

# **Draft Chapter 17.04**

## **Land Use Entitlements, Permits and Planning Applications**

### **(PC Study Session 12-9-25)**

**Note: There may be minor changes, edits and refinements of the text after the Study Session.**

- 17.04.010 Land Use Entitlements**
  - General Plan, Zoning Text (Code), Zoning Map Amendments, Development Agreements, Pre-zoning**
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#### **17.04.010 Land Use Entitlements**

##### **A. General Plan Amendment.**

The purpose of a general plan amendment is to allow for modifications to the general plan text. For example: changes to the goals, policies or implementation programs, or change the general plan land use designation on any parcel(s) or lot(s).

1. Review process. A general plan amendment shall be reviewed in accordance with the procedures established in **Chapter 17.02**, including required public hearings, staff analysis, environmental review when required by CEQA, and final action by the review authority as designated in this title.
2. Frequency of amendment. All amendments to the general plan shall comply with the provisions of California Government Code § 65358. Specifically, California Government Code § 65358(b) states that: “no mandatory element of the general plan shall be amended more frequently than four times during any calendar year.”

Subject to that limitation, an amendment may be made at any time, as determined by the legislative body and the following shall apply:

- a. Each amendment may include more than one change to the general plan;
- b. There is no limit to the number of times per year that a non-mandatory element of the general plan can be amended;
- c. There is no limitation applied to amendments required to comply with a court order; and,

- d. There is no limitation applied to amendments requested and necessary for a single development of residential units, at least 25 % of which will be occupied by or available to low- or moderate-income households.
3. Initiation of amendment. A general plan amendment may be initiated by the City Council, the Planning Commission, the Director, or by a property owner or authorized agent by submitting a complete application in accordance with the requirements of this title.
4. Findings. The city council may approve a general plan amendment upon finding that the amendment is in public interest and that the general plan as amended will remain internally consistent. In the event that a general plan amendment is requested by a private property owner, the applicant shall demonstrate to the city council that there is a substantial public benefit to be derived from such amendment and how the proposed amendment furthers the goals of the general plan.

**B. Zoning Text (Code) or Zoning Map Amendment**

The purpose of a zoning text (code) amendment or zoning map amendment is to allow modification to any provision of this title including the adoption of new regulations, or deletion and revision of existing regulations, or change the zoning classification on the zoning map for any parcel(s) or lot(s). This section is consistent with Government Code § 65853.

1. Review process. A zoning text or map amendment shall be reviewed in accordance with the procedures established in Chapter 17.02, including required public hearings, staff analysis, environmental review when required by CEQA, and final action by the review authority as designated in this title.
2. Initiation of amendment. A zoning text or map amendment may be initiated by the City Council, the Planning Commission, the Director, or by a property owner or authorized agent by submitting a complete application in accordance with the requirements of this title.
3. Findings. The zoning text (code) or the zoning map amendment may be approved when the city council finds that the amendment is consistent with the general plan goals, policies and implementation programs.

**C. Development Agreement.**

1. Applicability. A development agreement may be utilized for projects where long-term development phasing, vested rights, or public benefit obligations warrant contractual assurance, or where a project spans multiple stages requiring regulatory certainty over time.
2. Review process. A proposed development agreement shall be processed and reviewed in accordance with the procedures set forth in this title, including public notice, at least one public hearing before the Planning Commission, and final action by the City Council.

3. Findings. Approval of a development agreement shall require findings that the agreement:
  - a. Is consistent with the General Plan and any applicable specific or area plan;
  - b. Promotes orderly and beneficial development;
  - c. Provides public benefits or community improvements that justify the vested rights granted; and
  - d. Will not be detrimental to the public health, safety, or welfare.
4. Amendment or cancellation of agreement. A development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties or as otherwise provided within the agreement, subject to public hearing requirements consistent with state law.
5. Recordation. Upon execution, the development agreement shall be recorded in the office of the county recorder, thereby binding all future owners of the subject property for the duration of the agreement.
6. Periodic review. The City shall conduct periodic reviews at intervals specified in the agreement, but not less than every 12 months, to determine compliance with the terms. Failure to comply may result in modification or termination of vested rights as provided by law.

#### **D. Pre-Zoning**

Pre-zoning refers to the application of zoning classifications to property in anticipation of annexation to the City, consistent with Government Code § 65859 and § 56375.

1. Applicability. Pre-zoning applies to properties proposed for annexation into the City, allowing zoning classifications to be assigned concurrently with, or in advance of, the annexation process.
2. Review process. When directed by the City Council, the Planning Commission shall review and recommend appropriate zoning or pre-zoning classifications for the territory to be annexed. The City Council may adopt such classifications by ordinance concurrently with, or in advance of, the annexation ordinance.
3. Findings. Approval of pre-zoning shall require findings that the proposed zoning:
  - a. Is consistent with the General Plan and any applicable planning documents;
  - b. Represents a logical extension of existing zoning and land use patterns;
  - c. Supports future service provision and land use compatibility; and
  - d. Will not adversely affect surrounding properties or service delivery.
4. Effectiveness. Pre-zoning designations shall not become fully effective until annexation of the subject property is finalized. During this period, development entitlements shall not be granted unless otherwise permitted by agreement or statute.

5. Recordation and reference. Pre-zoning actions shall be incorporated into the official zoning map as designations applying upon annexation and incorporated into the map as active zoning classifications upon the effective date of annexation.
6. Modification. Any proposed modification to a pre-zoning designation shall be processed in accordance with applicable zoning amendment procedures and may be initiated prior to annexation when authorized by the Council.

#### **17.04.020 Administrative Use Permits (moved from section 17.62.190)**

The purpose of the administrative use permit is to provide a process for the Director or designee to review and consider uses and activities that generally meet the purpose of the applicable zone but may require special consideration in their design or operation to ensure compatibility with surrounding or potential future uses. The director may render its decision without publishing, posting or mailing of notice and without a public hearing.

##### **A. Applicability.**

All temporary uses require an AUP, as well as permanent uses identified in the land use tables as “A” contained in CMC Chapters 17.06 Single family residential, 17.08 Multifamily residential, 17.10 Commercial, and 17.12 Industrial.

##### **B. Review process.**

1. Application Submittal. The applicant shall submit a complete Administrative Use Permit application, including all required forms, fees, and supporting materials, to the Planning Department.
2. Director Review. The Director shall review the application for completeness and compliance with applicable zoning, development, and operational standards. The Director may request additional information or revisions if necessary to complete the review.
3. Decision. Upon completion the Director shall approve, conditionally approve, or deny the Administrative Use Permit and shall issue a written Notice of Decision to the applicant stating the determination and any conditions of approval.

##### **C. Findings.**

The Director shall make the following findings:

1. The proposed use complies with applicable zoning regulations, development standards, and operational requirements.
2. Conditions of approval may be imposed as necessary to ensure the use will not adversely impact surrounding properties or public health, safety, or welfare.
3. All conditions of approval shall be stated in the Notice of Decision and must be continuously complied with for the permit to remain valid.

##### **D. Conditions.**

In approving an AUP, the Director may impose reasonable conditions to ensure that the approval will comply with the findings required, any performance criteria and development standards with this code.

#### **17.04.030 Conditional Use Permits (move from section 17.62)**

The purpose of the Conditional Use Permit (CUP) is to provide a public review process for the discretionary review of proposed uses and activities that require special consideration to ensure compatibility with neighboring properties and the community. The process provides a means to evaluate the location, design, and operation of such uses to prevent adverse impacts on the community, protect public health, safety, and welfare, and ensure development that contributes positively to the city's orderly and balanced growth.

##### **A. Applicability.**

This section applies to any land use requiring a conditional use permit as designated with an "C" on the allowed use tables (Table 17.06.030, 17.08.030, 17.10.030, and 17.12.020). Existing uses listed as conditionally permitted on the ordinance's effective date may continue without a Conditional Use Permit but are subject to CUP for expansions or extensions. Conditional use permits shall not be granted for uses explicitly prohibited in the zone where the use is proposed. For uses "permitted subject to a conditional use permit", additional regulations established in CMC Section 17.24 – Specific Use Regulations shall apply.

##### **B. Application.**

1. **Application Submittal.** The applicant shall submit a complete Conditional Use Permit application, including all required forms, fees, plans, and supporting materials, to the Planning Division.
2. **Staff Review.** Planning staff shall review the application for completeness and compliance with applicable zoning, development, and environmental standards. Staff may request additional information or revisions as needed to complete the review.
3. **Public Hearing.** A public hearing shall be scheduled before the designated review authority, in accordance with public noticing requirements. Staff shall prepare a report and recommendation for the review authority.

##### **C. Approval authority.**

Refer to CMC Section 17.02.040 Administrative Responsibility/Authorities Table 17.02.040 Authorities.

##### **D. Findings.**

The Commission shall make the following findings before approving a conditional use permit application:

1. The proposed use is consistent with the general plan, the purpose of the zoning code, and purpose of the applicable zone and any applicable specific plans or city regulations and standards.

2. The site is adequate in size, shape, and design to accommodate the proposed use, including required yards, parking, loading, landscaping, and other features necessary for compatibility with surrounding land uses.
3. Adjacent streets and highways are sufficient in width and design to handle traffic generated by the use.
4. The proposed use will not adversely affect neighboring properties or their permitted uses.
5. Conditions necessary to protect public health, safety, and welfare are included in the decision. Such conditions may address use regulations, setbacks and buffers, fences and walls, parking and street improvements, access, signage, landscaping and maintenance, noise and operational limits, development timelines, duration of use, and other measures ensuring orderly and consistent development

**E. Conditions of approval.**

1. Conditions imposed as part of a conditional use permit shall be incorporated into the Notice of Decision and shall remain in effect for the life of the permit. The permit holder shall at all times maintain compliance with all conditions imposed.
2. Conditions may address operational limits, mitigation measures, development standards, reporting or monitoring requirements, and any other provisions deemed necessary to ensure compatibility with surrounding uses.

**F. Approval applies to the land.**

An approved conditional use permit shall run with the land and shall be binding on all subsequent owners, operators, tenants, and occupants of the subject property.

**G. Time Limits of Development, Modifications and Reapplications** shall comply with CMC Chapter 17.02.XX.

**H. Revocation and Voiding of Conditional Use Permits.**

1. The permittee shall receive written notice stating the reasons and hearing details at least 20 days in advance. Public notice shall comply with CMC Section 17.02.060.
2. Notice of the Planning Commission's action, including the resolution and reasons for revoking the permit, shall be mailed to the petitioner.
3. A permit is deemed void if the approved development timeline expires without a time extension under CMC Section [REDACTED]; or, if the approved use is discontinued or replaced for 180 days.

**17.04.040 Site Plan Review (moved from section 17.64)**

The purpose of the Site Plan Review (SPR) process is to implement the General Plan's goals, policies, and objectives to achieve high-quality land planning and design; ensure compliance with adopted development standards, objective design standards, and design guidelines to protect public health, safety, welfare, and community interests; confirm that new development and

redevelopment do not create public service or facility demands exceeding the capacity of existing or planned infrastructure; and provide clear, consistent, and efficient procedures for processing planning and development applications.

**A. Applicability.**

Site plan review and approval shall apply to all zoning districts for any new development, redevelopment, or new construction, including remodeling, alteration, relocation, rebuilding, or expansion of any building, dwelling, parking or storage lot, or other developed area of the city. Development plans shall be submitted for plan check and building permit issuance only after site plan review approval by the Director, Planning Commission, or City Council.

1. **Zoning Clearance.** A zoning clearance is a streamlined review process used to verify that a proposed project or use complies with applicable zoning regulations, such as permitted uses, setbacks, height limits, and other development standards. Zoning clearances are typically applied to minor projects that do not require a site plan review or other discretionary approvals. Projects that qualify for a Zoning Clearance include:
  - a. Construction of accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) 800 square feet or less that otherwise complies with Government Code § 65852.2(e). The provisions of CMC Section 17.24.250 shall apply.
  - b. Exterior additions to single-family residential structures comprising less than 25 percent of the square footage of the main or primary dwelling or up to 500 square feet, whichever is less.
  - c. Other minor exterior or interior improvements that the director deems to be similar in nature and intensity to the above criteria.
  - d. Reroofing of a structure
  - e. Windows and doors change out for existing single-family residential structures.
  - f. New or change out of existing ground-mounted air conditioning (HVAC) units for single-family residential structures.
  - g. Installation of small residential rooftop solar energy systems within single-family zoning districts.
  - h. Installation of electric vehicle charging stations within residential zoning districts, subject to the provisions of Government Code § 65850.7.
  - i. New Business License applications.
2. **Minor Site Plan Review.** Minor Site Plan Review applications are subject to the Director's Review. Prior to approval, the Director shall make findings that the project consistent with the General Plan, Zoning Code, applicable Specific Plans, and design guidelines. Eligible projects include: The following types of applications are eligible as minor site plan review.
  - a. Residential Development and Additions

- i. Construction of an ADU, except where prohibited by Government Code § 65852.2(e), subject to CMC Section 17.20.080
    - ii. Additions to single-family residences increasing floor area by 50 percent or more, or garage conversions to non-ADU/JADU uses.
    - iii. Exterior and interior remodeling of primary dwelling.
    - iv. Construction of up to four new single-family residential structures.
    - v. Construction of up to 10 multifamily units.
    - vi. Two-unit development and urban lot splits in single-family residential zone, subject to the provisions of CMC Section 17.20.XXX.
    - vii. Multifamily projects processed under Government Code § 65913.4 (SB 35).
  - b. Minor Renovations and Alterations
    - i. Expansions increasing total floor area by no more than 10 percent or 2,000 square feet, whichever is less.
    - ii. Parking expansions increasing requirements by no more than 15 percent or 10 stalls, whichever is less.
    - iii. Multifamily additions not increasing total floor area by more than 10 percent and not creating new dwelling units.
    - iv. Facade improvements or remodeling of commercial buildings and nonresidential structures.
    - v. Revisions to approved landscape or irrigation plans altering plant materials, quantity, or irrigation systems.
    - vi. Installation of electric vehicle charging stations within nonresidential districts.
  - c. Other Minor Projects
    - i. Resurfacing or restriping of existing parking or storage lots without design or layout changes.
    - ii. Conversion of a legal nonconforming residence to a permitted nonresidential use in commercial or industrial zones.
    - iii. Other projects the Director deems similar in nature and intensity or otherwise required to be reviewed administratively by law.
3. Major Site Plan Review. Major site plan review applications are subject to Planning Commission review and include:
- a. Construction of five or more single-family houses.
  - b. Construction of 11 or more multifamily units.



- c. Any new commercial, industrial, and nonresidential development.
- d. Major remodeling, alteration, relocation, rebuilding, or expansion of commercial centers, nonresidential buildings, multifamily complexes, or parking and storage lots.
- e. Any proposal exceeding the criteria for a Minor Site Plan Review.

## **B. Preliminary Review application.**

A preliminary review application provides an optional opportunity for applicants to meet with city staff to review a project in its conceptual stage and receive an initial assessment of potential issues before submitting a formal Site Plan Review application or other related planning applications. This process helps reduce review times and streamline project processing by identifying key concerns early.

1. The preliminary review allows staff to advise on the following:
  - a. Applicants on applicable city standards, requirements, and permitting procedures;
  - b. Evaluate whether a proposal meets these standards before significant investment;
  - c. Identify necessary studies, analyses, or mitigation measures; and
  - d. Offer design recommendations to minimize neighborhood and environmental impacts.
2. Although not mandatory, preliminary review applications are encouraged for complex projects such as:
  - a. General plan amendments, rezonings,
  - b. Specific plans,
  - c. Mixed-use developments,
  - d. Single-family projects with five or more units or lots,
  - e. Multifamily projects with eleven or more units, and commercial, industrial, or
  - f. Other nonresidential developments.
  - g. Multifamily projects qualifying under Government Code § 65913.4 and,
  - h. Residential, mixed-use, or transitional and supportive housing projects qualifying under Government Code § 65941.1 may also utilize this process. For qualifying projects under § 65941.1, applicants must submit a formal application within 180 days of city review or the preliminary review shall expire pursuant to Government Code § 65941.1(d)(1).

3. Application, fees, and review procedures.
  - a. The applicant shall submit a complete Preliminary Review application, including required forms, preliminary plans or conceptual drawings, applicable fees, and any supporting documentation, to the Planning Division.
  - b. Planning staff shall conduct a preliminary review of the application for completeness and general consistency with applicable zoning, development, and environmental criteria, and may request conceptual clarifications, supplemental information, or plan refinements to facilitate further processing and feedback.
  - c. Planning staff shall evaluate whether the submitted materials meets the requirements to proceed into formal entitlement, site plan review or other permitting review processes.

**C. Site Plan Review Application, Fees, Review Process and Procedures.**

The application submittal, the fees, the review process and procedures shall comply with CMC Chapter 17.02 Section 17.02.XXX.

**D. Approval authority and Appeal Procedures.**

1. CMC Chapter 17.02, Section 17.02.070 A, B and C and Table 17.02.070A shall govern the designated approving authority.
2. CMC Chapter 17.02, Section 17.02.080 shall govern all policies and requirements regarding completeness review, appeals, resubmittals, and related processes.
3. The review process and procedures for qualified SB 35 multifamily housing projects shall follow Government Code § [65913.4](#).

**D. Findings and conditions of Approval .**

1. Findings. The Planning Commission shall approve, or approve with conditions, an application for a major site plan review, excluding minor reviews and ministerial projects such as residential developments subject to Government Code § 65913, only after making the following findings:
  - a. The project complies with all provisions of the General Plan, Zoning Code any applicable Specific Plan, design guidelines, and objective design standards;
  - b. The design of the proposed development will not interfere with the use and enjoyment of existing neighborhood and future development, and will not create traffic or pedestrian hazards; and
  - c. The proposed development has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA); and
  - d. The proposed development will not be detrimental to the public health, safety or welfare or materially injurious to the properties in the vicinity; and

- e. The development complies with the provisions for dedications, public improvements and undergrounding utilities pursuant to CMC Section [17.22.XXX](#) and congestion management and transportation demand management requirements pursuant to CMC Section [17.22.XXX](#).
- 2. Conditions. The director or the planning commission may impose such conditions as are needed to:
  - a. Protect public health, safety, and general welfare;
  - b. Achieve the general purpose of this chapter or the specific purpose of the zoning district in which the project is located, or for General Plan compliance;
  - c. Minimize all undesirable or unsightly appearances not consistent with design guidelines; and
  - d. Provide an orderly and visually aesthetic development within the intent of this title.

#### **G. Modifications.**

Requests to modify an approved site plan or permit shall be filed with the Planning Division, accompanied by the fee established by City Council resolution. A modification may include changes to project design, permit terms, or conditions of approval. If the Director determines a proposed action does not substantially conform to the original approval, the applicant shall submit a modification application. The Director may approve a modification if it does not:

- 1. Change the character, scope, size, or intensity of the development;
- 2. Significantly increase impacts on infrastructure or traffic;
- 3. Alter external impacts on adjacent properties; or
- 4. Reduce approved setbacks or increase building height.

If these criteria are not met, the modification shall be reviewed by the original approving authority. A modification may be granted only if all findings required for the original approval are made.

#### **H. Revocation and Reapplications.**

The procedures governing revocation of approvals and eligibility for reapplication following revocation shall be in accordance with the provisions of **CMC Section 17.02.XXX.**

#### **17.04.050 Variances and Minor Deviations (moved from section 17.78.160/ )**

The purpose of the variance and minor deviation process is to provide a mechanism for granting limited relief from the strict application of zoning regulations when, due to special circumstances applicable to a property, the literal enforcement of such regulations would result in practical difficulties or unnecessary hardship. This process ensures that any deviation from development standards remains consistent with the intent and purpose of the Zoning Code, maintains the

integrity of the General Plan, and does not grant special privileges inconsistent with limitations on other properties in the same zoning district. Variances and minor deviations are intended to accommodate unique physical site conditions while preserving neighborhood character, protecting the public health, safety, and welfare, and ensuring equitable application of land use regulations. Any Variance granted pursuant to any Zoning Ordinance enacted prior to the effective date of this ordinance shall be construed to be a Variance under this title, subject to all conditions imposed in such Variance.

**A. Minor Deviations.**

1. The Director may review and decide on Minor Deviations through a ministerial approval.

<b>Table 17.04.050 Minor Deviations</b>	
<b>Standard</b>	<b>Maximum Reduction or Increase</b>
Lot area	10% reduction
Minimum setbacks	20% reduction but must maintain a) minimum 5 feet interior side yard; b) minimum 20 feet front yard; c) minimum 10 feet street side yard d) minimum 15 feet rear yard
Maximum lot coverage	10% increase
Building height	5 feet or 10% increase including the ground floor height
Maximum fence/wall height	1.5 feet increase (except within the front yard area)
Front Yard landscape coverage	reduction from the required 50% to 40%

2. In granting a Minor Deviation, the Director shall find that all of the conditions listed in subsection (1) of this section exist in reference to the subject property. The Director may impose reasonable conditions and requirements as terms of approval.

**B. Variances (moved from section 17.78)**

When practical difficulties, unnecessary hardships or results inconsistent with the general intent and purpose of this title occur by reason of the strict interpretation of any of its provisions, any property owner may initiate proceedings for consideration of a Variance from the provisions of this title. A Variance will not be granted to permit a use not permitted in the zone by this title.

1. Department Investigation. The Director shall investigate the facts bearing on each case to provide information necessary to assure action consistent with the intent and purpose of this title. In cases where the planning department considers the reasons as set forth on the application not all within the scope of the variance or that the application is incomplete, the applicant shall be so informed; whereupon, if the application is filed and the fees are accepted, the application shall be signed by the applicant to the effect that he was so informed. Acceptance of an application does not constitute an indication of approval.

2. Commission Public Hearing. After an application for a Variance is deemed complete, the Director shall set the matter for a public hearing to be held by the Planning Commission. Notice of the Public Hearing shall be given pursuant to CMC Section 17.02.060.
3. Findings. The Commission, before it may grant a Variance, shall make a finding that in the evidence presented that the following conditions exist in reference to the property being considered:
  - a. There are exceptional or extraordinary circumstances or conditions that do not apply to other properties in the same vicinity and zone;
  - b. The variance is necessary to preserve and enjoy the property rights of the applicant, which other property owners in the same vicinity and zone enjoy, and therefor shall not constitute a grant of special privilege;
  - c. The granting of the variance will not be detrimental to the public health, safety, convenience, and welfare or injurious to property and improvement in the same vicinity and zone in which the property is located;
  - d. The granting of such a variance will not be contrary to the objectives of the general plan.
4. Planning Commission Decision. The planning commission shall announce its decision at a regular meeting or scheduled special meeting within 30 days after the conclusion of the hearing. The decision shall approve, conditionally approve or disapprove the application, and shall set forth findings in support of the decision, and shall be filed with the council within 20 days of the decision. A copy thereof shall be mailed to the applicant at the address shown on the application.
5. Revocation of Variances. The procedures governing revocation of approvals and eligibility for reapplication following revocation shall be in accordance with the provisions of CMC Section 17.02.XXX. Time limits for the variance shall be in accordance with CMC Section 17.02.XXX.

**17.04.060 Existing Lots. (moved from section 17.68)**

- A. Every parcel of land existing on the effective date of the ordinance codified in this title shall be deemed to be one lot and shall be subject to all property development standards stated in the zone which it is located.
- B. No parcel of land existing on the effective date of the ordinance may be reduced below the minimum standards for lot area for the zone in which the lot is located.
- C. No lot area may be reduced or diminished in size in such a way that the yards, open spaces, or occupancy will be less than the requirements of the zone it's located.

**17.04.070 Use Determination. (moved from section 17.60 Permitted Uses)**

- A. Purpose.

The land use table may not include all possible uses. When a specific use is listed and it is unclear whether the use is permitted, conditionally permitted, or not permitted, the use determination section allows the director to determine whether or not a proposed use is similar to a listed use and whether it may be permitted or conditionally permitted in a particular zone.

**B. Applicability.**

A similar use determination is required when a use is not specifically listed in this code but may be permitted if it is determined to be similar in nature to a use that is permitted or conditionally permitted.

**C. Review process.**

1. A use determination can be initiated by staff or the public using an application provided by the director.
2. The director or the designee shall prepare a use determination.
3. The issuance of a use determination is an administrative function of the director and a public hearing or notice is not required.

**D. Findings.**

The Director shall first make a finding that all of the following conditions exist:

1. That field investigations have determined the use and operation are compatible with the uses permitted in the zones wherein it is proposed to be located; and
2. That the subject use is similar to one or more uses permitted in the zone which it is proposed to be located; and
3. That the subject use will not cause substantial injury to the values of property in the zone which it is proposed to be located; and
4. That the subject will be designed, located and operated so that the public health, safety and general welfare will be protected.

**E. Director Determinations.**

The Director shall have the authority to make use determinations for proposed uses not explicitly identified in the zoning code, provided that all the below criteria are met. After making the use determination, the director shall submit the decision to the Planning Commission for record keeping.

1. The proposed use is consistent with the intent and purpose of the zoning district in which it is proposed.
2. The proposed use is similar in nature, function, and potential impact to other uses permitted in the same zoning district.
3. The proposed use will not adversely affect adjacent properties, the environment, or the public health, safety, and welfare.

4. If the Director determines that the proposed use may warrant additional review or is of significant public interest, the Director shall have the authority to forward the use determination request to the Planning Commission for consideration and final determination.

#### **17.04.080 Nonconforming Structures, Uses, and Parcels**

##### **A. Purpose and Intent.**

1. This section is designed to ensure fairness by limiting the number and extent of nonconforming uses. It does so by regulating their enlargement, reestablishment after abandonment, and alteration or restoration after destruction of the structures they occupy.
2. This section also intends to limit the number of and extent of nonconforming structures by prohibiting their movement, alteration, or enlargement in a manner that would increase the discrepancy between existing conditions and the standards currently prescribed in this Zoning Code.

##### **B. Applicability.**

The provisions of this section apply to structures, lots, and uses that have become nonconforming by adoption of this Zoning Code, as well as structures, lots, and uses that become nonconforming due to subsequent amendments to this Zoning Code or to the Zoning Map.

##### **C. General Provisions.**

1. **Nonconforming Uses of Land.** A nonconforming use of land may be continued, transferred, or sold, provided that there is no enlargement, intensification, or expansion to occupy a greater area than it lawfully occupied before the use became nonconforming.
2. **Change in Tenancy, Ownership, or Management.** Any nonconforming use may change ownership, tenancy, or management where the new use is of the same use classification as the previous use.
3. **Change from Nonconforming to Permitted Use.** Any nonconforming use may change to a use allowed by right in the zoning district in which it is located, provided that the use complies with all applicable standards. Once a nonconforming use has been changed, it shall not be reestablished.
4. **Absence of Permit.** Any use that is nonconforming solely by reason of the absence of a permit or approval may be changed to a conforming use by obtaining the appropriate permit or approval.

##### **D. Continuation and Maintenance.**

1. A use lawfully occupying a structure or a site, that does not conform with the use regulations or the development standards for the zoning designation in which the use is located shall be deemed to be a nonconforming use. It may be continued, except as otherwise provided in this chapter.

2. A structure, lawfully occupying a site, that does not conform with the development standards for front yards, rear yards, height, coverage, or distances between structures, for the zoning designation in which the structure is located, shall be deemed to be a nonconforming use and may be continued, except as otherwise provided in this chapter.
3. Routine maintenance and repairs that do not constitute an alteration or addition may be performed on a structure or site when the use is nonconforming, and on a nonconforming structure.

**E. Alterations and Additions to Nonconforming Uses and Structures.**

1. A nonconforming structure, which is nonconforming by reason of its use, shall not be moved, altered, or enlarged unless required by law, or the moving, alteration, or enlargement will result in the elimination of the nonconformity, except as otherwise provided in this section.
2. A nonconforming use shall not be enlarged, intensified or extended in such a way as to occupy any part of the structure or site or enlarged or another structure or site which it did not occupy at the time it became a nonconforming use or in such a way as to displace any conforming use occupying a structure or site, except as otherwise provide in this section.
3. A nonconforming structure shall not be altered or reconstructed to increase the discrepancy between existing conditions and the development standards for front yards, side yards, rear yards, height of structures, or usable open space prescribed in the development standards for the zoning designation in which the structure is located. A nonconforming structure shall not be moved or enlarged unless the new location or enlargement conforms to the development standards or usable open space prescribed in the development standards for the zoning designation in which the structure is located.
4. A use which fails to meet the development standards of the zoning designation in which it is located shall not be enlarged or extended, or shall not have equipment replaced that results in failure to meet development standards, unless the enlargement, extension, or replacement will result in elimination of nonconformity with development standards for that zoning designation.

**F. Discontinuation of Nonconforming Use.**

Whenever a nonconforming use has been discontinued, or changed to a conforming use for a continuous period of 180 days or more, the nonconforming use shall not be reestablished, and the structure or site thereafter shall be in conformity with the development standards for the zoning designation in which it is located. Discontinuance of a use shall include cessation of the existing nonconforming use, regardless of intent to resume said nonconforming use. The Planning Director shall base a determination of discontinuance on evidence, including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business records to document continued operation. Without further action by the City, any further use of the site or structure shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this Zoning Code.



**G. Change of nonconforming use.**

The Planning Commission may consider and approve, or conditionally approve, a request to change a nonconforming use to a different nonconforming use, provided that:

1. There is no new building/structure proposed beyond any existing building/structure on the property; and
2. The different nonconforming use is not of greater intensity or type resulting in an increase in: traffic, noise, odor, lighting, residential dwelling units, the need for additional parking, and improvements required to ensure compliance with building and fire codes; and
3. A conditional use permit is obtained.

**H. Restoration of Damaged Structure.**

1. Whenever a structure which does not comply with the standards for front, side, and rear yards; height of structures; distances between structures; and parking facilities as prescribed in the regulations for the zoning designation in which the structure is located, or for the use which does not conform with the regulations for the district in which it is located, is destroyed by fire or other calamity, by act of God, or by the public enemy to the extent of 50% or less, the structure may be restored and the nonconforming use may be resumed, provided that restoration is started within one year and diligently pursued to completion. When the destruction exceeds 50% or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located, and the nonconforming use shall not be resumed.
2. The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure, as it existed prior thereto. Estimates for this purpose shall be prepared by, or reviewed and approved by, the building official and shall be based on the minimum cost of construction in compliance with the building code.
3. Restoration of a nonconforming use or structure shall require the issuance of a Site Plan Review, CMC Section 17.04.XXX.

**I. Nonconforming Parcels or Lots.**

A nonconforming parcel or lot may be used, developed, or improved subject to the following:

1. A nonconforming parcel or lot shall only be allowed those uses that are permitted by the underlying zone, and such uses shall be subject to all other provisions of this title. For exceptions, see nonconforming uses in CMC Section 17.04.080(E) Alterations and additions to nonconforming uses and structures.
2. A nonconforming parcel or lot may be developed or improved, provided that the nonconforming lot was legally created and the development or improvement and uses

conform to all provisions of the Zoning Code, including the standards of the applicable zone, with the exception of the nonconforming lot size, dimension, or configuration.

3. Nonconforming parcels or lots may be merged and/or reconfigured with conforming or nonconforming lots to create the same or fewer number of lots, but which conform more closely to the applicable standards of the underlying zone, subject to all other provisions of this title.

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