

# ARTICLE 6

## Planning Permit Procedures

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## CHAPTER 106.60 - PERMIT APPLICATION FILING AND PROCESSING

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### Sections:

- 106.60.010 - Purpose
- 106.60.020 - Authority for Land Use and Zoning Decisions
- 106.60.030 - Concurrent Permit Processing
- 106.60.040 - Application Preparation and Filing
- 106.60.050 - Application Fees
- 106.60.060 - Initial Application Review
- 106.60.070 - Environmental Review
- 106.60.080 - Staff Evaluation and Report

### 106.60.010 - Purpose

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

### 106.60.020 - Authority for Land Use and Zoning Decisions

Table 6-1 (Review Authority, page 6-5) identifies the review authority responsible for reviewing and making decisions on each type of application required by this Zoning Code.

### 106.60.030 - Concurrent Permit Processing

If an applicant submits more than one planning permit application for the same project, the applications shall be processed concurrently, with all the permits being considered and acted upon by the highest review authority required by this Article for any of the permits.

### 106.60.040 - Application Preparation and Filing

#### A. Pre-application conference.

1. **Purpose of conference.** A prospective applicant should request a pre-application conference with the Department before completing and filing a planning permit application. The purpose of this conference is to generally:
  - a. Inform the applicant in general of City requirements as they apply to the proposed project;
  - b. Review the City's approval process, possible project alternatives or modifications; and
  - c. 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.
2. **Project requiring Commission or Council approval.** If the permit application to be filed will require Commission or Council approval, the applicant may wish to consider reviewing the proposal with an affected Neighborhood Association.

3. **Effect of conference.** Neither the pre-application review nor the provision of information and/or pertinent policies shall be construed as a recommendation for approval or denial of the application or project by any City staff. Any failure by City staff to identify all required studies or all applicable requirements does not constitute a waiver of those requirements.
- B. **Neighborhood meeting.** Prior to filing a planning permit application with the City, a prospective applicant should contact and meet with property owners and residents neighboring the site, nearby residents and business owners, to inform them about the proposed project and consider their concerns in project design. A prospective project applicant should also contact the affected neighborhood association in the case of a multi-lot, multi-unit, nonresidential project.
- C. **Application contents.** Each application for a permit, amendment, or other matter pertaining to this Zoning Code shall be filed with the Department on a City application form, together with required fees and/or deposits, and all other information and materials required by the City's list of required application contents, as provided by the Department. Applicants are encouraged to contact the Department before submitting an application to verify which materials are necessary for application filing.
- D. **Eligibility for filing.** An application may only be filed by the owner of the subject property, or other person with the written consent of the property owner.

**TABLE 6-1 - REVIEW AUTHORITY**

Type of Decision	Procedure is in Chapter or Section:	Role of Review Authority (1)		
		Director	Planning Commission	City Council
<b>Administrative and Legislative</b>				
Interpretation	106.12	Decision (2)	Appeal	Appeal
Development Agreement	106.71	Recommend	Recommend	Decision
General Plan Amendment	106.74	Recommend	Recommend	Decision
Request for Reasonable Accommodation	106.66	Decision	Appeal	Appeal
Specific Plan	State law	Recommend	Recommend	Decision
Zoning Map Amendment (Rezoning)	106.74	Recommend	Recommend	Decision
Zoning Code Text Amendment	106.74	Recommend	Recommend	Decision
<b>Planning Permit/Development Approval</b>				
Zoning Clearance	106.62.020	Decision (2)	Appeal	Appeal
Minor Use Permit (MUP)	106.62.050	Decision (2)	Appeal	Appeal
Use Permit (UP)	106.62.050	Recommend	Decision	Appeal
Minor Variance	106.62.060	Decision (2)	Appeal	Appeal
Variance	106.62.060	Recommend	Decision	Appeal
Design Review - Nonresidential development				
Less than 5,000 sf	106.62.040	Decision	Appeal	Appeal
5,000 sf or more		Recommend	Decision	Appeal
Design Review - Residential development				
Single-family homes or subdivision - 5 to 9 units or lots	106.62.040	Decision	Appeal	Appeal
Single-family homes or subdivision - 10 or more units/ lots		Recommend	Decision	Appeal
2nd floor residential addition to existing home		Decision	Appeal	Appeal
Garage conversion		Decision	Appeal	Appeal
Multi-family units - 10 or fewer		Decision	Appeal	Appeal
Multi-family units - 11 or more		Recommend	Decision	Appeal
Fence or wall between 8 ft and 10 ft high		Decision	Appeal	Appeal
Fence or wall more than 200 ft in length		Decision	Appeal	Appeal
Residential accessory structure between primary dwelling and street		Decision	Appeal	Appeal

**TABLE 6-1 - REVIEW AUTHORITY - Continued**

Type of Decision	Procedure is in Chapter or Section:	Role of Review Authority (1)		
		Director	Planning Commission	City Council

**Planning Permit/Development Approval - Continued**

Temporary Use Permit	106.62.030	Decision	Appeal	Appeal
Itinerant Vendor Permit	106.62.070	Decision	Appeal	Appeal
Exception to Sign Regulations	106.62.080	Recommend	Decision	Appeal

**Subdivisions**

Tentative Map	Subdivision Ordinance	Recommend	Decision	Appeal
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**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 106.72 (Appeals).
- (2) Director may defer action and refer the request to the Commission, so that the Commission may instead make the decision.

**106.60.050 - Application Fees**

- A. Fee schedule.** The Council shall establish a schedule of fees for the processing of the applications required by this Zoning Code, hereafter referred to as the City's Fee Schedule, to defray the expenses incurred by the City in the processing of the planning permit applications established by this Article, and other matters relating to this Zoning Code.
  1. Unusually large or complex projects may be subject to an hourly rate in addition to the basic application fees, at the discretion of the Director.
  2. In addition to all required application fees, an applicant shall fully reimburse the City for all costs incurred by the City for the completion of any special study determined by the Director to be necessary in the evaluation of the project application (e.g. traffic, noise, cultural resources, etc.).
- B. Timing of payment.** No application shall be deemed complete, and processing shall not commence on any application until all required fees/deposits have been paid.
- C. Refunds and withdrawals.** The 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. In the case of a withdrawal, the Director shall have the discretion to authorize a partial refund based upon the pro-rated costs to-date and the status of the application at the time of withdrawal.
- D. Waiver of fees.** The Council may waive any fee, charge or expense as to any applicant or petitioner for a Use Permit, Variance or other permit, or amendment to this Code. No fee will be required or charged to persons whose properties are the subject of a rezoning initiated by the City.

**106.60.060 - Initial Application Review**

- A. Review for completeness.** The Department shall review each application for completeness and accuracy before it is accepted as being complete and officially filed. The Department's determination of completeness shall be based on the City's list of required application contents (see Section 106.60.040.C - Application contents), and any additional instructions provided the applicant in any pre-application conference.
1. **Notification of applicant.** As required by 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, as specified in the written notification, must be provided.
  2. **Appeal of determination.** Where the Department has determined that an application is incomplete, and the applicant believes that the application is complete and/or that the information requested by the Department is not required, the applicant may appeal the determination in compliance with Chapter 106.72 (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 the following Subsection (A.4).
  4. **Expiration of application.** If an applicant fails to provide the additional information specified in the Department letter within six months after the first filing with the Department, the application shall expire and be deemed withdrawn. The Director may grant additional extensions, up to 12 months. After the expiration of an application, project approval shall require the submittal of a new, complete application, including all required fees.
  5. **Environmental information.** After an application has been accepted as complete, the Department may require the applicant to submit additional information needed for the environmental review of the project in compliance with Section 106.60.070 (Environmental Review).
- B. Rejection of application with violations on the site.** The Department shall reject and not process an application if conditions exist on the site in violation of this Zoning Code, other provisions of the Municipal Code, or any permit or other approval granted in compliance with this Zoning Code or Municipal Code, other than an application needed to correct the violation. The Department's authority under this Subsection shall apply whether:
1. The current applicant was the owner of the subject property at the time the violation occurred; or
  2. The applicant is the current owner of the subject property with or without actual or constructive knowledge of the violation at the time of acquisition of the subject property.
- The Director's decision may be appealed in compliance with Chapter 106.72 (Appeals).
- C. Referral.** At the discretion of the Director, or where otherwise required by this Zoning Code or State or Federal law, an application may be referred to any public agency that may be affected by or have an interest in the proposed project.

**106.60.070 - Environmental Review**

After acceptance of a complete application, the project shall be reviewed as required by the California Environmental Quality Act (CEQA), and the City's CEQA guidelines, to determine whether the project is exempt from the requirements of CEQA or is not a project as defined by CEQA, whether a Negative Declaration may be issued, or whether an Environmental Impact Report (EIR) shall be required.

**106.60.080 - Staff Evaluation and Report**

- A. **Staff evaluation.** The Department shall review each planning permit application filed in compliance with this Article to determine whether it complies and is consistent with the provisions of this Zoning Code, other applicable provisions of the Municipal Code, the General Plan, and any applicable specific plan.
- B. **Staff report.** Where this Article requires Commission and/or Council action on an application, the Director shall provide a written recommendation to the applicable review authority on whether the application should be approved, approved subject to specific conditions recommended by the Director, or disapproved.
- C. **Report distribution.** Each staff report shall be furnished to the applicant and property owner at the same time as it is provided to the review authority prior to consideration of the application.



## CHAPTER 106.62 - PERMIT REVIEW AND DECISIONS

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### Sections:

- 106.62.010 - Purpose and Applicability
- 106.62.020 - Zoning Clearance
- 106.62.030 - Temporary Use Permit
- 106.62.040 - Design Review
- 106.62.050 - Use Permit and Minor Use Permit
- 106.62.060 - Variance
- 106.62.080 – Exception to Sign Regulations
- 106.62.090 – Commercial Subdivisions

### 106.62.010 - Purpose and Applicability

- A. **Permit review procedures.** This Chapter provides procedures for the final review, and approval or disapproval of the planning permit applications established by this Zoning Code.
- B. **Subdivision review procedures.** Procedures and standards for the review and approval of subdivision maps are found elsewhere in applicable City ordinances.
- C. **Application filing and initial processing.** Where applicable, the procedures of this Chapter are carried out after those described in Chapter 106.60 (Permit Application Filing and Processing), for each application.

### 106.62.020 - 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 permitted 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 Zoning Code requires a Zoning Clearance as a prerequisite to establishing a land use, or a Business License is required by Municipal Code, 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 Zoning Code for the proposed use.
- C. **Review and approval.** The Zoning Clearance shall be reviewed and a decision determined within 120 days from the day the application is determined complete. Director shall issue the Zoning Clearance after determining that the request complies with all Zoning Code provisions applicable to the proposed use. 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 Director.

**106.62.030 - Temporary Use Permit**

- A. Purpose.** This Section establishes procedures for the granting of Temporary Use Permits for short-term activities. This use is a special privilege, not a matter of right; it is subject to a revocable permit in compliance with Section 106.64.090 (Permit Revocation and Modification).
- B. Applicability.** A Temporary Use Permit is required to authorize activities or events as described in Section 106.42.250.
- C. Review Authority.** Temporary Use Permits may be approved or disapproved by the Director, in compliance with this section.
- D. Application filing and processing.** An application for a Temporary Use Permit shall be filed and processed in compliance with Chapter 106.60 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings required. Only one Temporary Use Permit is required for special events; each individual participant is not required to obtain a Temporary Use Permit. All vendors participating in the event must obtain an individual City Business License.
- E. Fee Exemptions.** A recognized 501(c)(3) organization shall not be required to pay a fee for the Temporary Use Permit, provided that the organization requests no more than one permit per year.
- F. Health Permit.** The vending of food, produce, or other edible items requires a valid health or other permit issued by the appropriate agency.
- G. Project review, notice and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with all applicable requirements of this Zoning Code. Public notice and a hearing are not required prior to a decision on a Temporary Use Permit unless the Director determines that a hearing should be conducted. In the event that a hearing is required, notice shall be provided and the hearing shall be conducted by the Planning Commission in compliance with Chapter 106.76 (Public Hearings).
- H. Findings and decision.** A Temporary Use Permit may be approved by the Director only after the Director first finds that the requested activity complies with applicable standards, and therefore, that the establishment, maintenance, or operation of the temporary activity would not be detrimental to the public health, safety, or welfare of persons residing or working in the neighborhood of the proposed activity. In the authorizing of a permit, the approving authority may impose time limits based upon the consideration and the location of nearby businesses, other high traffic generators, or proximity to other vendors to prevent the proliferation of vendors in an area thus negatively impacting traffic and pedestrian safety.
- I. Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on a Temporary Use Permit application.
- J. Condition of the site following temporary activity.** Each site occupied by a temporary activity shall be cleaned of debris, litter, or other evidence of the temporary activity on completion or removal of the activity, and shall thereafter be used in compliance with the provisions of this Zoning Code. A bond may be required before initiation of the activity to ensure cleanup after the activity is finished.
- K. Indemnification.** As a condition of issuance, the applicant agrees to indemnify, hold harmless, and defend the City and its representatives against liability and/or loss arising from activities connected with and/or undertaken in compliance with the Temporary Use Permit. The City is not liable for any business loss, property loss, or other damage that may result from use of the permit, or suspension or revocation of the permit, and no applicant shall maintain any claim or action against the City, its officials, officers, employees, or agents on account of any suspension or revocation.

- L. Term of permit, renewal.** Each permit shall be valid for the time specified in the permit up to a maximum of one year. The permit may be renewed subject to compliance with all terms and conditions of the permit, the standard established in the Section 106.42.250, and payment of applicable fees.
- M. Transferability.** The permit is not transferable to any other entity or person and is valid only as to the original applicant.

### 106.62.040 - Design Review

- A. Purpose.** Design Review is intended to ensure that the design of proposed development and new land uses assists in maintaining and enhancing the attractive appearance of the City. Therefore, the purposes of these procedures and requirements are to:
1. Recognize the interdependence of land values and aesthetics and encourage the orderly and harmonious appearance of development within the community;
  2. Ensure that new uses and structures enhance their sites and are compatible with the highest standards of improvement in the surrounding neighborhoods;
  3. Retain and strengthen the visual quality and attractive character of the community;
  4. Assist project developers in understanding the City's concerns for the aesthetics of development; and
  5. Ensure that development complies with all applicable City standards and guidelines, and does not adversely affect community health, safety, aesthetics, or natural resources.
- B. Applicability and review authority.** Design Review shall be required and conducted for projects as shown in the following table.
1. Design Review is not required for a project that is smaller than the thresholds listed in the table (for example, an individual single family home that is not part of a development of multiple homes and single family homes as part of a development of two or fewer homes).
  2. Design Review is required for a proposed residential land division based on the number of proposed dwelling units, in compliance with the following table.
  3. Design Review is required in addition to all other planning permit or approval requirements of this Zoning Code, and the Municipal Code.

Project	Review Authority
<b>Nonresidential development</b>	
New construction or addition, less than 5,000 sf	Director
New construction or addition, 5,000 sf or more	Commission
Proposed subdivision, as to street and lot layout	Commission
Fence or wall – more than 8 ft in height	Director
<b>Residential development</b>	
Single family homes - Project of 5 to 9 units	Director
Single family homes - Project of 10 or more units	Commission
Multi-family housing - Project of 10 or fewer units	Director
Multi-family housing - Project of 11 or more units	Commission
Fence or wall - Between 8 ft and 10 ft in height	Director
Fence or wall - More than 200 feet in length	Commission
2nd floor residential addition, garage conversion, or accessory structure between primary residential structure and the street	Director
Proposed subdivision, as to street and lot layout	Commission

**C. Application filing and processing.** An application shall be prepared, filed, and processed in compliance with Section 106.60.040 (Application Preparation and Filing). It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection D below.

**D. Findings and decision.** The review authority shall approve or disapprove an application for Design Review approval concurrently with the approval or disapproval of any other planning permit (i.e., Use Permit, Minor Use Permit, Variance or Minor Variance, Zoning Clearance, or subdivision map) required for the project, if the Design Review application is filed with the City at the same time. Design Review approval shall require that the review authority first find that the project, as proposed or with changes resulting from the review process and/or conditions of approval:

1. Complies with this Section and all other applicable provisions of this Zoning Code;
2. Provides architectural design, building massing and scale, and street and lot layout in the case of a subdivision, that are appropriate to and compatible with the site surroundings and the community;
3. Provides attractive and desirable site layout and design, including building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting, signs, etc.;
4. Provides safe and efficient public access, circulation and parking, including bicycle and pedestrian accommodations where appropriate;

5. Provides appropriate open space and landscaping, including the use of water efficient landscaping;
6. Is consistent with the General Plan, any applicable specific plan, development agreement, and/or any previously approved planning permit; and
7. Complies with all applicable design standards in Chapter 106.31 (Design Standards), and/or other applicable City design guidelines and policies.

**Wireless telecommunications facilities.** In addition to the findings listed above, the following findings shall be considered in the review of applications for wireless telecommunications facilities. The review authority shall provide written notice of its decision.

1. The wireless telecommunications facility provides a high quality design that is compatible with the site surroundings and the community, and has been designed to minimize its visual and environmental impacts, including the utilization of stealth technology, where applicable;
  2. The wireless telecommunications facility is in harmony with proposed developments on land in the general area;
  3. The application conforms with the criteria set forth in any applicable city-adopted design guidelines and is compatible with the visual compatibility standards; and
  4. The applicant demonstrated that it proposed the least intrusive means to achieve its technical objectives.
- E. Conditions of approval.** The review authority may require any reasonable conditions of approval to ensure that the project will comply with the findings required by Subsection D above.
- F. Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on an application for Design Review.

### 106.62.050 - 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 proposed land uses 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.** Use Permits shall be approved or disapproved by the Commission; Minor Use Permits shall be approved or disapproved by the Director, provided that the Director may choose to refer any Minor Use Permit application to the 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 106.60 (Permit Application Filing and Processing). 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 Director to ensure that the proposal complies with all applicable requirements of this Zoning Code.
1. **Use Permit.** The Commission shall conduct a public hearing on an application for a Use Permit prior to a decision on the application. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 106.76 (Public Hearings).
  2. **Minor Use Permit.** Prior to a decision on a Minor Use Permit, the City shall provide notice in compliance with Chapter 106.76 (Public Hearings), and as follows.
    - a. **Public notice.** The notice shall state that the Director 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 prior to the specified date for the decision.
    - b. **Hearing.** When a hearing is requested, notice of the hearing shall be provided in compliance with Chapter 106.76, and the Director shall conduct the public hearing prior to a decision on the application in compliance with Chapter 106.76, or shall refer the matter to the Commission for hearing and decision.
- F. Findings and decision.** The review authority may approve or disapprove an application for Use Permit or Minor Use Permit approval. The review authority shall record the decision and the findings on which the decision is based. The review authority may approve the 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 Zoning Code and the Municipal Code;
  2. The proposed use is consistent with the General Plan and any applicable specific plan;
  3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and 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 would 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 may impose any reasonable 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.), including conditions which establish standards for development that are more restrictive than the applicable requirements of this Zoning Code, to ensure that the approval will comply with the findings required by Subsection F above.
- H. Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on an application for Use Permit or Minor Use Permit approval.

**106.62.060 - Variance and Minor Variance**

- A. Purpose.** This Section allows Variances from the development standards of this Zoning 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 Zoning Code except to:
  - 1. Allow a land use not otherwise allowed in the zone;
  - 2. Increase the maximum allowed residential density;
  - 3. Waive a specific prohibition (for example, prohibited uses);
  - 4. Waive the requirement that not more than one lot per subdivision map have public street access; or
  - 5. Waive or modify a procedural requirement.
- C. Review authority.** A Variance application shall be reviewed, and approved or disapproved by the Commission, except that the Director may grant a Minor Variance to reduce any of the following requirements of this Zoning Code up to the maximum amount specified. The Director may choose to refer any Minor Variance application to the Commission for hearing and decision.

Standard Subject to Minor Variance	Maximum Reduction or Increase
Parking or loading spaces - Number required	30%
Front yard setback - Provided that a minimum setback of 15 feet is maintained	40%
Side yard setback - Provided that a minimum setback of 3 feet is maintained	40%
Rear yard setback	30%
Maximum lot coverage (increase)	30%
Maximum height (increase)	30%

- D. Application filing and processing.** An application shall be filed in compliance with Chapter 106.60 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings, as required by Subsection F below.
- E. Project review, notice and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with this Section, and all other applicable requirements of this Zoning Code.
  - 1. **Variance.** The Commission shall conduct a public hearing on an application for a Variance prior to a decision. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 106.76 (Public Hearings).

2. **Minor Variance.** Prior to a decision on a Minor Variance, the City shall provide notice of a public hearing in compliance with Chapter 106.76 (Public Hearings). The notice shall state that the Director will decide whether to approve or disapprove the Minor Variance 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 prior to the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided in compliance with Chapter 106.76 (Public Hearings), and the Director shall conduct the public hearing prior to a decision on the application in compliance with Chapter 106.76.
- F. **Findings and decision.** The review authority may approve a Variance or Minor 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 Zoning 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, any applicable specific plan, or development agreement.
  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 review authority shall first make both of the following findings, as required by 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 nonresidential development; and
    - b. The Variance will facilitate access to the nonresidential development by patrons of public transit facilities.
- G. **Conditions of approval.** In approving a Variance, the 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 reasonable conditions (e.g., the placement, height, nature and extent of the use; buffers, landscaping and maintenance, off-site improvements, performance guarantees, screening, surfacing, hours of operation etc.) to ensure that the approval complies with the findings required by Subsection F above.
- H. **Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on an application for a Variance or Minor Variance.



**106.62.080 - Exception to Sign Regulations**

- A. Purpose.** The review authority shall have the authority to grant an exception to the provisions of Section 106.38 pertaining to height, location, sign area, shape, projection, clearance of sign, sign type, and number of signs for non-residential projects.

The purpose is to create signage that is innovative, inspiring, creative, and appropriate for the unique design parameters of the impacted development. The Exception to Sign Regulations is intended to create signage that promotes a sense of place within a development and the larger community. The Exception to Sign Regulations is not intended to be an avenue to simply apply less restrictive sign regulations to conventionally designed and constructed signage.

- B. Applicability.** A sign exception may be granted to waive or modify the requirement of this Zoning Code with regard to signs when the Exception to the Sign Requirements will serve a special purpose that cannot be accomplished by the use of signs or standards allowed by the Zoning Code. Examples of such special purposes include prominent projects or unique proposals that create a sense of place within a project and within the community.

- C. Findings for Approval.** The review authority may approve an Exception to Sign Regulations, with or without conditions, only after determining the proposed sign meets all of the following criteria.

1. **Master Sign Plan.** The development shall be included as part of a Master Sign Plan approved by the review authority. The Master Sign Plan or modification of an existing Master Sign Plan shall be approved by the review authority concurrently with the Exception to Sign Regulations.
2. **Design Quality.** The sign shall:
  - a. Have a positive visual impact on the surrounding area.
  - b. Be of unique design and exhibit a high degree of creativity and thoughtfulness.
  - c. Provide strong graphic character through creative use of any of the following: color, graphics, proportion, quality materials, scale, and texture.
3. **Architectural Criteria.** The sign shall:
  - a. Utilize or enhance the architectural elements of the related buildings.
  - b. Be placed in a logical location in relation to the building's façade and not cover any key architectural features and details of the façade.
  - c. Be constructed of superior quality materials.
4. **Impacts on Surrounding Uses.** The sign shall be located and designed so as not to cause light and glare impacts on surrounding uses.
5. **Special Purpose.** The Sign meets the intent of the purpose of this chapter.

- D. Conditions of approval.** The review authority may require any reasonable conditions of approval to ensure that the project will comply with the criteria required by Subsection C above.

- E. Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on an application for a Exception to Sign Regulations.

- F. Application filing and processing.** An application shall be filed in compliance with Chapter 106.60 (Permit Application Filing and Processing). It is the responsibility of the applicant to provide evidence in support of the findings, as required in Subsection C above.

- G. Project review, notice, and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with this Section, and all other applicable requirements of this Zoning Code.

### **106.62.090 – Commercial Subdivisions**

- A. Purpose.** This Section provides the criteria for the subdivision of commercially zoned property. The intent of this section is to ensure the subdivision of commercially zoned property does not hinder the future redevelopment of commercial centers.
- B. Application filing and processing.**
1. An application for a commercial subdivision shall be filed and processed in compliance with Chapter 106.60 (Permit Application Filing and Processing).
  2. The application for the commercial subdivision creating a vacant parcel shall be accompanied by the information identified in the Department handout for subdivision applications, and shall also include a proposed plan of development which may be filed as an application for Use Permit, Design Review, or other appropriate approval.
- C. Findings for Approval.** The review authority may approve a subdivision of Commercially zoned land , with or without conditions, only after determining the proposed subdivision meets all of the following criteria:
1. The proposed subdivision is consistent with the General Plan and the design or improvement of the proposed subdivision is consistent with the General Plan.
  2. The site is physically suited for the type and proposed density of development.
  3. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage and the type of improvements are not likely to cause serious public health problems.
- D. Conditions of approval.** The review authority may require any reasonable conditions of approval to ensure that the project will comply with the criteria required by Subsection C above.
- E. Post approval procedures.** The procedures and requirements in Chapter 106.64 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 7 (Zoning Code Administration), shall apply following the decision on an application for a subdivision of commercially zoned property.

## **CHAPTER 106.64 - PERMIT IMPLEMENTATION, TIME LIMITS, AND EXTENSIONS**

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### **Sections:**

- 106.64.010 - Purpose
- 106.64.020 - Effective Date of Permits
- 106.64.030 - Applications Deemed Approved
- 106.64.040 - Filing of New Application after Denial
- 106.64.050 - Permits to Run with the Land
- 106.64.060 - Performance Guarantees
- 106.64.070 - Permit Time Limits, Extensions, and Expiration
- 106.64.080 - Changes to an Approved Project
- 106.64.090 - Permit Revocation or Modification

### **106.64.010 - Purpose**

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

### **106.64.020 - Effective Date of Permits**

A Design Review approval, Use Permit, Minor Use Permit, Variance, or Minor Variance shall become effective on the 11th day following the date of application approval by the review authority, provided that no appeal has been filed in compliance with Chapter 106.72 (Appeals).

### **106.64.030 - Applications Deemed Approved**

A planning permit application deemed approved in compliance with State law (Government Code Section 65956) shall be subject to all applicable provisions of this Zoning 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.

### **106.64.040 - Filing of New Application after Denial**

After the denial of an application for, or the revocation of, a Use Permit, Minor Use Permit, Variance, or Minor Variance, no application for the approval of the same or a substantially similar project on the same site shall be accepted by the Department for processing within 12 months of the decision to deny the application or revoke the planning permit, except where authorized by the Commission or Council.

### **106.64.050 - Permits to Run with the Land**

Except when otherwise provided by this Zoning Code, each planning permit approval that is granted in compliance with Chapter 106.62 (Permit Review and Decisions) 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 and becomes void in compliance with Section 106.64.070 (Permit Time Limits, Extensions, and Expiration). All applicable conditions of approval shall continue to apply after a change in property ownership.

**A. Lapse of permit after implementation.** A use which has been established and/or operated as approved and the use is discontinued for more than twelve (12) consecutive months shall be considered lapsed if any of the following apply:

1. If no appurtenant structure is required and the use is discontinued for more than twelve (12) consecutive months;

2. If an appurtenant structure is required for the conditionally-permitted use and the structure is removed from the site for more than twelve (12) consecutive months.
  - a. If a structure associated with the operation of a conditionally permitted use is issued a certificate of occupancy and all other conditions of approval of the conditional use permit are satisfactorily completed, the entitlement remains in effect even if the structure is vacant for more than twelve (12) consecutive months; however, no use may be reestablished in the structure and/or on the site unless the use is determined by the Director to be substantially the same as the original conditionally permitted use.

### 106.64.060 - Performance Guarantees

Security to guarantee the completion of work required by a condition of approval of a planning permit required by this Zoning Code may be required by the review authority as a condition of approval, or allowed by the Director to defer required improvements or landscaping, in compliance with this Section.

- A. The security shall, as required by law or otherwise at the option of the City, be deposited with the City in the form of cash, a certified or cashier's check, letter of credit, or a faithful performance bond executed by the permittee and a corporate surety authorized to do business in California. The type of security shall be at the discretion of the Director. The security shall remain in effect until all of the secured conditions and/or work have been performed to the satisfaction of the Director.
- B. Upon completion of work to the satisfaction of the Director, the security deposit will be released. However, upon failure to perform any secured condition, the City may cause the work to be done, and may collect from the permittee, and surety in the case of a bond, all costs incurred by the City, including engineering, legal, administrative, and inspection costs.
- C. In the event the City causes the completion of required work guaranteed by the performance guarantee, any unused portion of the security shall be refunded to the permittee after deduction of the cost of the work and administrative costs incurred by the City; except that, to the extent that the Director can demonstrate to the satisfaction of the City Manager that the permittee willfully breached an obligation in a manner that he or she 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 permittee in compliance with Chapter 106.72 (Appeals).

### 106.64.070 - Permit Time Limits, Extensions, and Expiration

- A. **Time limits.** Unless a condition of approval or other provision of this Zoning Code establishes a different time limit, any permit or approval not exercised within three years of approval shall expire and become void, except where an extension of time is approved in compliance with Subsection B below.
  1. The permit shall not be deemed "exercised" until the permittee has substantially commenced the approved activity or has actually commenced the allowed use on the site in compliance with the conditions of approval.
  2. After it has been exercised, a planning permit shall remain valid and run with the land in compliance with Section 106.64.050 (Permits to Run with the Land), as long as a Building Permit is active for the project, and after a final building inspection or certificate of occupancy has been granted.
  3. If a project is to be developed in approved phases, each subsequent phase shall be exercised within three years 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 D below, except where an extension of time is approved in compliance with Subsection B below. If the project also involves the approval of a Tentative Map, the phasing shall be consistent with the Tentative Map and the permit shall be exercised before the expiration of the Tentative Map, or the permit shall expire and become void.

4. In the event of expiration, the City shall take action to revoke the permit in compliance with Section 106.64.090 (Permit Revocation or Modification), no later than the time that the property owner attempts to rely on the permit, including by applying for a grading, building, or other construction permit.
- B. Extensions of time.** Upon written request by the applicant, the Director may grant a single extension of one year to the time for an approved Planning Permit to be exercised. In the case of projects that involve tentative maps that are extended in time pursuant to the provisions of the Subdivision Map Act, all entitlements associated with that project shall expire no sooner than the approved tentative map.
1. **Filing and review of request.**
    - a. **Time for filing.** The applicant shall file a written request for an extension of time with the Director before the expiration of the permit, together with the filing fee required by the City's Fee Schedule.
    - b. **Evidence to be provided.** The Director 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.
  2. **Action on extension request.** A permit may be extended as follows for no more than two additional one-year periods beyond the expiration of the original approval, provided that the review authority first finds that there have been no changes in the conditions or circumstances of the site or project such that there would have been grounds for denial of the original project.
    - a. **Director's action.** Upon good cause shown, the first extension may be approved, approved with modifications or disapproved by the Director, whose decisions may be appealed to the Commission, in compliance with Chapter 106.72 (Appeals).
    - b. **Commission action.** One subsequent extension may be approved, approved with modifications, or disapproved by the Commission, whose decisions may be appealed to the Council in compliance with Chapter 106.72 (Appeals).
- C. Expiration.** If a permit expiration date is reached with no extension requested, or a requested extension is denied or expires, the permit shall be revoked in compliance with Section 106.64.090 (Permit Revocation or Modification).
- D. Effect of expiration.** After the expiration of a planning permit in compliance with Subsection A.1 above, no further work shall be done on the site until a new planning permit and any required Building Permit or other City permits are first obtained.

### 106.64.080 - Change to an Approved Project

Development or a new land use authorized through a planning permit granted in compliance with this Zoning Code shall be established only as approved by the review authority, and in compliance with any conditions of approval, except where a change to the project is approved 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. Changes approved by Director.** The Director may authorize one or more changes to an approved site plan, architecture, conditions of approval, or the nature of the approved land use where the Director first determines the change is minor, and finds that each change:

1. Is consistent with all applicable provisions of this Zoning Code;
2. Does not involve a feature of the project that was a basis for findings in a negative declaration or environmental impact report for the project; and
3. Does 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 Director, Commission, or Council) in the project approval.

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

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

### 106.64.090 - Permit Revocation or Modification

An approved planning permit may be revoked, or conditions of approval or other provisions of the permit or entitlement may be modified by the City in compliance with this Section.

- A. Notice and hearing.** The review authority shall hold a public hearing to revoke or modify an application, entitlement, or permit granted in compliance with the provisions of this Zoning Code. Notice of the hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 106.76 (Public Hearings) .
- B. Review authority action.** A Planning Permit may be revoked or modified by the review authority that originally approved the permit (e.g., Director, Commission or Council), after first making one or more of the following findings:
1. One or more of the findings required to grant the original permit can no longer be made because of changes to the project by the applicant;
  2. Permit issuance was based on misrepresentation by the applicant, either through the omission of a material statement in the application, or in public hearing testimony;
  3. One or more conditions of approval have not been completed or have been violated;
  4. The use or structure for which the permit was granted no longer exists or has been suspended for at least 12 months, as defined in Chapter 106.72 (Nonconforming Uses, Structures, and Parcels);
  5. Improvements authorized by the permit are in violation of any code, law, ordinance, regulation, or statute; or
  6. The approved use has been expanded beyond the scope of the original approval, so that the external impacts of the use are substantially greater (e.g., traffic, noise, parking requirements, outdoor activities, etc.).
  7. The permit has expired in compliance with Section 106.64.070 (Permit Time Limits, Extensions, and Expiration).
- C. Effect of revocation.** The revocation of a Planning Permit shall have the effect of terminating the permit and denying the privileges granted by the original permit.

## CHAPTER 106.66 - REASONABLE ACCOMMODATION

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### Sections:

- 106.66.010 - Purpose
- 106.66.020 - Applicability
- 106.66.030 - Application Requirements
- 106.66.040 - Review Authority
- 106.66.050 - Review Procedure
- 106.66.060 - Findings and Decision
- 106.66.070 - Appeal of Determination

### 106.66.010 - Purpose

This Chapter provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning laws and other land use regulations, policies and procedures.

### 106.66.020 - Applicability

- A. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a requirement of this Zoning Code or other City requirement, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Article is intended to apply to those persons who are defined as disabled under the Acts.
- B. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing- related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. A request for reasonable accommodation shall comply with Section 106.66.030 (Application Requirements).
- C. A reasonable accommodation is granted to the household that needs the accommodation and does not apply to successors in interest to the site.
- D. A reasonable accommodation may be granted in compliance with this Chapter without the need for the approval of a Variance in compliance with Section 106.62.060 (Variance and Minor Variance).

### 106.66.030 - Application Requirements

- A. **Application.** A request for reasonable accommodation shall be submitted on an application form provided by the Department, or in the form of a letter to the Director, and shall contain the following information:
  1. The applicant's name, address and telephone number;
  2. Address of the property for which the request is being made;
  3. The current actual use of the property;
  4. The basis for the claim that the individual is considered disabled under the Acts;

5. The Zoning Code provision, regulation or policy from which reasonable accommodation is being requested; and
  6. Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
- B. Review with other land use applications.** If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including Use Permit, Design Review, General Plan Amendment, Zone Change, Annexation, etc.), then the applicant shall file the information required by Subsection A above, together for concurrent review with the application for discretionary approval.

### 106.66.040 - Review Authority

- A. Director.** A request for reasonable accommodation shall be reviewed by the Director if no approval is sought other than the request for reasonable accommodation.
- B. Other review authority.** A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

### 106.66.050 - Review Procedure

- A. Director review.** The Director shall make a written determination within 45 days of the application being deemed complete and either grant, grant with modifications, or deny a request for reasonable accommodation in compliance with Section 106.66.060 (Findings and Decision).
- B. Other review authority.** The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. The written determination to grant or deny the request for reasonable accommodation shall be made in compliance with Section 106.66.060 (Findings and Decision).

### 106.66.060 - Findings and Decision

- A. Findings.** The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:
1. Whether the housing in the request will be used by an individual disabled under the Acts;
  2. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
  3. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
  4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning;
  5. Potential impact on surrounding uses;
  6. Physical attributes of the property and structures; and
  7. Other reasonable accommodations that may provide an equivalent level of benefit.



- B. Conditions of approval.** In granting a request for reasonable accommodation, the review authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by Subsection A above. The conditions shall also state whether the accommodation granted shall be removed in the event that the person for whom the accommodation was requested no longer resides on the site.

**106.66.070 - Appeal of Determination**

A determination to grant or deny a request for reasonable accommodation may be appealed in compliance with Chapter 106.72 (Appeals).