to development.

2. **Timing of Planned Development Permit approval**. For projects proposing a Planned Development Permit, a Building or Grading Permit shall not be issued until the Planned Development Permit has been approved in compliance with this Section and the rezoning for a :PD Combining Zone has been achieved.

3. **Scope of Approval**.

   a. A Planned Development Permit may authorize a land use activity that is not otherwise allowed in the base zoning district provided that:

      (1) The development will include other uses which are either permitted outright or conditionally permitted in the base zone; and

      (2) The Planning Commission has the review authority to grant a Planned Development Permit for a land use activity that is not otherwise allowed in the base zoning district.

   b. The permit may adjust or modify, where necessary and justifiable, all applicable development standards (e.g. building envelope [coverage, height, and setbacks], fence and wall heights, landscaping, off-street parking [design and ratios], site coverage, street layout, etc.) identified in this Land Use Code.

   c. A residential project may be approved with increased density or intensity in compliance with the State density bonus law (Government Code Section 65915).

C. Application filing and processing. An application for a Planned Development Permit shall be filed 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 Planned Development applications. It is the responsibility of the applicant to provide evidence in support of the findings, as required by Subsection G (Findings), below.

D. Planned Development Types. The uses within a Planned Development shall be divided into the following three categories:

1. **Type "A" Planned Developments**. Type "A" Planned Developments are those developments that are limited to uses that are permitted outright in the zoning district and involve no exceptions to the development standards of the zoning district;

2. **Type "B" Planned Developments**. Type "B" Planned Developments are those developments that are limited to uses which are permitted outright or conditionally permitted in the zoning district and may involve exceptions to the development standards of the zoning district; and

3. **Type "C" Planned Developments**. Type "C" Planned Developments may include uses that are not permitted outright or conditionally permitted in the zoning district, provided that the development will include other uses that are either permitted outright or conditionally permitted in the zoning district. Type "C" Planned Developments may involve exceptions to the development standards of the zoning district.

E. Review Authority. A Planned Development Permit may be granted by the following review authorities:

1. **Zoning Administrator**. The Zoning Administrator may grant Type "A" Planned Development Permits that are exempt from CEQA; and

2. **Planning Commission**. The Planning Commission may grant Type "A" Planned Development Permits that are not exempt from CEQA reviews, Type "B" and Type "C" Planned Development Permits.

F. Project Review, Notice and Hearing. Each application shall be reviewed by the Zoning Administrator to ensure that the proposal complies with all applicable requirements of the Land Use Code. Any request for phasing within a Planned Development Permit shall have an application that includes a Comprehensive Development Plan for the entire site.

1. **Type "A" Planned Developments that are Exempt from CEQA**. Before a decision on a Type "A" Planned Development Permit that is exempt from CEQA, the City shall provide notice in compliance with Chapter 9.74 (Public Hearings).

   a. The notice shall state that the Zoning Administrator will decide whether to approve or disapprove the Type "A" Planned Development Permit application on the date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for decision.

   b. If a public hearing is requested, the Zoning Administrator shall refer the application to the Planning Commission for a hearing and decision to be conducted in compliance with Chapter 9.74 (Public Hearings). If no public hearing is requested, the Zoning Administrator shall render a decision on the date specified in the notice referred to in Subsection F.1.a, above.

2. **Other Planned Developments Permits.** The Planning Commission shall conduct public hearings for all of the following applications:

   a. Type "A" Planned Development Permits that are not exempt from CEQA;

   b. Type "A" Planned Development Permits that the Zoning Administrator chooses to refer to the Planning Commission for hearing and decision;

   c. Type "B" Planned Development Permits; and

   d. Type "C" Planned Development Permits.

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

G. Findings. The review authority may approve a Planned Development Permit only after first making the following findings as appropriate for the type of Planned Development Permit.

1. Findings for Type "A" Planned Development Permits:

   a. The proposed project carries out the policies and intent of the General Plan, Local Coastal Program and any applicable specific plan;

b. The proposed project is in compliance with all of the applicable provisions of this Land Use Code;

c. Proper standards and conditions have been imposed to ensure the protection of the public health, safety and welfare;

d. The proposed project will not circumvent the intent of protecting Environmentally Sensitive Habitat Areas or significant historic resources, and consideration will be given to impacts on areas with steep slopes, waterways, wetlands or riparian areas, or significant cultural or historic resources; and

e. The subject site is adequate in terms of size, shape, topography and existing conditions to accommodate the proposed development.

2. Findings for Type "B" Planned Development Permits:

a. All findings listed for Type "A" Planned Development Permits in Subsection 9.72.070.G.1, above, except for G.1.b;

b. The proposed project meets the intent of all applicable provisions of this Land Use Code relating to both on-site and off-site improvements that are necessary to accommodate flexibility in site planning and property development and to carry out the purpose, intent, and requirements of this Section and the respective base zoning district, including prescribed development standards and applicable design guidelines;

c. The proposed project is designed to ensure compatibility with adjacent uses within the zoning district and general neighborhood of the proposed development;

d. The proposed project will produce a comprehensive development of superior quality (e.g. appropriate variety of structure placement and orientation opportunities, appropriate mix of structure sizes, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, etc.) that might not otherwise occur from more traditional development applications;

e. Each proposed exception is justifiable and will result in a more desirable development, and development amenities are provided as identified in Subsection H. The possible exceptions listed in Subsection B (Applicability) may be allowed when the review authority first determines that a specific exception will result in a more desirable development; and

f. Proper on-site traffic circulation and control is designed into the development to ensure interconnectivity with neighborhoods (i.e. vehicle, pedestrian, and bicycle), and protection for fire suppression and police surveillance equal to or better than what would normally be created by compliance with the minimum setback and parcel width development standards identified in Article 2 (Zoning Districts and Allowable Land Uses).

3. Findings for Type "C" Planned Development Permits:

a. All findings listed for Type "A" except for G.1.b. and Type "B" Planned Development Permits in Subsection 9.72.070.G.2, above;

b. The design, location, operating characteristics, and size of the proposed development will be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection; and

c. The available land supply in the primary zoning district shall be sufficient for other permitted uses, if a use other than that permitted or conditionally permitted is proposed.

H. Modifications to Development Standards. A Planned Development that proposes an exception to the requirements of this Land Use Code shall provide development amenities that offset any exceptions to an equal or greater degree, as determined by the review authority. These amenities may include the following:

1. In a residential planned development, the inclusion of housing units for people of moderate, low, or very low income in addition to the number of units required by Chapter 9.32 (Affordable Housing Requirements);

2. Special attention given to the amount and design of common open space;

3. Special attention given to minimizing the extent of site disturbance;

4. Provision of day care facilities or recreational facilities;

5. Architectural/site design merit;

6. Energy-efficient construction that exceeds Title 24 requirements by 15%;

7. Special attention given to the amount and design of proposed landscaping;

8. Provision of laundry facilities, covered parking, or other special amenities;

9. Facilities for recycling and storage of garbage, beyond those normally expected. For example, a neighborhood drop-off site for recycled materials would be an amenity; on-site recycling bins would not as these are typically required;

10. Creation of jobs for people of moderate, low, or very low income;

11. Provision of bike facilities other than those required by Section 9.36.060, or other provisions of this Land Use Code; and/or

12. Restoration of Environmentally Sensitive Habitat Areas, where feasible.

I. Planned Development Permit project completion.

1. A Planned Development Permit may specify a time for project completion acceptable to the review authority.

2. If not specified in the permit, the completion period shall not exceed 36 months unless extensions are granted per Subsection 9.79.070(B)(2) of this code.

3. If construction of the project has not commenced within the applicable development completion period, the Planned Development Permit shall automatically be terminated and deemed void, with no further action required by the City.

J. Planned Development Permit Amendment.

1. **Action on requested changes**. Any requested change in the Planned Development Permit, other than those allowed by Subsection J.3, below shall be submitted to the review authority (the review authority that originally approved the permit) for review and approval.

2. **Added stipulations deemed reasonable and necessary**. The review authority may, as a condition of approval, impose added stipulations, changes or conditions to the Planned Development Permit as it deems reasonable and necessary to carry out the purpose and intent of the original Planned Development Permit and this section.

3. **Minor changes by Zoning Administrator**. Minor changes in the Planned Development Permit which do not involve an increase in building area, an increase in the number of dwelling units, decrease in amenities, or a change of use may be approved by the Zoning Administrator in compliance with Section 9.79.080 (Change to an Approved Project).

K. Conditions of approval. In approving a Planned Development Permit, the review authority may impose any conditions (e.g. the placement, height, nature and extent of the use; buffers, landscaping and maintenance, off-site improvements, performance guarantees, screening, surfacing, etc.) deemed reasonable and necessary to carry out the purposes of this Section and to ensure that the approval will comply with the findings required by Subsection G (Findings), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

L. Coastal Permit required. A Coastal Permit shall be required for all Planned Development Permits located in the Coastal Zone. Procedures for obtaining a Coastal Permit are identified in Section 9.72.030 (Coastal Permits).

M. Post decision procedures. The procedures and requirements in Chapters 9.76 (Appeals) and 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to revocation in Article 9 (Land Use Code Administration), shall apply following the decision on an application for Planned Development Permit approval.

9.72.080 - Use Permit and Minor Use Permit

A. Purpose. A Use Permit or Minor Use Permit provides a process for reviewing uses and activities that may be appropriate in the applicable zoning district, but whose effects on site and surroundings cannot be determined before being proposed for a specific site.

B. Applicability. A Use Permit or Minor Use Permit is required to authorize a proposed land use identified by Article 2 (Zoning Districts and Allowable Land Uses) as being allowable in the applicable zoning district subject to the approval of a Use Permit or Minor Use Permit.

C. Review authority.

1. **Use Permit.** A Use Permit shall be approved or disapproved by the Planning Commission.

2. **Minor Use Permit.** A Minor Use Permit shall be approved or disapproved by the Zoning Administrator, provided that:

   a. The Zoning Administrator may choose to defer action and refer any Minor Use Permit application to the Planning Commission for hearing and decision; and

   b. A Minor Use Permit may be issued by the Zoning Administrator only if the proposed project is exempt from CEQA. If the proposed project is not statutorily or categorically exempt from CEQA, the application shall be referred to the Planning Commission for hearing and decision.

D. Application filing and processing. An application for a Use Permit or Minor Use Permit shall be completed, filed, and processed in compliance with Chapter 9.70 (Permit Application Filing and Processing). The application shall include the information identified in the Department handout for Use Permit applications. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F., below.

E. Project review, notice, and hearing. Each application shall be reviewed by the Zoning Administrator to ensure that the proposal complies with all applicable requirements of this Land Use Code.

1. **Use Permit.** The Planning Commission shall conduct a public hearing on an application for a Use Permit before reaching a decision on the application. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 9.74 (Public Hearings).

2. **Minor Use Permit.** Before a decision on a Minor Use Permit, the City shall provide notice in compliance with Chapter 9.74 (Public Hearings).

   a. Content of public notice. The notice shall state that the Zoning Administrator will decide whether to approve or disapprove the Minor Use Permit application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision.

   b. Response to request for hearing. If a public hearing is requested, the Zoning Administrator shall refer the application to the Planning Commission for a hearing and decision to be conducted in compliance with Chapter 9.74 (Public Hearings).

   c. Decision without hearing. If no public hearing is requested, the Zoning Administrator shall render a decision on the date specified in the notice described in Subsection E.2, above.

F. Findings and decision. The review authority may approve a Use Permit or Minor Use Permit only after first finding all of the following:

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Land Use Code and the Municipal Code or is a nonconforming use in compliance with subsection 9.90.020A.1;

2. The proposed use is consistent with the General Plan, Local Coastal Program, and any applicable specific plan;

3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and potential future land uses in the vicinity;

4. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and

5. Granting the permit will not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.

G. Conditions of approval. In approving a Use Permit or Minor Use Permit, the review authority shall impose any conditions (e.g., the placement, height, nature and extent of the use; buffers, landscaping and maintenance, off-site improvements, performance guarantees, screening, surfacing, time limits, etc.) deemed reasonable and necessary to carry out the purposes of this Section and ensure that the approval will comply with the findings required by Subsection F. (Findings and decision), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

H. Coastal Permit required. A Coastal Permit shall be required for all Use Permits located in the Coastal Zone except those specifically excluded from Coastal Permit requirements by Section 9.72.030 (Coastal Permit).

I. Post decision procedures. The procedures and requirements in Chapters 9.76 (Appeals) and 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to revocation in Article 9 (Land Use Code Administration), shall apply following the decision on an application for Use Permit or Minor Use Permit approval.

9.72.090 - Variance

A. Purpose. This Section allows Variances from the development standards of this Land Use Code only when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical conditions, the strict application of the standards denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district.

B. Applicability. A Variance may be granted to waive or modify any requirement of this Land Use Code except: allowed land uses; residential density; specific prohibitions (for example, prohibited signs), or procedural requirements.

C. Review authority. A Variance application shall be approved or disapproved by the appropriate review authority.

D. Application filing and processing. An application for a Variance 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 Variance applications. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection F., below.

E. Project review, notice, and hearing. Each application for a Variance shall be reviewed by the Zoning Administrator to ensure that the proposal complies with all applicable requirements of this Land Use Code. The appropriate review authority shall conduct a public hearing on an application for a Variance before a decision on the application. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 9.74 (Public Hearings).

F. Findings and decision. The appropriate review authority may approve a Variance with or without conditions, only after first making all of the following findings, as applicable.

1. General findings.

a. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, topography, or other conditions), so that the strict application of this Land Use Code denies the property owner privileges enjoyed by other property owners in the vicinity and within the same zoning district;

b. Granting the Variance is necessary for the preservation and enjoyment of substantial property rights enjoyed by other property owners in the same vicinity and zoning district and denied to the property owner for which the Variance is sought; and

c. The Variance is consistent with the General Plan, Local Coastal Program, and any applicable specific plan.

2. Findings for off-street parking Variances. For a nonresidential development project proposing to locate a portion of the required parking at an off-site location, or provide in-lieu fees or facilities instead of the required on-site parking spaces, the appropriate review authority shall first make both of the following findings in compliance with State law (Government Code Section 65906.5), instead of those required by Subsection F.1 above.

a. The Variance will be an incentive to, and a benefit for, the subject nonresidential development; and

b. The Variance will facilitate access to the subject nonresidential development by patrons of public transit facilities.

3. Finding for reasonable accommodation. The appropriate review authority may also grant a Variance to the site planning or development standards of this Land Use Code in compliance with this Section, based on the finding that the Variance is necessary to accomplish a reasonable accommodation of the needs of a disabled person in compliance with the Americans with Disabilities Act (ADA).

G. Conditions of approval. In approving a Variance, the appropriate review authority:

1. Shall impose conditions to ensure that the Variance does not grant special privileges inconsistent with the limitations on other properties in the vicinity and zoning district in which the property is located; and

2. May impose any conditions (e.g., the placement, height, nature and extent of the use; buffers, landscaping and maintenance, off-site improvements, performance guarantees, screening, surfacing, etc.) deemed reasonable and necessary to carry out the purposes of this Section and ensure that the approval will comply with the findings required by Subsection F. (Findings and decision), above. The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

H. Coastal Permit required. A Coastal Permit shall be required for all Variances in the Coastal Zone except those specifically excluded from Coastal Permit requirements by Section 9.72.030 (Coastal Permits).

I. Post decision procedures. The procedures and requirements in Chapters 9.76 (Appeals) and 9.79 (Permit Implementation, Time Limits, and Extensions), and those related to revocation in Article 9 (Land Use Code Administration), shall apply following the decision on an application for a Variance.

9.72.100 - Zoning Clearance

A. Purpose. Zoning Clearance is the procedure used by the City to verify that a proposed structure or land use complies with the list of activities allowed in the applicable zoning district, and the development standards applicable to the use.

B. Applicability. Where Article 2 (Zoning Districts and Allowable Land Uses) or other provision of this Land Use Code requires a Zoning Clearance as a prerequisite to establishing a land use, the Zoning Clearance shall be required at the time of Department review of any building, grading, or other construction permit, or other authorization required by this Land Use Code for the proposed use.

C. Issuance.

1. The Zoning Administrator shall issue the Zoning Clearance after determining that the request complies with all Land Use Code provisions applicable to the proposed use.

2. An approval may be in the form of a stamp, City staff signature, or other official notation on approved plans, a letter to the applicant, or other certification, at the discretion of the Zoning Administrator.

CHAPTER 9.74 - PUBLIC HEARINGS

Sections:

9.74.010 - Purpose of Chapter
9.74.020 - Notice of Hearing
9.74.030 - Wavier of Public Hearing on Coastal Permit for Minor Development
9.74.040 - Notice of Non-Appealable Development
9.74.050 - Scheduling of Hearing
9.74.060 - Hearing Procedure
9.74.070 - Recommendation by Planning Commission
9.74.080 - Decision and Notice
9.74.090 - Effective Date of Decision

9.74.010 - Purpose of Chapter

This Chapter provides procedures for the public hearings required by this Land Use Code. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted, in compliance with this Chapter.

9.74.020 - Notice of Hearing

When this Land Use Code requires a public hearing before a decision on a permit, or for another matter, the public shall be provided notice of the hearing in compliance with State law (Government Code Sections 65090, 65091, 65094 and 66451.3, and Public Resources Code 21000 et seq.), and as required by this Chapter.

A. Contents of notice. Notice of a public hearing shall include:

1. **Hearing information.** The date, time, and place of the hearing and the name of the hearing body; a brief description of the City's general procedure concerning the conduct of hearings and decisions; and the phone number and street address of the Department, where an interested person could call or visit to obtain additional information;

2. **Project information.** The date of filing of the application and the name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; a general description, in text and/or by diagram, of the location of the property that is the subject of the hearing;

3. **Statement on environmental document.** If a proposed Negative Declaration, Mitigated Negative Declaration or final Environmental Impact Report has been prepared for the project in compliance with Chapter 9.78 (Environmental Impact Assessment), the hearing notice shall include a statement that the hearing body will also consider approval of the proposed Negative Declaration, Mitigated Negative Declaration or certification of the final Environmental Impact Report; and

4. **Coastal Zone information.** If the proposed development is within the Coastal Zone, the notice shall also include a statement that the development is within the Coastal Zone.

B. Method of notice distribution. Notice of a public hearing required by this Chapter for a planning permit, amendment, or appeal shall be given as follows, as required by State law (Government Code Sections 65090 and 65091).

1. Mailing. Notice shall be mailed or delivered at least 10 days before the hearing to the following:

a. Site owners. The owners of the property being considered in the application, or the owner's agent, and the applicant;

b. Local agencies. Each local agency expected to provide schools, water, or other essential facilities or services to the project, whose ability to provide the facilities and services may be significantly affected;

c. Nearby property owners. All owners of real property as shown on the latest County equalized assessment roll, within a radius of 300 feet of the exterior boundaries of the parcel that is the subject of the hearing; and any other person whose property might, in the judgment of the Zoning Administrator, be affected by the proposed project;

d. Projects not exempt from CEQA. For projects not exempt from CEQA, all owners of real property as shown on the latest County equalized assessment roll, within a radius of 500 feet of the exterior boundaries of the parcel that is the subject hearing;

e. Nearby residents. If the proposed development is within the Coastal Zone, each dwelling unit within 100 feet of the exterior boundaries of the parcel that is the subject of the hearing;

f. Persons requesting notice. Any person who has filed a written request for notice with the Zoning Administrator and has paid the required fee for the notice; and

g. Coastal Commission. The Coastal Commission, if the proposed development is within the Coastal Zone.

2. Additional required notice. If the notice is mailed as identified in Subsection B.1., above, then the notice shall also either be:

a. Published. Published at least once in a local newspaper of general circulation within the City at least 10 days before the hearing; or

b. Posted. Posted by the applicant, at least 10 days before the hearing, on site and along public streets within 100 feet of the subject site's boundaries and in at least three public places in the City, in compliance with the Department's handout on public hearing requirements.

3. Alternative to mailing. If the number of property owners to whom notice would be mailed in compliance with Subsection B.1., above is more than 1,000, the Zoning Administrator may choose to provide the alternative notice allowed by State law (Government Code Section 65091[a][3]), except for developments within the Coastal Zone.

4. **Additional notice.** In addition to the types of notice required above, the Zoning Administrator may provide any additional notice with content or using a distribution method as the Zoning Administrator determines is necessary or desirable.

9.74.030 - Waiver of Public Hearing on Coastal Permit for Minor Development

This Section provides for the waiver of a public hearing on a Coastal Permit for development that is appealable to the Coastal Commission, in compliance with Public Resources Code Section 30624.9. This Section shall not be used to waive the requirement for a public hearing on any other permit required by this Land Use Code to have a public hearing. A request to waive a public hearing shall be noticed per Subsection 9.74.030 (B) (1) below.

A. Applicability. A public hearing that would otherwise be required before City action on a minor development that is appealable to the Coastal Commission may be waived only for a development which:

1. Is determined to be truly minor by the Zoning Administrator;

2. Is consistent with the certified Local Coastal Program;

3. Requires no discretionary approval other than a Zoning Clearance; or

4. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

Minor development shall include a single-family home and additions to a single-family home, and other development determined by the Zoning Administrator to meet the above listed criteria.

B. Criteria for waiver. A public hearing may be waived for minor development if both of the following occur:

1. Notice that a public hearing shall be held upon request by any person is provided by the City to all persons who would otherwise be required to be notified of a public hearing by Section 9.74.020.B (Method of Notice Distribution), as well as any other persons known to be interested in receiving notice; and

2. No request for public hearing is received by the City within 15 working days from the date of the City sending the notice.

C. Content of notice. The notice shall contain all information required by Section 9.74.020.A (Contents of Notice), and shall also provide a statement that failure by a person to submit a written request for a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a planning permit application.

9.74.040 - Notice of Non-Appealable Development

The California Code of Regulations, Title 14, Section 13568b, requires that all development within the Coastal Zone (except that which is categorically excluded) shall receive public notice regardless of whether this Land Use Code requires a public hearing before the development can be approved or disapproved. Public notice requirements for projects requiring a public hearing are provided in Section 9.74.020 (Notice of Hearing). This Section provides notice requirements for projects which are not appealable to the Coastal Commission in compliance with Public Resources Code Section 30603, and which are not categorically excluded.

A. Distribution of notice. Within 10 days of accepting a planning permit application for a non-appealable development, or at least 10 days before the City's decision on the application, the City shall provide notice, by first-class mail, of the pending development application, to:

1. All persons who have requested to be on the mailing list for the particular project or for decisions by the City within the Coastal Zone;

2. All owners of real property as shown on the latest County equalized assessment roll, and residents, within a radius of 100 feet of the exterior boundaries of the parcel involved in the application; and

3. The Coastal Commission.

B. Content of notice. The notice shall contain the information required for public notices by Section 9.74.020.A (Contents of Notice), and the following:

1. The date the application will be acted upon by the City's review authority;

2. The City's general procedure concerning the submission of public comments either in writing or orally before the decision is rendered; and

3. A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held before the decision is rendered.

9.74.050 - Scheduling of Hearing

After the completion of any environmental documents required by the California Environmental Quality Act (CEQA) and Chapter 9.78 (Environmental Impact Assessment) and a Department staff report, a matter requiring a public hearing shall be scheduled on the next available Zoning Administrator, Historic and Design Review Commission, Planning Commission, or Council agenda (as applicable) reserved for public hearings, but no sooner than any minimum time period established by State law.

9.74.060 - Hearing Procedure

A. Time and place of hearing. A public hearing shall be held at the date, time, and place for which notice was given.

B. Continuance. A hearing may be continued without further notice; provided, the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

C. Deferral of final action. For any matter being considered at a hearing in compliance with this Land Use Code, a hearing body may announce a tentative decision, and defer their action on a final decision until appropriate findings and/or conditions of approval have been prepared.

9.74.070 - Recommendation by Planning Commission

A. Written recommendation required. At the conclusion of a public hearing on a proposed amendment to the General Plan/Local Coastal Plan, this Land Use Code, the Zoning Map, a provision of the certified Local Coastal Program, a development agreement, or a specific plan, the Planning Commission shall forward a written recommendation, including all findings on which the decision was based, to the Council for final action.

B. Mailing of recommendation. Following the hearing, a copy of the Planning Commission's recommendation shall be mailed to the applicant at the address shown on the application.

9.74.080 - Decision and Notice

A. Decision. The review authority may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting agenda in compliance with Section 9.74.060 (Hearing Procedure). At the conclusion of a hearing conducted by the Zoning Administrator, the Zoning Administrator may instead refer the matter to the Planning Commission for a final determination.

B. Council decision is final. The decision of the Council on any matter except a Local Coastal Program amendment (see Section 9.92.070) shall be final.

C. Notice of decision. The notice of decision shall contain all findings on which the decision was based, any conditions of approval, and any reporting and/or monitoring requirements required to mitigate identified impacts and protect the public convenience, health, interest, safety, or general welfare. Following the hearing and decision, the applicant shall be provided the notice of decision.

9.74.090 - Effective Date of Decision

A decision of the Zoning Administrator, Historic and Design Review Commission, or Planning Commission in compliance with Chapter 9.72 (Permit Approval or Disapproval) is final and effective on the 11th day following the decision unless an appeal is filed in compliance with Chapter 9.76 (Appeals).

CHAPTER 9.76 - APPEALS

Sections:

9.76.010 - Purpose of Chapter
9.76.020 - Appeal Subjects and Jurisdiction
9.76.030 - Filing and Processing of Appeals
9.76.040 - Appeals to the Coastal Commission

9.76.010 - Purpose of Chapter

This Chapter establishes procedures for the appeal and review of determinations and decisions of the Flood Plain Administrator, Zoning Administrator, Historic and Design Review Commission, or Planning Commission.

9.76.020 - Appeal Subjects and Jurisdiction

A. Land Use Code administration and interpretation. The following determinations and actions of the Zoning Administrator and Department staff may be appealed to the Planning Commission and then to the Council:

1. A determination on the meaning or applicability of these regulations that are believed to be in error, and cannot be resolved with Department staff;

2. A determination that a permit application or information submitted with the application is incomplete, in compliance with State law (Government Code Section 65943); and

3. An enforcement action in compliance with Chapter 9.96 (Enforcement and Penalties).

B. Planning permit and hearing decisions.

1. **Director.** A determination, interpretation, or decision of the Director under the provisions of this Land Use Code may be appealed to the Planning Commission.

2. **Flood Plain Administrator.** A determination, interpretation, or decision by the Flood Plain Administrator in compliance with Chapter 9.60 (Flood Hazard Mitigation Standards), may be appealed to the Planning Commission.

3. **Zoning Administrator.** A determination, interpretation, or decision by the Zoning Administrator may be appealed to the Planning Commission.

4. **Historic and Design Review Commission.** A decision of the Historic and Design Review Commission may be appealed to the Planning Commission and/or Council per Table 7-1 (Review Authority).

5. **Planning Commission.** A decision of the Planning Commission may be appealed to the Council.

9.76.030 - Filing and Processing of Appeals

A. Eligibility. Appeals to, and reviews of decisions made in compliance with this Land Use Code may be initiated by the following individuals and bodies.

1. Aggrieved persons. An appeal may be filed by an aggrieved person, as defined in Section 7.69.040.A, except that in the case of a decision on a Minor Use Permit, Use Permit, Variance, and/or other Planning Commission decision that followed a public hearing. An appeal may only be filed by an aggrieved person who, in person or through a representative, appeared at the public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.

2. Commission review. The Planning Commission may choose to review a determination by the Director or Flood Plain Administrator, or a decision by the Zoning Administrator or Historic and Design Review Commission.

a. A member of the Planning Commission may request the opportunity to discuss any decision previously rendered; however, a majority vote of the Planning Commission is required to initiate an appeal of the decision.

b. Upon a majority vote by the Planning Commission to initiate an appeal, the Director shall schedule the matter for hearing.

3. Council review. The Council may choose to review a determination by the Director or Flood Plain Administrator, or a decision by the Zoning Administrator, Historic and Design Review Commission, or Planning Commission.

a. A member of the Council may request the opportunity to discuss any decision previously rendered; however, a majority vote of the Council is required to initiate an appeal of the decision.

b. Upon a majority vote by the Council to initiate an appeal, the City Clerk shall schedule the matter for hearing.

c. Except for a decision on development within the Coastal Zone (see Section 9.76.040, below), the decision of the Council on an appeal shall be final and shall become effective upon adoption of the resolution by the Council.

B. Timing and form of appeal. An appeal shall be in writing and shall specifically state the pertinent facts and the basis for the appeal.

1. General appeals. An appeal shall be filed with the Department or City Clerk, as applicable, within 10 business days of the actual date of the final decision. Appeals addressed to the Planning Commission shall be filed with the Department; appeals addressed to the Council shall be filed with the City Clerk. An appeal shall be accompanied by the required filing fee identified in the City's Fee Schedule.

2. **Appeal by Coastal Commissioners.** An appeal to a City decision on an appealable development within the Coastal Zone by two Coastal Commissioners shall be filed within 10 business days of the North Coast office of the Coastal Commission receiving the notice of final City action required by Section 9.79.030 (Final City Action on Planning Permit in the Coastal Zone).

C. Scope of planning permit appeals. An appeal of a decision on a planning permit shall be limited to issues raised at the public hearing, or in writing before the hearing, or information that was not known at the time of the decision that is being appealed.

D. Report and scheduling of hearing. When an appeal has been filed, the Director shall prepare a report on the appeal, and schedule the appeal for a public hearing by the appropriate review authority identified in Section 9.76.020, above. Notice of the hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 9.74 (Public Hearings).

E. Decision.

1. At a hearing on an appeal, the review authority may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal.

2. The review authority may:

   a. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or non-compliance of the subject of the appeal with this Land Use Code;

   b. Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or

   c. Disapprove the planning permit approved by the previous review authority.

3. If new or different evidence is presented on appeal, the Planning Commission or Council may refer the matter to any applicable review authority for further consideration.

F. Effective date of appeal decision.

1. **Planning Commission decision.** A decision by the Planning Commission is effective on the 11th business day after the decision, when no appeal to the decision has been filed with the Council.

2. **Council decision.** A decision by the Council is effective on the date of the decision, except in the case of a development that is appealable to the Coastal Commission in compliance with Section 9.76.040 (Appeals to the Coastal Commission).

G. Notice of final action on appeals within the Coastal Zone. Where an appeal has been filed and decided on a project that is appealable to the Coastal Commission in compliance with Section 9.76.040 (Appeals to the Coastal Commission), the City shall provide a Notice of Final Action.

H. Withdrawal of an appeal of a Planning Commission decision. After filing, an appeal of a Planning Commission decision shall not be withdrawn except with the consent of the Council.

9.76.040 - Appeals to the Coastal Commission

Decisions by the Flood Plain Administrator, Zoning Administrator, Planning Commission, and Council on developments within the Coastal Zone may be appealed to the California Coastal Commission in compliance with this Section.

A. Status of appellant:

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

2. **Aggrieved person defined - Public Resources Code Section 30801.** Anyone who, in person or through an explicitly identified representative who appeared at a public hearing before the Zoning Administrator, Planning Commission, or Council in connection with the decision or appeal of any development, or who by other appropriate means before a hearing, informed the City of the nature of his or her concerns, unless for good cause was unable to do either.

B. Exhaustion of City appeals required. An applicant or aggrieved party may appeal a City decision on a planning permit to the Coastal Commission only after all appeals to the Planning Commission and Council have been exhausted in compliance with this Chapter. This limitation shall not apply to any circumstance identified in California Code of Regulations Section 13573, including:

1. An appellant was denied the right of appeal under this Chapter because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subchapter 2 of the California Code of Regulations; or

2. An appeal of a City decision by two members of the Coastal Commission, in compliance with Public Resources Code Section 30625, shall be transmitted to the Council in compliance with California Code of Regulations Section 13573(b). The appeal shall be suspended where the City decision has been appealed to the Council. If the Council modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal of that decision.

C. Appealable development - Public Resources Code Section 30603(a). A decision by the City on a permit application for any of the following projects may be appealed to the Coastal Commission:

1. **Between the sea and the first public road.** Developments located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance (refer to Post Certification Map);

2. **Public trust lands, submerged lands, or tidelands.** Developments located on public trust lands, submerged lands, tidelands, or within 100 feet of any estuary, stream, or wetland (refer to Post Certification Map);

3. **Public works/energy facility.** Any development that constitutes a major public works project or energy facility; and

4. **Sensitive coastal resource area.** Development not included with Subsections (1) or (2) that is located within sensitive coastal resource areas as defined in Public Resource Code Section 30116.

D. Grounds for appeal to Coastal Commission - Public Resources Code Section 30603. The grounds for an appeal to the Coastal Commission of a City decision are as follows:

1. For approval of development as described in Subsection C. above, an allegation that the development does not conform to the standards of the City's certified Local Coastal Program or the public access policies of the Coastal Act; or

2. For disapproval of development described in C.3 above, an allegation that the development conforms to the standards of the City's certified Local Coastal Program and the public access policies of the Coastal Act.

E. Time for appeal to Coastal Commission. An appeal of a Council decision on an appealable development shall be filed with the Coastal Commission within 10 working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this Chapter and the Coastal Act.

F. Notice to City of appeal to Coastal Commission. An appellant shall notify the City when appealing to the Coastal Commission by providing the City a copy of the information required in California Code of Regulations Section 13111.

CHAPTER 9.78 - ENVIRONMENTAL IMPACT ASSESSMENT [2]

Sections:

9.78.010 - Purpose of Chapter
9.78.020 - Authority
9.78.030 - Guiding Principles
9.78.040 - Applicability
9.78.050 - Preparation of Environmental Documents
9.78.060 - Exemptions from CEQA
9.78.070 - Fees
9.78.080 - Appeals
9.78.090 - Public Hearings
9.78.100 - Time Limits
9.78.110 - Review and Determination Procedures
9.78.120 - Negative Declaration [2]
9.78.130 - Draft Environmental Impact Report
9.78.140 - Final Environmental Impact Report
9.78.150 - Standards of Adequacy
9.78.160 - Content of Environmental Impact Report
9.78.170 - Findings
9.78.180 - Notice of Determination

9.78.010 - Purpose of Chapter

This Chapter implements the requirements of the California Environmental Quality Act (CEQA) by providing the City, as lead agency, with criteria, objectives, principles, and procedures for applying the requirements of CEQA to proposed projects, including the application of Statutory and Categorical Exemptions and the preparation and processing of Negative Declarations, Mitigated Negative Declarations, Environmental Impact Reports (EIR), and other environmental review documents for projects that are subject to CEQA. The basic purposes of CEQA, and the provisions of this Chapter are to:

A. Inform government decision makers and the public about the potential environmental effects of proposed activities;

B. Identify ways that potential environmental damage may be avoided or significantly reduced;

C. Prevent significant, avoidable environmental impacts by requiring changes in projects, either by the adoption of alternatives or the imposition of mitigation measures; and

D. Disclose to the public why a project was approved if that project could cause significant environmental effects.

9.78.020 - Authority

These guidelines are adopted by the City to implement Public Resources Code Section 21082, hereinafter referred to as the California Environmental Quality Act of 1970, or "CEQA."

9.78.030 - Guiding Principles

The following principles shall serve as a guide for all applications submitted to the City for review and approval and determined to be projects under CEQA:

A. **Timing of review.** Environmental considerations shall be dealt with at the earliest point possible by emphasizing the use of an initial study, or a scoping session. Any potentially adverse effects that are properly mitigated through re-design may preclude more extensive environmental review.

B. **Extent of review.** The least extensive environmental review consistent with the purpose of this Chapter shall be utilized (e.g., an Environmental Impact Report would not be required if a Negative Declaration can legitimately be prepared). In this way, sufficient environmental protection would be afforded while minimizing costs and the project review period.

C. **Consistency.** An examination of whether the project is consistent with existing zoning, plans, and other applicable land use controls shall be performed (CEQA Guidelines, Section 15063(d)(5)).

D. **Mitigation measures.** The primary goal of the environmental review process shall be to incorporate mitigation measures in the project proposal to be considered by the review authority where necessary and appropriate to reduce the potential for significant environmental impacts.

E. **Mitigation monitoring.** Where mitigation of environmental impacts is required, the mitigation measures shall be monitored over time to ensure that the steps taken are adequate to achieve the intended purpose. An applicant for a project for which mitigation monitoring is required shall be responsible for all costs associated with both the monitoring program and the implementation or any remedial measures should they become necessary in the event that a mitigation measure fails to achieve its intended purpose.

F. **Historical resources.** Project reviews shall comply with Section 15064.5 of the CEQA Guidelines and/or comply with Subsection 9.53.040 (D) (2) of this Land Use Code when an action which has the potential to adversely affect a historical resource is pending during the project review period.

9.78.040 - Applicability

These guidelines are intended to augment CEQA and the guidelines for implementation of CEQA (California Code of Regulations Title 14, Section 15000 et. seq.) This Chapter is not intended to replace CEQA, and full compliance with CEQA is required regardless of the provisions of this Chapter.

A. **City actions.** These guidelines shall apply to all City actions in the implementation of CEQA.

B. **Conflicting provisions.** In the event of any conflict between the provisions of this Chapter, and CEQA or the State CEQA Guidelines, CEQA and the State CEQA Guidelines shall prevail.

C. **Reference to Negative Declaration.** A reference to a Negative Declaration in this Chapter shall implicitly include a Mitigated Negative Declaration, as applicable.

9.78.050 - Preparation of Environmental Documents

The City, when it has the principal responsibility for project approval or implementation, shall prepare project environmental documents either directly or by contract as determined by Council protocols.

A. **Initial study required.** The City shall require the project sponsors to supply an initial study, using a City approved form, to determine whether the project may have a significant effect on the environment and to assist in the preparation of the appropriate CEQA document. Should it become evident that an EIR must be prepared for the project, the initial study requirement may be waived.

B. **Independent judgment required.** All environmental documents distributed for public review shall be reviewed by the Environmental Coordinator and shall reflect the independent judgment of the City as lead agency.

C. **Noticing of document availability required.** The public shall be notified of the availability of all environmental documents, including Notice of Exemption, prepared for public review, by the Environmental Coordinator. Noticing can be achieved through detailed agendas for the various review authorities.

9.78.060 - Exemptions from CEQA

A. **Exemption from CEQA.** An exemption from CEQA shall apply to a project if it is exempt by statute, categorical exemption, general rule, or by rejection or disapproval of the project (CEQA Guidelines Section 15061). This includes the determination by the City that the project is exempt under the general rule that CEQA applies only to projects that will have the potential for causing a significant effect on the environment (Section 15061 [b] [3]). Unlike statutory exemptions, categorical exemptions are not absolute. There are exceptions to the exemptions as listed in Section 15300.2 of the CEQA Guidelines. The existence of the exception requires the project to go through the CEQA process regardless of the fact that the project otherwise meets the criteria of a categorical exemption.

B. **Ministerial projects.** Ministerial projects are statutorily exempt from CEQA review as opposed to discretionary projects which require some sort of judgment to be used by the review authority. The term "ministerial project" shall be applied as it is used in the CEQA Guidelines (see Section 15268), except that certain projects, reviewable by the Environmental Coordinator without a public hearing, shall be considered ministerial. These include the following, except when a project involves a parcel with an average slope greater than 20 percent, or a discretionary review process is already involved:

1. Code interpretations;
2. Determination of ESHA and EBA boundaries and wetland setbacks;
3. Determination of parking requirements;
4. Determination of zoning district boundaries;
5. Extension requests;
6. Modification of off-street loading requirements;

7. Sidewalk non-compliance;

8. Vision clearance waivers; and

9. Tree removals for 4 or fewer trees in accordance with Subsection 9.58.020 (B) (2) (a) (1) of this Land Use Code, except for Landmark Trees.

9.78.070 - Fees

Fees to recover the estimated cost for the preparation and/or processing, and reproduction of Negative Declarations, notices, related environmental documents, and other essential administrative costs shall be payable to the City in the amounts and at the times identified by the City's Fee Schedule. The cost of an EIR shall be deposited with the City in compliance with the applicable City's Fee Schedule.

9.78.080 - Appeals

A. Filing of appeal. Any person may appeal the final decision of any City official, agency, board, or commission rendered in compliance with California Environmental Quality Act, the CEQA Guidelines, or these guidelines. The appeal shall be made, in writing, within 10 days of the date the final decision was rendered, in compliance with Chapter 9.76 (Appeals).

B. Additional notice. In addition to the notice provisions identified in Chapter 9.74 (Public Hearings), the City Clerk shall give notice of the appeal to the project applicant, if the project applicant is not the appellant, and to any organizations or individuals previously requesting the notice in writing.

9.78.090 - Public Hearings

A. Public hearing on draft document may be scheduled.

1. A public hearing on the draft environmental document may be scheduled if the Environmental Coordinator, Planning Commission, or Council determines that the magnitude of the project, the complexity of the environmental issues, or the degree of public interest or controversy indicate that a public hearing is appropriate to facilitate the goals and purposes of CEQA and these guidelines.

2. If the Environmental Coordinator, Planning Commission, or Council does so choose to hold a public hearing, the hearing shall take place during the public review period. Public Hearings for Draft EIRs are further described in Section 9.78.130 D., below.

B. Public hearing for adoption or certification. A public hearing may be required for adoption of the Negative Declaration or certification of the final EIR. If a pubic hearing on a Negative Declaration or a draft EIR is otherwise required by this Chapter, State law, Planning Commission, or Council discretionary decision, the hearing may be held in conjunction with the hearing on the project application.

9.78.100 - Time Limits

A. Negative Declarations and EIRs. The City shall complete and approve a Negative Declaration in not more than 180 days; and complete and certify an EIR in not more than 12 months.

B. Measurement of time limits. The time limits required by Subsection A. shall be measured from the date on which an application for project approval is accepted as complete by the City, in compliance with Section 9.70.060 (Initial Application Review). The time limits may be waived when the project would require compliance with both CEQA and the National Environmental Policy Act (NEPA), or the applicant has requested or consented to a waiver of the time limits.

C. Applicant failure to notify City. Failure of an applicant to notify the City in writing of the current status of the project and/or failure to pay the administrative cost of starting the EIR within 20 days of the final decision to prepare the EIR, shall automatically terminate any further City consideration of the project.

9.78.110 - Review and Determination Procedures

A. Application content and completeness. Each application shall contain sufficient information to allow for a determination whether environmental review is required and, if so, the type of environmental document to be prepared. An application shall not be deemed to be complete without this information.

B. Indemnification and Hold Harmless Agreement. The Environmental Coordinator may require an applicant for a project requiring environmental review to hold the City, its officers, employees and agents, free and harmless from any claim, action or proceeding attacking or seeking to set aside the approval of an applicant's project.

C. Preliminary determination. Upon receipt by the lead City Department of an application for project approval, or a proposal for a public project, a copy of the application or proposal shall be forwarded to the City's Environmental Coordinator. The Environmental Coordinator shall make a preliminary determination and report the determination to the lead City Department and the applicant or applicant's representative.

D. Categorical exemption projects.

1. Certain projects have no substantial environmental impact by their very nature, generally because of the size or type of activity.

2. These projects, as identified by the State Resources Agency, shall be categorically exempt from further provisions of this Chapter.

3. The list of categorical exemptions is published by the State Resources Agency and amended from time to time.

4. In the event that the State no longer publishes a list, a similar list shall be adopted by the Council.

5. A Notice of Exemption if required by the City, shall include a statement that the subject project is categorically exempt (PRC Section 21152), shall be noticed and filed with the County Recorders Office (14 CCR Section 15061d) after project approval.

E. Initial study and determination.

1. **Detailed project description and initial study.** Along with the formal application the applicant shall submit a detailed project description and an initial study evaluating the project's potential environmental significance. At this time any potential adverse environmental impacts should be identified. The initial study requirement may be waived for EIRs.

2. **Contents of initial study.**

   a. The initial study shall consist of a checklist and any other materials which may be necessary to determine what level of environmental reporting would be required (e.g., Negative Declaration or an EIR).

   b. The initial study may also be used to determine suggested modifications to the project which, if incorporated into the project design, may reduce the level of environmental reporting required.

   c. Information in the initial study that may also help determine whether a mitigation monitoring program would be necessary.

F. Submission of data. The Environmental Coordinator may require the applicant to revise the initial study or supply additional data and information necessary for making an environmental determination. The data and information shall be submitted in any format approved by the Environmental Coordinator and may be included, in whole or in part, within any report or determination.

G. Determination.

1. If the initial study or other information discloses potential adverse effects of the proposed project, the applicant may submit proposed changes in the project to mitigate the potentially adverse impacts to a less than significant level.

2. If this information shows that impacts can be avoided, or reduced to a less than significant level, the Environmental Coordinator may then determine that the project will not have a significant impact and proceed with preparation of a Negative Declaration in compliance with Section 9.78.120 (Negative Declaration), below.

3. Preparation of a Negative Declaration may serve as the written determination and will be publicly noticed.

4. The determination shall be completed within 45 days after accepting a complete application.

5. If the submitted information is not considered sufficient to avoid potentially significant impacts, then an EIR shall be prepared in compliance with Section 9.78.130 (Draft EIR), below.

9.78.120 - Negative Declaration [2]

In this Chapter, references to Negative Declarations shall implicitly include Mitigated Negative Declarations, as applicable.

A. Notice of intention.

1. **Notice required.** If the Environmental Coordinator determines that a Negative Declaration shall be proposed, a notice of intent to adopt the Negative Declaration shall appear in the legal advertisement section of a newspaper of general circulation at least 21 days before either the public hearing on the project, if a hearing is required, or project approval, if no hearing is required.

2. **Whom shall receive notice.** In addition to a legal advertisement in the newspaper, notice shall be given to the County Clerk and all responsible agencies in compliance with Section 15072 of the CEQA Guidelines and to other public agencies having jurisdiction. Additionally, notice may be given to persons having special expertise as provided by the CEQA Guidelines. The notice shall be given at least 21 days before the adoption of the Negative Declaration.

3. **30-day review period [2].** The public review period shall be 30 days for projects where a Negative Declaration is prepared and circulated to the State Clearinghouse per Section 15073 of the CEQA Guidelines. In these cases the notice shall be provided to the County Clerk at least 30 days before the public hearing or decision on the project.

4. **Appeal of decision.** The decision to file a Negative Declaration may be appealed by any interested party in compliance with Chapter 9.76 (Appeals). In cases where project modification would make the environmental effect insignificant, a provisional Negative Declaration may be issued based upon project modification as required to reduce the environmental effects. The Negative Declaration processing fee shall be identified in the City's Fee Schedule.

B. Contents. All Negative Declarations prepared by or for the City shall contain the following information:

1. A complete project description;

2. A location map for the project, including the address;

3. A proposed finding that the project will not have a significant effect on the environment;

4. The Initial Study which supports the above finding;

5. Mitigation measures, if any, to avoid potentially significant effects. The applicant shall agree in writing to the mitigation measures identified; and

6. Where a project involves a site that the Department of Toxic Substances Control and the Secretary for Environmental Protection have identified as being affected by hazardous wastes or cleanup problems, in compliance with State law (Government Code Section 65962.5), the Negative Declaration shall make that fact clear.

C. Changes before public review. Changes in the project description which are designed to mitigate significant environmental effects to a level of insignificance shall be completed before the draft Negative Declaration is released for public review, as required by Section 15070 (b)(1) of the CEQA Guidelines. New or additional mitigation measures developed to clearly avoid or mitigate significant environmental impacts, and any applicable monitoring program, shall be agreed to by the applicant before the release and public review of the draft Negative Declaration.

D. Required findings. In adopting a Negative Declaration, the review authority shall determine that the project would not have a significant adverse effect on the environment, consistent with CEQA Guidelines Section 15065, and make findings that the project will not:

1. Substantially degrade environmental quality;

2. Substantially reduce fish or wildlife habitat;

3. Cause a fish or wildlife habitat to fall below self-sustaining levels;

4. Threaten to eliminate a plant or animal community;

5. Reduce the numbers or range of a rare, threatened, or endangered species;

6. Eliminate important examples of the major periods of California history or pre-history;

7. Achieve short term goals to the disadvantage of long term goals;

8. Have possible environmental effects that are individually limited but cumulatively considerable when viewed in connection with past, current, and reasonably anticipated future projects; and

9. Have environmental effects that will directly or indirectly cause substantial adverse effects on human beings.

E. Hearing and adoption.

1. Action on Negative Declaration. Before making a determination on a project, the review authority shall conduct a public hearing to consider the Negative Declaration. The review authority shall either adopt the Negative Declaration, or return it to City staff for further study. The applicant shall address any adverse impacts identified by the review authority and may revise the project to alleviate these impacts. Any revisions to a Negative Declaration shall be conducted in compliance with Section 15073.5 and 15074.1 of the CEQA Guidelines.

2. Switching from a Negative Declaration to an EIR. If the review authority finds that there is substantial evidence, in light of the whole record, that the project, even if revised, may have a significant effect on the environment which cannot be mitigated or avoided, they shall require the applicant to prepare an EIR for the subject project.

F. Notice of Determination. Following adoption of the Negative Declaration, it shall be signed by the Environmental Coordinator. A Notice of Determination shall be filed with the County Clerk and with the Secretary for Resources, if required by the CEQA Guidelines (see Public Resources Code Sections 21152 [a] and 21152.1). Where fees are required to be paid at the time of filing, the Environmental Coordinator shall specify the manner in which those fees are to be handled.

9.78.130 - Draft Environmental Impact Report

A. Notice of Preparation. Immediately after determining that an EIR is required for a project, the Environmental Coordinator shall send a Notice of Preparation (NOP) to each responsible agency by certified mail and to the State Clearinghouse, stating that an EIR is being prepared.

B. Preparation and adequacy.

1. Preparation of draft EIR.

a. When an EIR is required, the Environmental Coordinator shall determine if the EIR shall be prepared by staff or consultant under contract to the City, per CEQA Guidelines Section 15084a.

b. If the EIR is to be prepared by a consultant, the City shall request EIR proposals under established criteria and select a qualified consultant from respondents, other than the applicant.

c. The City retains the right to hire separate consultants for review of the draft documents.

d. The applicant shall enter into a contract with the City for all EIR preparation costs.

2. Deposit of EIR costs required. The applicant shall deposit with the City EIR contract costs and administrative costs in compliance with the City's Fee Schedule.

3. Compliance with CEQA. The consultant's contract shall specify that the EIR shall be prepared to comply with CEQA, the CEQA Guidelines, this Chapter and as determined by the City.

4. Information submitted by applicant. Information submitted by the applicant, after independent analysis, may be included, in whole or in part, within the draft EIR.

5. Preparation of EIR for public project. The City may prepare the draft EIR, in whole or in part, for public projects.

6. Administrative review. The Environmental Coordinator shall review an administrative draft EIR and either determine that it is adequate and authorize preparation of the draft EIR, or determine that the administrative draft EIR is inadequate and return it to the preparer for further analysis.

C. Distribution and review.

1. Public review of draft EIR.

a. Public participation is an essential part of CEQA, in compliance with CEQA Guidelines Section 15201.

b. The City shall provide at least 30 days for public review of the draft EIR.

c. A draft EIR sent to the State Clearinghouse shall include a Notice of Completion, which specifies public review period dates consistent with Clearinghouse requirements for State agency review in compliance with CEQA Guidelines Section 15085.

d. The time for review shall commence the day copies of the draft EIR are received by the Clearinghouse.

2. Public notice. Public notice of the review period shall be given in compliance with Public Resources Code Section 21092. The public notice shall be published in a newspaper of general circulation, and posted in the County Clerk's office for 30 days.

3. Access to draft EIR. Copies of the draft EIR may be purchased from the City Clerk and/or from a local copy shop for the cost of duplication. An electronic version may also be available from the City.

4. Notice of Availability. The Notice of Availability shall be filed with the County Clerk, all responsible and trustee agencies, and distributed to any person or organization requesting a copy, or who previously requested a copy.

D. Hearing. During the public review period, the review authority may hold a public hearing to accept written and oral comments on the draft EIR.

9.78.140 - Final Environmental Impact Report

A. Preparation. Upon completion of the public review period, the Environmental Coordinator shall collect all comments on the draft EIR and provide them to the City's consultant or City staff. Those comments and appropriate responses shall be included in the final EIR.

B. Review.

1. Administrative review. If requested by the Environmental Coordinator, the City's consultant or City staff shall submit for review an administrative draft of the final EIR. The Environmental Coordinator shall either determine that it is adequate and authorize preparation of the final EIR, or determine that it is inadequate and return it to the preparer for further analysis.

2. Copies of final EIR. Copies of the final EIR shall be placed in the City Clerk's office, public library, and in locations designated by the Environmental Coordinator.

3. **Access to final EIR.** Copies of the final EIR may be purchased from the City Clerk and/or from a local copy shop for the cost of duplication. An electronic version may also be available from the City.

C. Certification. The review authority shall consider and review the final EIR before taking any action on the subject project and shall:

1. **Certify compliance with CEQA.** Certify that the final EIR has been prepared in compliance with CEQA and this Chapter, that it has been reviewed and considered by the review authority; and that it represents the City's independent judgment and analysis; or

2. **Determine the final EIR to be inadequate.** Determine that the final EIR is inadequate, and return it to the City's consultant or City staff for further processing.

9.78.150 - Standards of Adequacy

A. Sufficient degree of analysis.

1. An EIR should be prepared with a sufficient degree of analysis to provide the decision makers with information which enables them to make a decision which intelligently takes into account all potential environmental consequences.

2. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.

3. Disagreement among experts does not make an EIR inadequate.

4. The courts have looked not for perfection but for adequacy, completeness, and good faith effort at full disclosure.

B. Responsibility for adequacy. The draft and final EIRs shall reflect the City's independent judgment in compliance with CEQA Guidelines Section 15084.

9.78.160 - Content of Environmental Impact Report

A. Mandatory topics. All EIRs prepared by or for the City shall include discussion of the following topics as required by CEQA Guidelines Sections 15122 through 15132:

1. Table of contents or index;

2. Summary of discussion contained in the draft EIR;

3. Project description;

4. Environmental setting;

5. Significant environmental effects of the project (including direct, indirect, short-term, cumulative, and unavoidable impacts);

6. Areas of known controversy;

7. Alternatives to the proposed project, including the No-Project Alternative, and identification of the environmentally superior alternative;

8. Mitigation measures for the identified significant environmental effects;

9. Growth-inducing impacts; and

10. Significant irreversible changes due to the proposed project (required only for EIRs on plans, policies, ordinances, Local Agency Formation Commission Actions, and EIR/EISs).

B. Data from other reports. In preparation of the report, data and conclusions may be drawn from other reports accepted by the City which may be referenced.

C. Most critical impacts. The EIR shall address all potential environmental impacts, but concentrate on potential impacts with the greatest adverse effects.

9.78.170 - Findings

A. Reviewed and considered the EIR. Before the review authority acts on a project for which an EIR has been certified, it shall certify that it has reviewed and considered the information identified in the EIR, and it shall determine whether the project will or will not have a significant effect on the environment.

B. Required findings. The review authority shall not approve or carry out a project where the certified EIR identifies one or more significant environmental effects without a Statement of Overriding Consideration (see Subsection C, below), unless it makes one or more of the following findings, supported by written evidence:

1. Changes or alterations, which have been required in or incorporated into the project, mitigate or avoid the significant environmental effects identified in the certified EIR.

2. The changes or alterations are within the responsibility and jurisdiction of another public agency, and the changes have been adopted by the other agency or can and should be adopted by the other agency.

3. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the certified EIR.

C. Statement of Overriding Considerations.

1. Social and economic benefits. The review authority may approve a project which may result in significant adverse effects on the environment if it determines that there are social and economic benefits which outweigh the possibility of environmental damage.

2. Benefits outweigh the potential environmental effects. In this case the review authority shall issue a Statement of Overriding Considerations stating how they arrived at the conclusion that the overall potential benefits outweigh the potential environmental effects.

3. **Publishing of statement.** The statement shall be published in a newspaper of general circulation within 14 days of the review authority's decision.

9.78.180 - Notice of Determination

A. After approval or disapproval of a project for which a final EIR has been certified or a Negative Declaration made, the Environmental Coordinator shall file a Notice of Determination with the County Clerk in compliance with the CEQA Guidelines.

B. If the project requires discretionary approval from a State agency, the Notice of Determination also shall be filed with the Secretary of Resources.

CHAPTER 9.79 - PERMIT IMPLEMENTATION, TIME LIMITS, AND EXTENSIONS

Sections:

9.79.010 - Purpose of Chapter
9.79.020 - Effective Date of Permits
9.79.030 - Final City Action on a Planning Permit within the Coastal Zone
9.79.040 - Applications Deemed Approved
9.79.050 - Permits to Run with the Land
9.79.060 - Performance Guarantees
9.79.070 - Permit Time Limits, Extensions, and Expiration
9.79.080 - Change to an Approved Project
9.79.090 - Resubmittal
9.79.100 - Covenant of Easements

9.79.010 - Purpose of Chapter

This Chapter provides requirements for the implementation or "exercising" of the permits required by this Land Use Code, including time limits and procedures for granting extensions of time.

9.79.020 - Effective Date of Permits

A. **Non-appealable development.** The approval of a planning permit for a project that is not appealable to the Coastal Commission shall become effective on the 11th business day following the actual date of application approval by the appropriate review authority, where no appeal of the review authority's action has been filed in compliance with Chapter 9.76 (Appeals).

B. **Appealable development.** The approval of a planning permit for a project that is appealable to the Coastal Commission shall become effective upon the expiration of the Coastal Commission 10 business day appeal period which begins the day after the receipt by the North Coast office of the California Coastal Commission of adequate notice of final action, and where no appeal of the review authority's action has been filed by two Coastal Commissioners, the applicant, or any aggrieved person in compliance with the Coastal Act, and where no local appeal has been filed within 10 business days of the date of the decision by the review authority in compliance with Chapter 9.76 (Appeals).

9.79.030 - Final City Action on a Planning Permit within the Coastal Zone

The following requirements apply after the review authority has acted on a planning permit application within the Coastal Zone after a public hearing.

A. Notice of final City action. Within five calendar days of a Council decision on a planning permit, or at the end of the local appeal period (e.g., from the Planning Commission to the Council) and meeting the requirements of Subsection B., below, the City shall notify the following of its action by first class mail:

1. The Coastal Commission; and

2. Any person who specifically requested notice of the action by submitting a self-addressed, stamped envelope to the City (or, where required, who paid the fee established by the City's Fee Schedule to receive the notice).

The notice shall include any conditions of approval and written findings and the procedures for appeal of the City decision to the Coastal Commission.

B. Notice of failure to act.

1. Notification by applicant. If the City has failed to act on an application within the time limits identified in State law (Government Code Sections 65950-65957.1), thereby approving the development by operation of law, the person claiming a right to proceed in compliance with Government Code Sections 65950-65957.1 shall notify, in writing, the City and the Coastal Commission of their claim that the development has been approved by operation of law. The notice shall specify the application which is claimed to be approved.

2. Notification by City. When the City determines that the time limits established by Government Code Sections 65950-65937.1 have expired, the City shall, within seven calendar days of the determination, notify any person entitled to receive notice in compliance with Subparagraph B.1., above, that the application has been approved by operation of law in compliance with Government Code Sections 65950-65957.1, and the application may be appealed to the Coastal Commission in compliance with California Code of Regulations Section 13110 et seq. This Section shall apply equally to a City determination that the project has been approved by operation of law, and to a judicial determination that the project has been approved by operation of law.

C. Finality of City action. A City decision on a planning permit application for a development shall not be deemed final until:

1. The City decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified Local Coastal Program and, where applicable, with the public access and recreation policies of Coastal Act Chapter 3; and

2. When all City rights of appeal have been exhausted in compliance with Chapter 9.76 (Appeals).

9.79.040 - Applications Deemed Approved

A planning permit application for a parcel outside of the Coastal Zone that is deemed approved in compliance with State law (Government Code Section 65956) shall be subject to all applicable provisions of this Land Use Code, which shall be satisfied by the applicant before a Building Permit is issued or a land use not requiring a Building Permit is established.

9.79.050 - Permits to Run with the Land

A Design Review, Minor Use Permit, Planned Development Permit, Use Permit, or Variance approval that is granted in compliance with Chapter 9.72 (Permit Approval or Disapproval) shall be deemed to run with the land through any change of ownership of the subject site, from the effective date of the permit, except in any case where a permit expires or becomes void in compliance with Section 9.79.070 (Permit Time Limits, Extensions, and Expiration). All applicable conditions of approval shall continue to apply after a change in property ownership.

9.79.060 - Performance Guarantees

A. **Security may be required.** As a condition of approval and upon a finding that the City's health, safety and welfare warrant, the review authority may require the execution of a covenant to deposit security, and the deposit of security in a reasonable amount to ensure the faithful performance of one or more of the conditions of approval in the event that the obligor fails to perform. The security shall, as required by law or otherwise at the option of the City, be in the form of cash, a certified or cashier's check, or a faithful performance bond executed by the applicant and a corporate surety authorized to do business in California. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Zoning Administrator.

B. **Payable to the City.** Any security required in compliance with this Section shall be payable to the City.

C. **Release of security.** Upon satisfaction of all applicable provisions of this Section, the security deposit will be released. However, upon failure to perform any secured condition, the City may perform the condition, or cause it to be done, and may collect from the obligor, and surety in case of a bond, all cost incurred thereto, including administrative, engineering, inspection, and legal costs. Any unused portion of the security shall be refunded to the obligor after deduction of the cost of the work, except that, to the extent that the Zoning Administrator can demonstrate to the satisfaction of the City Manager that the obligor willfully breached an obligation in a manner that the obligor knew or should have known would create irreparable harm to the City, the entire amount of the bond or deposit may be withheld. The City Manager's determination may be appealed to the Council by the obligor by filing an appeal with the City Clerk within 10 business days after the decision.

9.79.070 - Permit Time Limits, Extensions, and Expiration

A. Time limits. Unless a condition of approval or other provision of this Land Use Code establishes a different time limit, any permit or approval not exercised within 12 months of approval shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below, or by the period of time in which:

1. An appeal to the Council is pending;

2. A proceeding before the California Coastal Commission is pending; or

3. Construction is restrained by the process of any Court of competent jurisdiction.

B. Extensions of time. Upon written request by the applicant, the Zoning Administrator may extend the time for an approved planning permit to be exercised.

1. Filing and review of request.

a. Time for filing. The applicant shall file a written request for an extension of time with the Department at least 30 days before the expiration of the permit, together with the filing fee required by the City's Fee Schedule.

b. Basis for extension. The Zoning Administrator shall determine whether the applicant has made a good faith effort to exercise the permit. The burden of proof is on the applicant to establish, with substantial evidence, that circumstances beyond the control of the applicant (e.g., demonstrated financial hardship, problems with completing the acquisition of the parcel, poor weather during periods of planned construction, etc.) have prevented exercising the permit.

c. Public hearing. If the original approval required a public hearing, the review authority who originally granted the approval shall hold a public hearing on a proposed extension of time, after providing notice of the public hearing in compliance with Chapter 9.74 (Public Hearings).

2. Action on extension request. A permit may be extended as follows for no more than two additional 12-month periods beyond the expiration of the original approval; provided, the review authority first finds that there have been no changes in the conditions or circumstances of the site or project that would have been grounds for disapproval of the original project.

a. Zoning Administrator's action. Upon good cause shown, the first extension may be approved, approved with modifications, or disapproved by the Zoning Administrator, whose decisions may be appealed to the Planning Commission, in compliance with Chapter 9.76 (Appeals).

b. Planning Commission's action. One subsequent extension may be approved, approved with modifications, or disapproved by the Planning Commission, whose decisions may be appealed to the Council in compliance with Chapter 9.76 (Appeals).

C. Effect of expiration. After the expiration of a planning permit in compliance with Subsection A.1, no further work shall be done on the site until a new planning permit and any required Building Permit or other City approvals are first obtained.

D. Exercised defined. The permit shall not be deemed "exercised" until the permittee has obtained the required Building Permit, or has actually commenced the allowed use on the site in compliance with the conditions of approval, where no Building Permit is required.

E. Run with the land. After it has been exercised, a planning permit shall remain valid and run with the land in compliance with Section 9.79.050, as long as a Building Permit is active for the project, or a Certificate of Occupancy has been granted.

F. Developed in pre-approved phases. If a project is to be developed in pre-approved phases, each subsequent phase shall be exercised within 12 months from the date that the previous phase was exercised, unless otherwise specified in the permit, or the permit shall expire and be void in compliance with Subsection C., above, except where an extension of time is approved in compliance with Subsection B., above.

9.79.080 - Change to an Approved Project

Development or a new land use authorized through a planning permit granted in compliance with this Land Use Code shall be established only as approved by the review authority, and in compliance with any conditions of approval, except where a change to the project is approved as follows.

A. Application. An applicant shall request a desired change in writing, and shall also furnish appropriate supporting materials and an explanation of the reasons for the request. A change may be requested either before or after construction, or establishment and operation of the approved land use.

B. Public hearing required. If the original project approval required public notice and a hearing, public notice shall be provided, and the Planning Commission shall conduct a public hearing on the requested changes in compliance with Chapter 9.74 (Public Hearings).

C. Changes approved by Zoning Administrator.

1. If no public hearing is required by Subsection B. (Public hearing required), above, the Zoning Administrator may authorize one or more changes to an approved site plan, architecture, or the nature of the approved land use where the Zoning Administrator first finds that the changes:

    a. Are consistent with all applicable provisions of this Land Use Code;

    b. Do not involve a feature of the project that was a basis for findings in a Negative Declaration or Environmental Impact Report for the project;

    c. Do not involve a feature of the project that was specifically addressed or was a basis for conditions of approval for the project or that was a specific consideration by the review authority (e.g., the Zoning Administrator, Historic and Design Review Commission, Planning Commission, or Council) in the project approval; and

    d. Do not result in an expansion of the land use.

2. The Zoning Administrator may choose to refer any requested change to the original review authority for review and final action.

D. Changes approved by original review authority. A proposed change that does not comply with the criteria in Subsection C., above shall only be approved by the original review authority for the project through a new permit application processed in compliance with this Land Use Code.

9.79.090 - Resubmittal

A. Resubmittal prohibited within 12 months.

1. **May be disapproved with prejudice.** An application for a discretionary planning permit, entitlement, or amendment may be disapproved with prejudice.

2. **Disapproved with prejudice defined.** An application may be disapproved with prejudice on the grounds that two or more similar applications for the same parcel have been disapproved in the past two years, or that another cause exists for limiting the refiling of the application.

3. **Exceptions to 12-month limitation.** For a period of 12 months following the date of disapproval of a discretionary planning permit, entitlement, or amendment, no application for the same or substantially similar discretionary permit, entitlement, or amendment for the same site shall be filed, except if the disapproval was without prejudice, or on the grounds of substantial new evidence or proof of changed circumstances to an extent that further consideration is deemed warranted.

B. No limitation on disapprovals without prejudice. There shall be no limitation on subsequent applications for a site on which a project was disapproved without prejudice.

C. Zoning Administrator's determination. The Zoning Administrator shall determine whether the new application is for a permit, entitlement, or amendment which is the same or substantially similar to the previously approved or disapproved permit, entitlement, or amendment.

D. Appeal. The determination of the Zoning Administrator may be appealed, in compliance with Chapter 9.76 (Appeals).

9.79.100 - Covenant of Easements

A. Applicability. When necessary to achieve the land use goals of the City, the City may require a property owner holding property in common ownership to execute and record a Covenant of Easement in favor of the City, in compliance with State law (Government Code Section 65870 et seq.).

1. **Required provisions.** A Covenant of Easement may be required to provide for emergency access, ingress and egress, landscaping, light and air access, open space, parking, or for solar access.

2. **Condition of approval.** A Covenant of Easement may be imposed as a condition of approval by the review authority.

B. Form of covenant. The form of a Covenant shall be approved by the City Attorney, and a Covenant of Easement shall identify:

1. The real property to be subject to the easement and the real property to be benefited by the easement;

2. The planning permit or approval granted that relied on or required the Covenant; and

3. The purposes of the easement.

C. Recordation. A Covenant of Easement shall be recorded in the County Recorder's Office and a conformed copy for City files to be paid by the applicant.

D. Effect of covenant. From and after the time of its recordation, a Covenant of Easement shall:

1. Act as an easement. Act as an easement in compliance with State law (Civil Code Section 801 et seq.) except that it shall not merge into any other interest in the real property. Civil Code Section 1104 shall apply to the conveyance of the affected real property; and

2. Impart notice. Impart notice to all persons to the extent afforded by the recording laws of the State. Upon recordation, the burdens of the Covenant shall be binding on, and the Covenant shall benefit, all successors-in-interest to the real property.

E. Enforceability of covenant. A Covenant of Easement shall be enforceable by the successors-in-interest to the real property benefited by the Covenant and the City. Nothing in this Section creates standing in any person, other than the City, and any owner of the real property burdened or benefited by the Covenant, to enforce or to challenge the Covenant or any requested amendment or release.

F. Release of covenant. The final review authority may release a Covenant of Easement at the request of any person, including the City or an affected property owner, after first finding that the Covenant is no longer necessary to achieve the land use goals of the City. Upon release, the Zoning Administrator shall cause the recordation of a notice of the release of the Covenant of Easement with the County Recorder's Office.

G. Fees. The City shall impose fees to recover the City's reasonable cost of processing a request for a release. Fees for the processing shall be established by the City's Fee Schedule.