

# San Joaquin County Development Title Update

Module #1: Introductory Provisions,  
Administration and Permits

For Planning Commission Review

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## Introduction

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This is the first of three modules that present San Joaquin County’s preliminary draft regulations for the Development Title Update for review by the Planning Commission and interested parties. Module 1 proposes an updated regulatory and administrative permitting process. The proposed procedures are based on a review of the 2035 General Plan and existing development regulations, comments from County staff, the Planning Commission, members of the Board of Supervisors, and stakeholders who were interviewed for this project. The goal of the proposed regulations is to create a streamlined, user-friendly set of procedures that are up to date with current planning practices and State law and implement the General Plan. This is necessary because the zoning regulations that the County currently has in place have not been comprehensively updated for over 25 years. More specifically, the update is intended to:

- Organize and consolidate development provisions in Title 9 in a logical, user-friendly format with use of tables and graphics, where appropriate;
- Make zoning consistent with the policies and land use concepts for the 2035 General Plan and federal and State law;
- Support economic growth, housing, transportation, conservation and natural resources, and healthy community objectives of the General Plan;
- Achieve high quality design in the various zoning districts and transition areas; and
- Facilitate creation of a Web-based document with a user interface.

San Joaquin County’s current zoning regulations create what is, for some, a fairly cumbersome procedure to obtain a permit to do development. All use permits are heard by the Planning Commission even though some might logically be handled by a Zoning Administrator. The Site Approval process is not always straightforward, and an Administrative Use Permit might serve more efficiently in its place. Finally, more flexibility is needed in application requirements to allow for electronic submissions, and notification procedures are not tailored to the type of permit.

### **REVISED ORGANIZATION OF TITLE 9**

The proposed organization is intended to provide a logical structure for Title 9, so that it will be easy to use and amend over time. Divisions and chapters are organized into “series” to provide an additional level of organization. The nine series consolidate the 19 divisions into a more logical arrangement and sequence. Definitions and use classifications would appear at the end of the Title as an auxiliary reference section, General Terms. The numbering system remains largely consistent with the existing article (but in steps of 10, not five, to be consistent with “auto-numbering” capabilities of word processing software, although a new level in the article’s hierarchy—series—has been added to organize the chapter into logical groups and make the Title easier to navigate. The final version of the Title also will include “reserved” sections to facilitate incorporating amendments into logical places within the Title.

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Generally, the most frequently consulted sections appear towards the beginning of the Title, while more specific and less frequently used parts—including administration, permits, and definitions—have been moved to the end. In all, as currently conceived, Title 9 will become a more accessible and user-friendly “development code” with nine series, in the following order:

100 Series – Introductory Provisions

200 Series – Base Zones

300 Series – Overlay Zones, Master Plans, Specific Plans and Planned Development

400 Series – Additional Use and Development Regulations

500 Series – Land Divisions, Dedications and Improvements

600 Series – Infrastructure Standards and Financing

700 Series – Supplemental Regulations

800 Series – Administration and Permits

900 Series – General Terms

Each of these major series, divisions, chapters and sections will be ordered to flow logically from one idea to the next. Typically, each major section begins with statements regarding their purpose and applicability, then lists general standards and moves progressively to more specific regulations. Many sections would end with references to other parts of the ordinance, such as permits, that present further, related regulations. Tables also will include references to other pertinent regulations, so that, in an electronic version of the Development Title, “hyperlinks” can make it easy to find these supplemental requirements.

### **OVERVIEW OF THIS MODULE**

This Module establishes a streamlined procedural framework for the County that should make it easy to administer the Title, reducing costs to applicants and to the County. A set of common procedures for applications is proposed in this module along with a refined notification process for discretionary permits. The permits types are described, with triggers, criteria, and review procedures detailed. The first portion of the module presents the introductory provisions and then provides detail on the “Planning Agency” that is the bodies and persons who are charged with implementing the General Plan and zoning regulations and making permit decisions. Each review body is listed with descriptions of their roles and authority. The second portion outlines procedures that apply to all application types. How to file, what to file, and what types of projects require a public hearing are all discussed. The public hearing process, including noticing, conduct of hearings, and appeals, is also described.

After the review body and application processes have been discussed, then each permit type is laid out. There are two categories of Use Permits: those that can be approved by a Zoning Administrator and those that require Planning Commission approval. Deviations from these regulations can be approved through Variances and Waivers. Temporary uses, such as a special event or seasonal outdoor sales, now will have to secure a Temporary Use Permit, and there is a clear process for issuing them.

After reviewing current requirements in the Government Code for local zoning regulations, we have brought in formal language and some additional regulations, where appropriate, to ensure conformance with State law.

We also provided some definitions at the end of the Module that relate to terms used in the Administrative Sections. In the final zoning regulations, they will be located in the 900 Series – General Terms. They are provided here for the Commission’s initial review and comment.

The proposed Chapters incorporate many provisions included in San Joaquin County’s existing Title, but these are simplified, where needed, and expanded, when necessary. Technical edits also are made to reflect “best practices.” Following are highlights of specific proposals and changes from existing regulations.

## REVIEW AUTHORITIES

In re-organizing roles and duties, our goal was to make the permit review process more streamlined and to have the review and approvals occur without extensive reliance on public hearings by the Planning Commission or the Board of Supervisors. This is consistent with the idea of adding in more standards and performance criteria to implement General Plan policies – topics for subsequent modules – so there can be more “over-the-counter” approvals.

In structuring San Joaquin County’s decision-making processes, we anticipate that most of the development applications would only need a Zoning Clearance (a staff checklist process) or administrative review by the Zoning Administrator, who will be responsible for issuing the bulk of permits in the county. Only Conditional Use Permits and Variances (include Flood Variances) will require a hearing before the Planning Commission – all other permits can be reviewed and issued by the Department. We have given the Zoning Administrator the ability to make decisions on certain use permits which now go the Planning Commission, further enabling streamlined permit review and approvals to occur on a timelier basis with a lower cost to applicants. Many small projects will be approved without a public hearing through a Zoning Clearance process if they meet the requirements that are outlined in this Title. We believe that having a Zoning Administrator will benefit San Joaquin County because it can streamline the approval process.

The table below outlines the permit application and actions, advisory bodies, decision-making bodies, and appellate bodies.

<b>PROPOSED PERMITS AND TYPES OF APPROVAL ACTIONS</b>				
<i>Application or Action Type</i>	<i>Notice &amp; Hearing</i>	<i>Advisory Body</i>	<i>Decision Maker</i>	<i>Appeal Body</i>
<b>Type One: Ministerial Actions</b>				
Zoning Clearance	No	N/A	Zoning Administrator	Planning Commission
Grading Permit	No	N/A	Zoning Administrator	Planning Commission
Minor Changes to an Approved Permit	No	N/A	Zoning Administrator	Planning Commission
<b>Type Two: Discretionary Quasi-Judicial Actions</b>				
Administrative Use Permits	Yes	N/A	Zoning Administrator	Planning Commission
Conditional Use Permits	Yes	Planning Director	Planning Commission	Board of Supervisors
Waiver of Standards	Yes	N/A	Zoning Administrator	Planning Commission
Major Permit Modifications	Yes	N/A	Planning Commission	Board of Supervisors
Subdivision Maps	Yes	Planning Commission	Board of Supervisors	
Temporary Use Permits	Yes	N/A	Zoning Administrator	Planning Commission

<b>PROPOSED PERMITS AND TYPES OF APPROVAL ACTIONS</b>				
<i>Application or Action Type</i>	<i>Notice &amp; Hearing</i>	<i>Advisory Body</i>	<i>Decision Maker</i>	<i>Appeal Body</i>
Variances	Yes	Planning Director	Planning Commission	Board of Supervisors
<b>Type Three: Discretionary Legislative Actions</b>				
General Plan Text and Map Amendments	Yes	Planning Commission	Board of Supervisors	Superior Court
Development Title and Map Amendments	Yes	Planning Commission	Board of Supervisors	Superior Court
Planned Development Zones	Yes	Planning Commission	Board of Supervisors	Superior Court
Specific Plans	Yes	Planning Commission	Board of Supervisors	Superior Court
Development Agreements	Yes	Planning Commission	Board of Supervisors	Superior Court

### **COMMON PROCEDURES**

One goal of the zoning regulations is to establish uniform procedures that are common to the application and processing of a variety of different permit types. Because the Chapter containing the common procedures will likely be one that users most frequently consult, it appears immediately following the Chapter on Review Authorities.

The majority of the material in this section is drawn from the existing Title and State law. Procedures for conducting preliminary review, requirements for written findings, and procedures for public hearings are included and, where they are already covered in the Development Title, only technical editing was necessary.

Public notice provisions have been revised and strengthened to meet all applicable state laws. A robust notice system assists all parties involved – neighbors, project sponsors, community organizations, and the like – to be informed about proposals and to voice their concerns if any. We have carried forward the current notification process for projects in rural and agricultural zones that goes beyond the basic requirements of the Government Code (a 300-foot radius around the project). Public hearing notification has also been updated.

Finally, there is a ‘one-stop’ section on appeals. It has procedures that must be followed, notice requirements, and standards of review. There is a table that provides an easy and useful way to determine what course of action must be taken if one wishes to contest a land use decision in San Joaquin County.

### **USE PERMITS**

As mentioned above, we have separated San Joaquin County’s use permit processes into two main tracks: Administrative Use Permits for uses that are permitted but require an additional level of review by the Zoning Administrator and Conditional Use Permits for uses that may have an impact upon surrounding properties and require a high level of review by the Planning Commission. Administrative Use Permits will replace Site Approvals. We also added specific provisions for Temporary Use Permits for those uses that are short in duration. The goal was to create a system that would allow the majority of use permits to be approved by the Zoning Administrator. Additional findings are added for adequate public facilities and services and conformance to the Development Title. Decisions on Administrative Use Permits are appealed to the Planning Commission; decisions on Conditional Use Permits are appealable to the Board of Supervisors.

## **OTHER CHANGES.**

**The Planning Agency.** This module expands the Planning Agency to include a Zoning Administrator, which will streamline the process. The responsibilities of the Director have been refined, reflecting this new position, and now include Building Official, Code Enforcement Manager, and Fire Warden. The Director may serve as the Zoning Administrator.

**Zoning Clearance.** This is a new procedure to streamline ministerial review of “by right” projects. It can include checking for compliance with objective standards, as allowed by State law.

**Variances.** Minor additions include additional findings related to no detriment and for variances for parking and open space, per the Government Code. Authority to impose conditions also is explicitly stated and provisions for appeals, extensions, and modifications are added.

**Waivers.** This scope of this chapter, formerly titled “Deviations,” has been expanded to clarify the purpose of waivers, as distinct from variances, and include provisions for granting waivers for reasonable accommodations that may exceed the percentage limitations. Provisions for reasonable accommodations have been expanded to cover churches and other religious institutions, as required by the Religious Land Use and Institutionalized Persons Act. The findings have been clarified to provide more flexibility. Finally, certain standards cannot be waived if they would create a conflict with General Plan density and intensity limits.

**Revocation of Permits.** This module also allows the Zoning Administrator or the County Counsel’s Office to initiate revocation proceedings, not just the Planning Commission or the Board. The revocation is done by the original decision-maker and is subject to appeal.

**General Plan Amendments.** This chapter expands on current requirements with additional detail to ensure conformance with the Government Code. A Director’s report is required, and changes the Board makes that had not previously been considered by the Planning Commission must be referred back to them for comment.

**Development Title Amendments.** This chapter follows the same procedure as proposed for General Plan amendments to ensure conformance with the Government Code.

**Other Permits.** This module carries forward the current permitting procedure for agricultural excavations and quarry excavations, with approval responsibility assigned to the Zoning Administrator and the Planning Commission, respectively. The process would be the same as for a Zoning Clearance. Existing procedures for flood variances only have minor editing for clarity and conformance with this updated Title. The process would be the same as for a Conditional Use Permit. Finally, new permit procedures for construction grading and drainage permits are included.

**Development Agreements.** Provisions for development agreements are largely the same as in the current Title, with minor editing and technical additions for greater clarity and conformance to State law. The contents of an application to enter into an agreement are prescribed in greater detail; many sections now considered optional would be required. This is best practice.

## **SUMMARY OF PROPOSED STREAMLINING PROCESS**

The flow chart on the next page illustrates how the development review process would be streamlined. A “counter check-in” with County staff or the voluntary pre-application conference would allow applicants to ask questions about the permit approval process and the information needed for applications. Then, with the proposed common procedures for filing an application and determining its completeness, applications can be

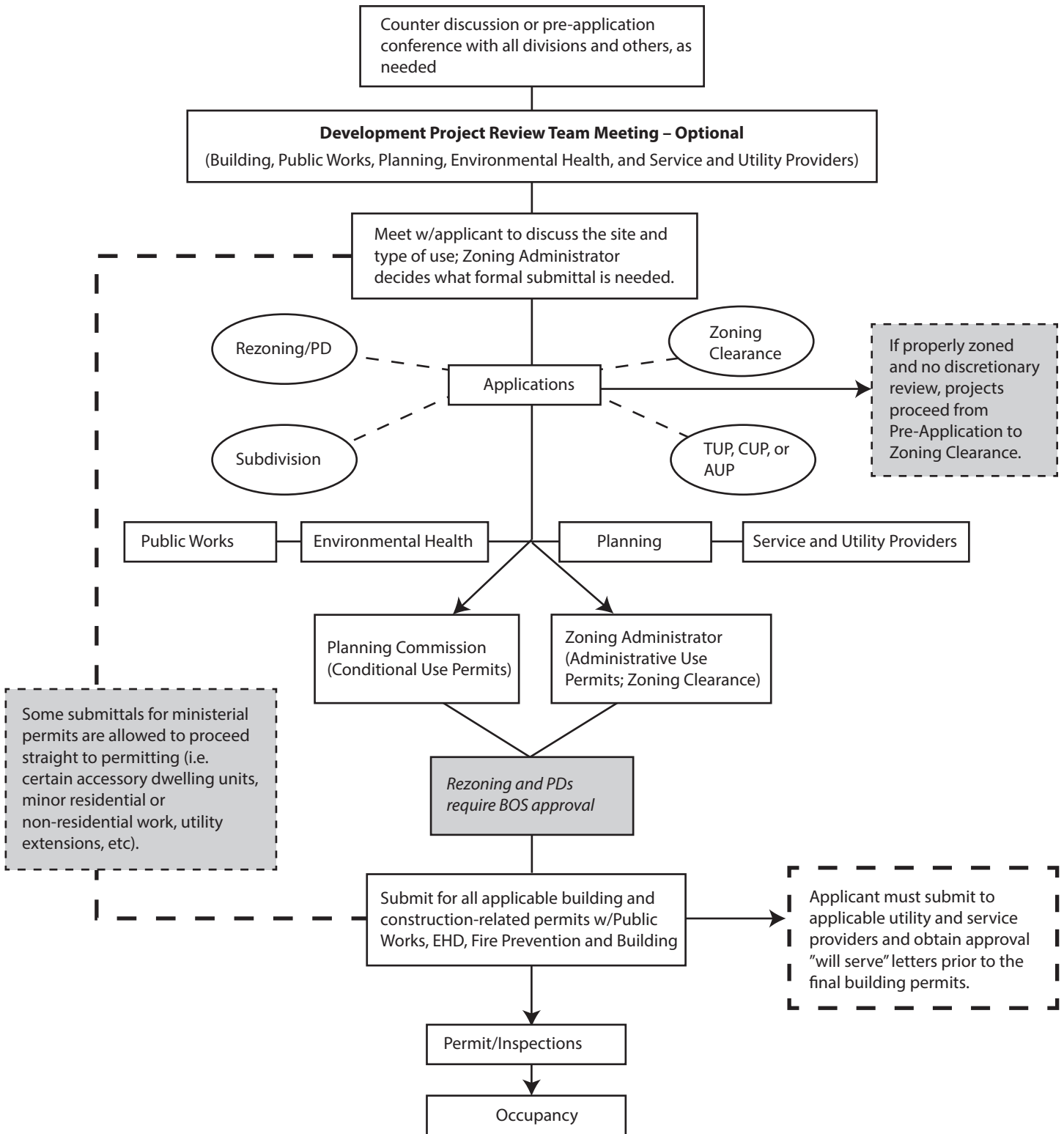
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processed efficiently. If no discretionary review is required, then the applicant can go directly to the building permit stage. And, as noted earlier, certain use permits will be processed as Administrative Use Permits with only a Zoning Administrator approval required.

### **NEXT STEPS**

Comments by the Planning Commission will be reviewed with the Director and County Staff and changes reflected in the Hearing Draft of the updated Development Title, which will be subject to CEQA review. County Counsel will be working closely with the update team to ensure a seamless integration of the new Development Title with other titles in the San Joaquin County Ordinance Code.

# Proposed Streamlining for Development Project Permitting



Note:  
 TUP - Temporary Use Permit  
 CUP - Conditional Use Permit  
 AUP - Administrative Use Permit

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# Series 100: General Provisions

## Chapter 9-100 Introductory Provisions

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**Sections:**

9-100.010	Title and Authority
9-100.020	Purpose
9-100.030	Consistency of Development Title with General Plan
9-100.040	Structure of the Development Title
9-100.050	Applicability
9-100.060	Zoning Maps.
9-100.070	Minimum Requirements
9-100.080	Interpretation, Constitutionality, and Severability
9-100.090	No Relief From Other Provisions
9-100.100	Inapplicability of Formal Rules Of Evidence
9-100.110	Development Title Repeals Existing Ordinances
9-100.120	Permits and Licenses to Comply with Title

**9-100.010 Title and Authority**

The ordinance codified in this Title (Title 9) shall be known and cited as the "Development Title of San Joaquin County," the "Development Title" or the "Title." Reference to section numbers herein are to the sections of this Title.

This Title is adopted pursuant to the authority contained in the California Constitution, Article XI, Section 7, Section 65850 of the California Government Code and the Subdivision Map Act (Title 7, Division 2 of the California Government Code, as amended), the Surface Mining and Reclamation Act of 1975, California Public Resource Code, Division 2, Chapter 9, the California Environmental Quality Act, California Public Resource Code, Division 13 and the California Vehicle Code, Section 22660.

**9-100.020 Purpose**

This Title is intended to serve as the basis for all land use regulations adopted by San Joaquin County. Its purposes is to serve the public health, safety, and general welfare; implement the 2035 General Plan; and achieve the following objectives:

- (a) Encourage the most appropriate use of land and the harmonious relationship among land uses;

- (b) Support economic development and job creation and provide housing for all segments of the community;
- (c) Promote a safe and efficient traffic circulation system;
- (d) Provide open spaces for light, air and outdoor living;
- (e) Prevent overcrowding of land and the undue concentration of population;
- (f) Secure safety from fire, flooding, and other dangers;
- (g) Facilitate the provision of needed public services and community facilities;
- (h) Conserve and stabilize the value of land and real property; and
- (i) Conserve the County's natural beauty, improve its appearance, and enhance its physical character.

**9-100.030 Consistency of Development Title with General Plan**

All actions, approvals, and procedures taken with respect to, or in accordance with, this Title shall be consistent with the 2035 General Plan. In the event this Title becomes inconsistent with the 2035 General Plan by reason of adoption of a new General Plan or by amendment of the existing General Plan or any of its elements, this Title shall be amended within a reasonable time so that it is consistent with the newly adopted General Plan or remains consistent with the existing General Plan as amended. Additionally, all Development Title amendments shall be consistent with the 2035 General Plan. The procedure for the amendment of this Title is contained in Chapter 9-807, General Plan Amendments.

**9-100.040 Structure of the Development Title**

- (a) **Organization of Regulations.** The Development Title consist of nine series:
  - 100 Series – Introductory Provisions
  - 200 Series – Base Zones
  - 300 Series – Overlay Zones, Master Plans, Specific Plans, and Planned Development
  - 400 Series – Additional Use and Development Regulations
  - 500 Series – Land Divisions, Dedications and Improvements
  - 600 Series – Infrastructure Standards and Financing
  - 700 Series – Supplemental Regulations
  - 800 Series – Administration and Permits

900 Series – General Terms

- (b) **Types of Regulations.** The Development Title include three types of regulations that control the use and development of property:
- (1) ***Land Use Regulations.*** These regulations specify the land uses permitted, conditionally permitted, and prohibited in each zoning district. These regulations also provide any special requirements that are applicable to specific uses. Land use regulations for base zones and for overlay zones are located in the 200 and 300 Series. Additional land use regulations that apply countywide or to only some of the zones, such as those pertaining to nonconforming uses and specific uses (e.g., alcoholic beverage sales, emergency shelters, live-work, residential care facilities, and wineries), are located in the 400 Series. Performance standards that govern special uses are also located in the 400 Series.
  - (2) ***Development Regulations.*** These regulations control the height, bulk, density/intensity, location and appearance of structures on development sites. Development regulations for base zones and for overlay zones are located in the 200 and 300 Series. Development regulations, applicable to some or all zones are located in the 400 Series; these include regulations for accessory buildings, fences, landscaping, lighting, nonconforming uses and structures, off-street parking and loading, signs, and wireless communications facilities. Design standards for public improvements in subdivisions are in the 600 Series.
  - (3) ***Administrative Regulations.*** These regulations contain detailed procedures for the administration of these regulations and include common procedures, processes and standards for discretionary entitlement applications and other permits. Specific procedures for processing maps related to subdivisions, approving improvement agreements, and other approvals related to land divisions are located in the 500 Series. Authority for adopting and implementing Master Plans, Specific Plans and Planned Development is located in the 300 Series. Administrative regulations are located in 800 Series.
  - (4) ***General Terms and Use Classifications.*** The 900 Series provides a list of terms and definitions of the terms used in the Development Title.

**9-100.050 Applicability**

- (a) **General Rules for Applicability.**
- (1) ***Applicability to Property.*** The Development Title applies, to the extent permitted by law, to all property within the unincorporated area of the County, including all uses, structures and land owned by any private person, firm, corporation or organization, or the County or other local, State or federal agencies. Any governmental agency is exempt from this Title only to the extent that such property may not be lawfully regulated by the County.
  - (2) ***Compliance with Regulations.*** Land must be used, and structures must be constructed, occupied, enlarged, altered, demolished and moved in accordance with the provisions of this Title.

(b) **Relation to Other Regulations.**

- (1) **General.** The Development Title and the requirements or conditions imposed by it do not supersede any other regulations or requirements adopted or imposed by the Board of Supervisors, the State of California, or any federal agency that has jurisdiction over uses and development authorized by this Title. All uses and development authorized by this Title shall comply with all other such regulations and requirements. Where conflict occurs between the provisions of these Regulations and any other provision of the County Code, uncodified ordinances, resolution, guideline or regulation, the more restrictive provisions control, unless otherwise specified.
- (2) **Permit Streamlining Act.** It is the intent of the Development Title that all solely adjudicatory actions taken by the decision-making body pursuant to this Title be within a time frame consistent with the provisions of Government Code Section 65920 *et seq.* (California Permit Streamlining Act). This Title may not be interpreted as imposing time limits on a decision-making body's legislative actions or quasi-legislative judgments.
- (3) **Relation to Private Agreements.** The Development Title shall not interfere with or annul any recorded easement, covenant, or other agreement now in effect, provided that where these Regulations impose a greater restriction than imposed by an easement, covenant, or agreement, these Regulations control.
- (4) **Application During Local Emergency.** The Board of Supervisors may authorize a deviation from a provision of the Development Title during a local emergency that has been proclaimed and ratified under the County Code. The Board of Supervisors may authorize a deviation by resolution without notice or public hearing.

(c) **Effect on Previously Approved Projects and Projects in Progress.** Any building, structure or use of land for which Conditional Use Permits, Variances, or Flood Variances have been granted must be completed in accordance with the zoning, plans, specifications and permits on which these approval were granted within two years of such granting, except if a later expiration date is stated in the approval. Any building, structure, or use of land for which a Building Permit or its functional equivalent has been issued and where substantial work has been performed and substantial liabilities incurred in good faith reliance thereon, may be completed and used in accordance with the plans, specifications and permits on which these permits or approvals were granted. No extensions of time, except as provided for in the Building Code, shall be granted for commencement of construction, unless the applicant has secured a permit extension from the Director. This provision does not apply to projects with an approved Vesting Tentative Map or Development Agreement.

(1) **Applications Filed Prior to and Approved After the Effective Date of the Development Title.**

- (A) *Applications for Use Permits, Tentative Subdivision Maps and Parcel Map Submitted Prior to and Approved After the Effective Date of these Regulations.*

Complete applications filed prior to the effective date of the ordinance codifying this Title may be approved under the current provisions of this Title upon request of the applicant. For a four month period after the effective date of the ordinance codifying this Title, applicants may elect to develop under the provisions of the prior Development Title, but in that case shall comply with all provisions of the prior Development Title. If a Building Permit application is not filed within one year of the date of approval of a Use Permit, the approval shall expire unless otherwise specified in the conditions of approval.

- (i) A one-year time extension may be permitted upon submission of a completed application fee, and documentation showing conditions have not substantially changed since the approval was granted.
  - (ii) All requests for extensions shall be reviewed for compliance to the applicable development standards. Where the pre-existing Development Title is silent on any specific aspect of land use regulations and development standards, this Title controls. Extension requests may be denied or approved by the Zoning Administrator. The Zoning Administrator shall approve the extension request if the delay in obtaining a Building Permit was not caused by the applicant and has discretion to approve or deny the extension if the applicant failed to take steps towards obtaining a Building Permit. This decision is appealable to the Planning Commission, which may deny, approve, or approve with new conditions the extension request.
- (B) *Applications for Rezoning Filed Prior to and Approved After the Effective Date of this Title.* Rezoning applications filed prior to the effective date of this Title shall be governed by the provisions, standards, and conditions of approval established in this Title and shall follow the applicable procedures identified in the 800 Series, Administration and Permits, of this Title.
- (2) ***Applications Filed After the Effective Date of this Title and Not Covered by a Pre-Existing Development Agreement.*** All new applications for Rezoning, Use Permits, Tentative Subdivision Maps, and Parcel Maps filed after the effective date of this Title, including modifications and amendments to those new applications, shall conform to the current provisions of this Title.

### **9-100.060 Zoning Maps.**

A series of zoning maps, to be known collectively as the “Zoning Map of the County of San Joaquin” or “Zoning Map,” shall be maintained by the Community Development Department.

- (a) **Contents.** The zoning maps shall show the designations and boundaries of each zone and shall show any base data that the Director of the Community

Development Department (the “Director”) deems useful or that the Board of Supervisors directs.

- (b) **Revisions.** The Director shall revise the zoning maps to show amendments, including changes in designations, rezoning of property, and clarification of zone boundaries.
- (c) **Incorporation.** The zoning maps and all notations, references, data, and other information contained therein are made a part of this Title by reference herein.
- (d) **Zone Boundaries.** Where uncertainty exists as to the boundaries of any zone shown on the zoning maps, the following rules shall apply:
  - (1) Where zone boundaries are indicated as approximately following street and alley lines or lot line, such lines shall be construed to be the boundary of the said zone, and the following shall apply:
    - (A) When two zones are separated by a street or alley, the zone boundary shall be the centerline of the street or alley, unless otherwise specified, and
    - (B) When a residential zone is separated from any other zone by a street or alley, the residential zone boundary shall include both sides of the street or alley.
  - (2) Where any public street or alley is officially vacated or abandoned, the regulations applicable to abutting properties shall apply to the centerline of such vacated or abandoned street or alley;
  - (3) Where any private right-of-way or easement of any railroad, canal, transportation, or public utility company is vacated or abandoned, the regulations applicable to abutting property shall apply to the centerline of such vacated or abandoned property;
  - (4) For unsubdivided property, or in instances where a zone boundary divides a lot, the location of the zone boundary shall be determined by the Director unless the zone boundary is indicated by dimensions.
- (e) **Creation of New Zones.** The boundaries of a new zone shall be shown on the zoning map. The map together with all legends, symbols, notations, references, zoning district boundaries and other information on the map shall be incorporated into this Title by reference as though it were fully included.

#### **9-100.070 Minimum Requirements**

The provisions of this Title are considered to be minimum requirements. The County may establish more stringent requirements where deemed necessary.

**9-100.080 Interpretation, Constitutionality, and Severability**

- (a) **Ambiguities.** Unless otherwise provided, any ambiguity concerning the content or application of this Title shall be resolved by the Director.
- (b) **Invalidity.** If any section, subsection, sentence, clause, or phrase of this Title is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Title. The Board declares that it would have passed this Title and every section, subsection, clause, and phrase thereof, notwithstanding that one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

**9-100.090 No Relief From Other Provisions**

Except as otherwise specifically provided, no provision of this Title shall be construed as relieving any party to whom a use permit, variance, or other development approval has been issued from any other provision of state or federal law or from any provision, ordinance, rule, or regulation of the County requiring a license, franchise, or permit to accomplish, engage in, carry on, or maintain a particular business, enterprise, occupation, transaction, or use.

**9-100.100 Inapplicability of Formal Rules Of Evidence**

- (a) **Formal Rules of Evidence Do Not Apply.** Except as otherwise expressly provided in this Chapter, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply to hearings conducted pursuant to this Title.
- (b) **No Presumption Regarding Error.** There shall be no presumption that error is prejudicial or that injury was done if error is shown.

**9-100.110 Development Title Repeals Existing Ordinances**

The ordinance adopting this Title repeals the pre-existing Title 9 of the Ordinance Code of San Joaquin County, Ordinance No. 549, Ordinance No. 1862, Ordinance No. 441, Ordinance No. 3384, Ordinance No. 545, Ordinance No. 648, and Ordinance No. 3089. The adoption of the ordinance, however, shall not affect or prevent any pending or future prosecution of, or action to abate, any existing violation of Title 9 of the Ordinance Code of San Joaquin County or any existing illegal use or violation of the repealed ordinances listed in this section, if the violation is also a violation of the provisions of this ordinance.

**9-100.120 Permits and Licenses to Comply with Title**

All permits and licenses for the use or division of land or the construction, moving, or alteration of any building or structure issued by the County shall be subject to the following requirements:

- (a) **Issuance of Permit.** All departments, officials, and employees of the County responsible for the issuance of such permit or license shall determine that the permit or license requested will not violate any of the provisions of this Title.
- (b) **Invalid Permit.** Any permit or license issued by said departments, officials, or employees which is issued in violation of the provisions of this Title shall be null and void.
- (c) **Failure to Comply.** Failure to comply with any conditions or requirements of such permit or license shall be considered a violation. Conviction of an infraction because of such failure to comply will render the permit or license void.
- (d) **Permits Run with the Land.** All development permits shall run with the land; permits are not tied to individuals, including those persons who applied for the permit or who owned the property at the time the permit was issued.



## Chapter 9-101 Rules for Construction of Language

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### Sections:

9-101.010	Purpose
9-101.020	Rules for Construction of Language
9-101.030	Rules of Interpretation

### **9-101.010 Purpose**

The purpose of this Chapter is to provide precision in the interpretation of the Development Titles. The meaning and construction of words and phrases defined in this article apply throughout the Development Title regulations, except where the context indicates a different meaning.

### **9-101.020 Rules for Construction of Language**

In interpreting the various provisions of the Development Title, the following rules of construction apply:

- (a) The ordinary meaning of terms applies.
- (b) In case of conflict between the text and a diagram or graphic, the text controls.
- (c) All references to public officials are to those of the County, and include designated deputies of such officials, unless otherwise indicated.
- (d) All references to days are to calendar days, unless otherwise indicated. If a deadline falls on a weekend or holiday, or a day when County offices are closed, the deadline will be extended to the next working day. The end of a time period is the close of business on the last day of the time period.
- (e) The words “shall,” “will,” “must,” “has to,” “is required to,” and “is to” are always mandatory and not discretionary. The words “should” or “may” are permissive.

### **9-101.030 Rules of Interpretation**

The Director will interpret any definition not expressly identified in this Title and provide clarification and determinations, which shall be compiled, made available at County offices and the library, and be posted on the County’s website for easy public access.

## Chapter 9-102 Rules of Measurement

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### Sections:

9-102.010	Purpose
9-102.020	General Provisions
9-102.030	Fractions
9-102.040	Measuring Distances
9-102.050	Measuring Height
9-102.060	Determining Grade
9-102.070	Measuring Lot Width and Depth
9-102.080	Determining Average Slope
9-102.090	Determining Floor Area
9-102.100	Determining Floor Area Ratio
9-102.110	Determining Lot Coverage
9-102.120	Determining Lot Frontage
9-102.130	Determining Setbacks
9-102.140	Measuring Signs
9-102.150	Measuring Parking Lot Landscaping
9-102.160	Measuring Pedestrian Clearance

### **9-102.010 Purpose**

The purpose of this Chapter is to explain how various measurements referred to in these Regulations are to be calculated.

### **9-102.020 General Provisions**

For all calculations, the applicant is responsible for supplying drawings illustrating the measurements that apply to a project. These drawings must be drawn to scale and of sufficient detail to allow easy verification upon inspection by the Zoning Administrator.

### **9-102.030 Fractions**

Whenever the Development Title requires consideration of distances, parking spaces, dwelling units or other aspects of development or the physical environment expressed in numerical quantities, and the result of a calculation contains a fraction of a whole number, the results will be rounded as follows:

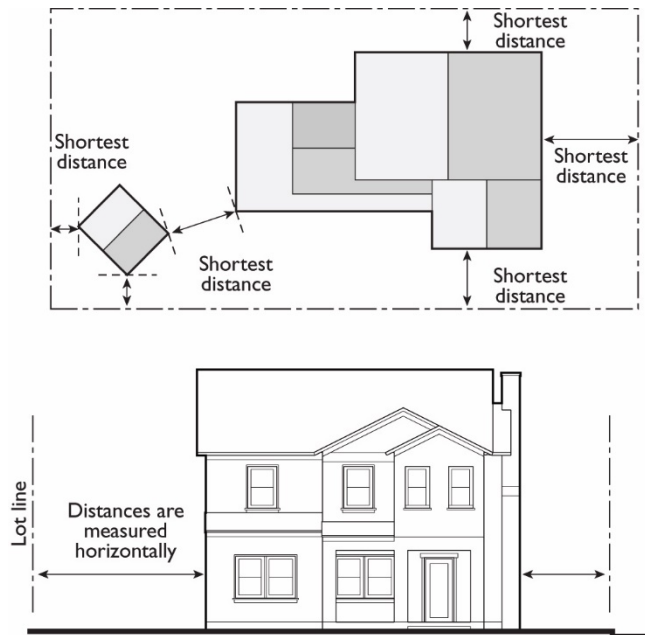
- (a) **General Rounding.** Fractions of one-half (0.5) or greater must be rounded up to the nearest whole number, and fractions of less than one-half (0.5) must be rounded down to the nearest whole number, except as otherwise provided.
- (b) **Exception for State Affordable Housing Density Bonus.** The calculation of fractions related to permitted bonus density units for projects eligible for bonus density

pursuant to Government Code Section 65915 or any successor statute shall be done as provided by State law.

#### **9-102.040 Measuring Distances**

- (a) **Measurements are Shortest Distance.** When measuring a required distance, such as the minimum distance between a structure and a lot line, the measurement is made at the closest or shortest distance between the two objects.
- (b) **Distances are Measured Horizontally.** When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography or slope of the land.
- (c) **Measurements Involving a Structure.** Measurements involving a structure are made to the closest support element of the structure. Structures or portions of structures that are entirely underground are not included in measuring required distances.
- (d) **Measurement of Vehicle Stacking or Travel Areas.** Measurement of a minimum travel distance for vehicles, such as garage entrance setbacks and stacking lane distances, are measured down the center of the vehicle travel area. For example, curving driveways and travel lanes are measured along the center arc of the driveway or traffic lane.
- (e) **Measuring a Buffer or Radius.** When a specified land use is required to be located a minimum distance from another land use, the minimum distance is measured in a straight line from all points along the lot line of the subject project, in all directions.

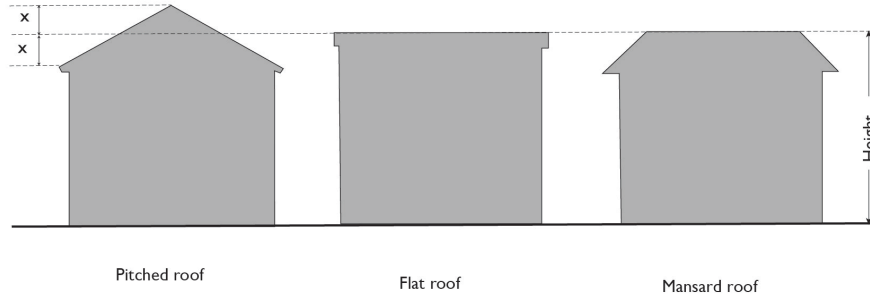
**FIGURE 9-102.040: MEASURING DISTANCES**



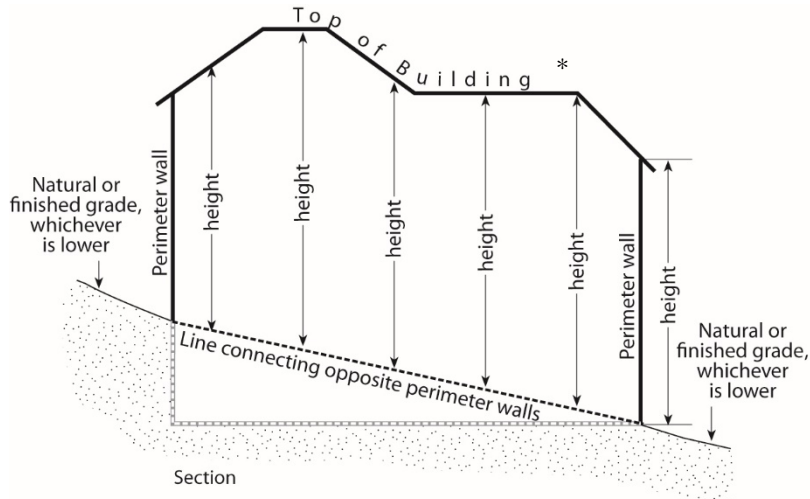
**9-102.050 Measuring Height**

- (a) **Measuring Building Height.** Building height shall be defined as the distance from finished grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building along the finished grade directly below. For structures projecting over water, height will be measured from highest grade at front (landward) property line. On lots with a grade change of 10 percent or more between the front and rear property lines, building height is measured from the “grade plane” as determined in the following subsection, and height shall be measured from the measure point at the top of the building, as determined above, to the grade plane.

**FIGURE 9-102.050-A: MEASURING BUILDING HEIGHT**



**FIGURE 9-102.050-B: MEASURING BUILDING HEIGHT OF A TERRACED OR STEPPED BUILDING**

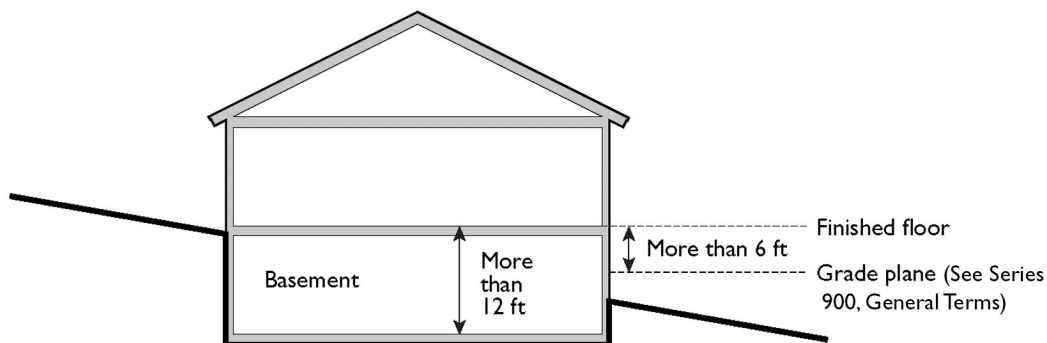


\* or roof mid-point

- (1) **Measuring Building Height on Sloped Lots.** On lots with a grade change of 10 percent or more between the front and rear lot lines, or between the front lot line and its most distant point when there is no rear lot line, building height is measured from the adjacent natural or finished grade, whichever is lower, to the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof.
- (2) **Exceptions.** Antennas, belfries, chimneys, cooling towers, cupolas, domes, elevator bulkheads, flagpoles, ornamental towers, penthouses, solar collectors, spires and standpipes and necessary mechanical equipment may exceed the height limits pursuant to Section 9-400.050 (Exceptions to Height Limits).

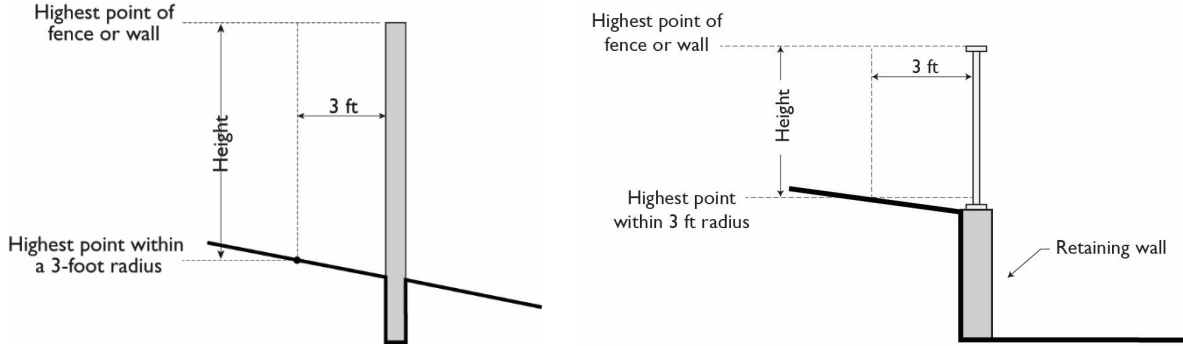
- (b) **Measuring the Number of Stories in a Building.** In measuring the height of a building in stories, the following measurement rules apply:
- (1) A balcony or mezzanine shall be counted as a full story if its floor area exceeds one-third of the total area of the nearest full floor directly below it or if it is enclosed on more than two sides.
  - (2) A basement shall be counted as a full story if the finished surface of the floor above the basement is:
    - (A) More than six feet above grade plane; or
    - (B) More than 12 feet above the finished grade at any point.

**FIGURE 9-102.050-C: DETERMINING IF A BASEMENT IS A STORY**



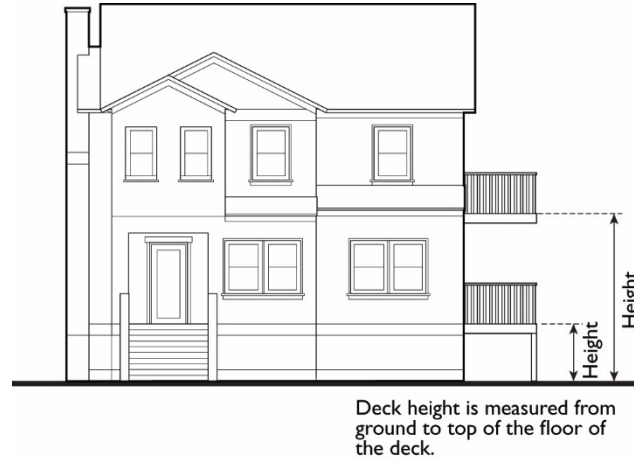
- (3) A story may not exceed 25 feet in height from the upper surface of the floor to the ceiling above.
- (c) **Measuring Height of Fences or Walls.** The height of any fence or wall shall be determined by measuring the vertical distance from the highest finished grade within a three-foot radius of any point on the fence or wall to the highest point of any portion of the fence or wall. In the case of fences or walls between the setback line and lot line, height shall be measured from highest finished grade adjacent to the fence or wall to the top of the fence or wall.
- (1) **Measuring Height of Fences on Retaining Walls.** The height of a fence that is on top of a retaining wall is measured from the highest finished grade point within a three-foot radius of any point on such fence to the highest point of the fence on the highest side of the wall. Any fence or railing required to comply with minimum height in applicable Building Code requirements is permitted.

**FIGURE 9-102.050-D: MEASURING HEIGHT OF FENCES AND WALLS**



- (d) **Measuring the Height of Decks.** Deck height is the vertical distance from finished grade directly below the deck to the top of the floor of the deck.

**FIGURE 9-102.050-E: MEASURING HEIGHT OF DECKS**

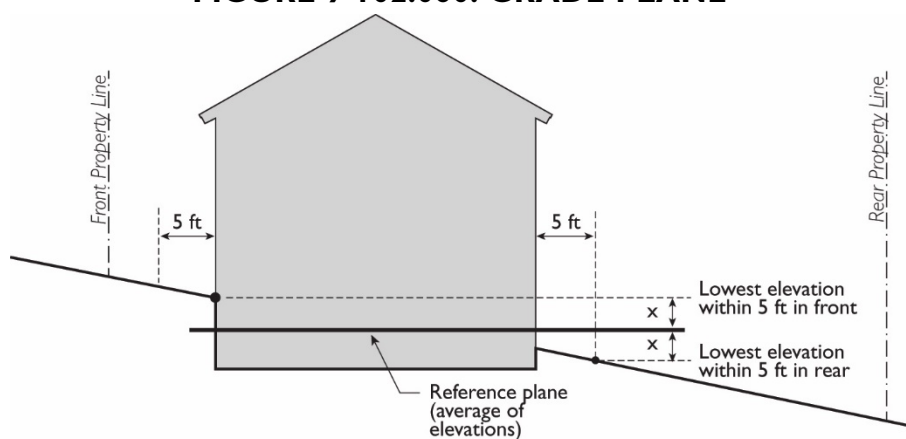


**9-102.060 Determining Grade**

- (a) **Determining Grade.** Grade is the location of the ground surface. For purposes of this Chapter, the grade of a building used to determine building height shall be determined by one or more of the following:
- (1) **Average Grade.** A horizontal line approximating the ground elevation through each building on a site used for calculating the exterior volume of a building. Average grade is calculated separately for each building.
  - (2) **Existing Grade.** The existing elevation of the ground at any point on a lot. Existing grade also may be referred to as natural grade.

- (3) **Finished Grade.** The lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the lot line, or when the lot line is more than five feet from the building, between the building and a line five feet from the building.
- (4) **Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than five feet from the building, between the building and a point five feet from the building.

**FIGURE 9-102.060: GRADE PLANE**

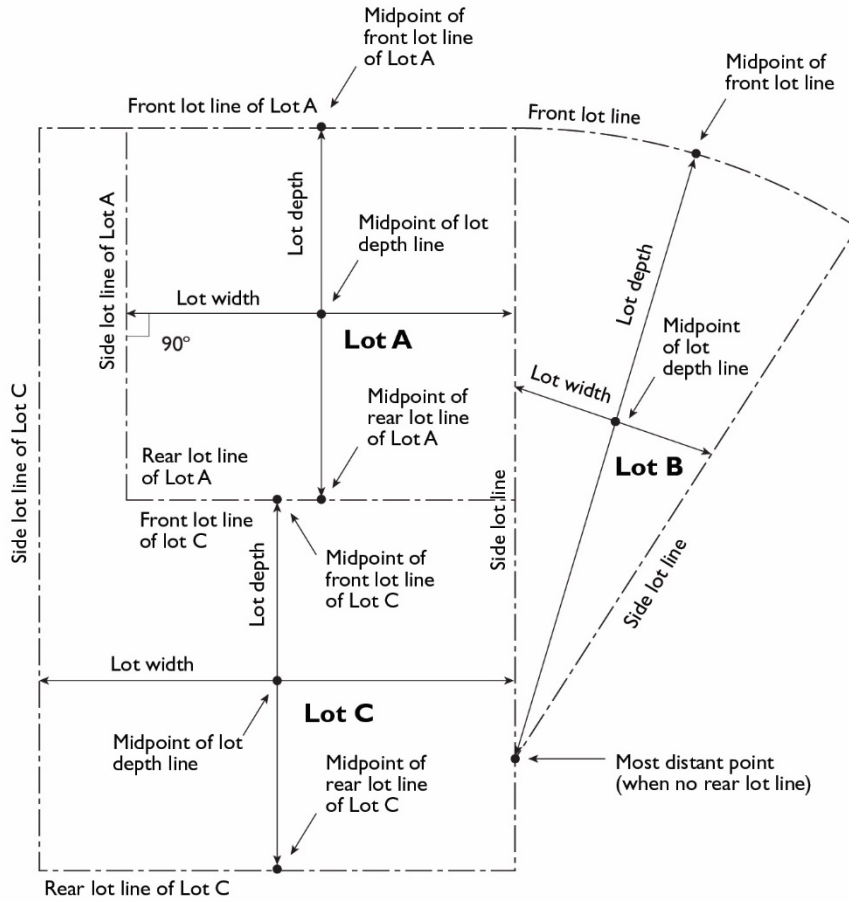


**9-102.070 Measuring Lot Width and Depth**

- (a) **Lot Width.** Lot width is the horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.
- (b) **Lot Depth.** Lot depth is measured along a straight line drawn from the midpoint of the front lot line to the midpoint of the rear lot line or to the most distant point on any other lot line where there is no rear lot line.



**FIGURE 9-102.070: MEASURING LOT WIDTH AND DEPTH**



**9-102.080 Determining Floor Area**

The floor area of a building is the sum of the gross horizontal areas of all floors of a building or other enclosed structure, measured from the outside perimeter of the exterior walls and/or the centerline of interior walls.

- (a) **Included in Floor Area.** Floor area includes, but is not limited to, all habitable space (as defined in the Building Code) that is below the roof and within the outer surface of the main walls of principal or accessory buildings, the centerlines of party walls separating such buildings or portions thereof, or lines drawn parallel to and two feet within the roof line of any building without walls. In the case of a multi-story building that has covered or enclosed stairways, stairwells, or elevator shafts, the horizontal area of such features shall be counted only once at the floor level of their greatest area of horizontal extent. The area of mezzanines and sleeping lofts shall not be counted if the space is between two floors.

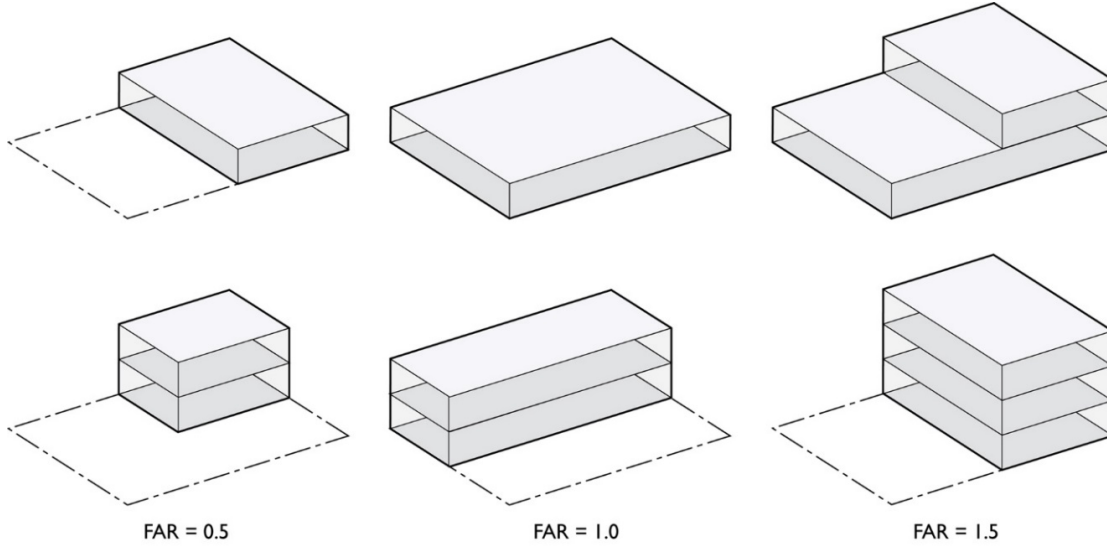
- (b) **Excluded from Floor Area.** Floor area does not include the following: mechanical, electrical, and communication equipment rooms that do not exceed two percent of the building's gross floor area; bay windows or other architectural projections where the vertical distance between the lowest surface of the projection and the finished floor is 30 inches or greater; areas that qualify as usable open space; solar panels and solar structures, and, in non-residential buildings, areas used for off-street parking spaces or loading spaces, driveways, ramps between floors of a multi-level parking garage, and maneuvering aisles that are located below the finish grade of the property.
- (c) **Non-Residential Uses.** For non-residential uses, gross floor area includes interior walkways interior courtyards, walkways, paseos, and corridors covered by a roof or skylight. Non-residential gross floor area does not include arcades, porticoes, and similar open areas that are located at or near street level and are accessible to the general public but are not designed or used as sales, display, storage, service, or production areas.

#### **9-102.090 Determining Floor Area Ratio**

The floor area ratio (FAR) is the ratio of the floor area, excluding the areas described below, of all principal and accessory buildings on a site to the site area. To calculate the FAR, floor area is divided by site area, and typically expressed as a decimal. For example, if the floor area of all buildings on a site totals 20,000 square feet, and the site area is 10,000 square feet, the FAR is expressed as 2.0. In single family homes and duplexes, any portion of a floor with a ceiling height greater than 12 feet is counted twice for purposes of calculating compliance with the maximum residential floor area allowed under subsection 15.04.201.030(G).

- (a) **Excluded from Floor Area in Calculating FAR.** The following are excluded from the floor area when calculating FAR.
  - (1) **Underground Areas.** Floor area located below finished grade.
  - (2) **Parking.** Parking areas located below finished grade or finished floor of habitable space where the vertical distance between finished grade and finished floor is five feet or less. Structured parking areas located above finished grade where the vertical distance between finished grade and the floor of the parking level is five feet or less.
  - (3) **Sideloaded or Detached Garages.** Sideloaded or detached garages not exceeding 400 square feet, located to the rear of residential structures, a minimum of 40 feet away from the front lot line, and accessed by a driveway.

**FIGURE 9-102.090: DETERMINING FLOOR AREA RATIO**



**9-102.100 Determining Lot Frontage**

- (a) **Corner Lot.** The front of a lot is the narrowest dimension of the lot with street frontage.
- (b) **Through Lot.** The front yard of a through lot abuts the street that adjoining lots use to provide primary access into the dwelling.

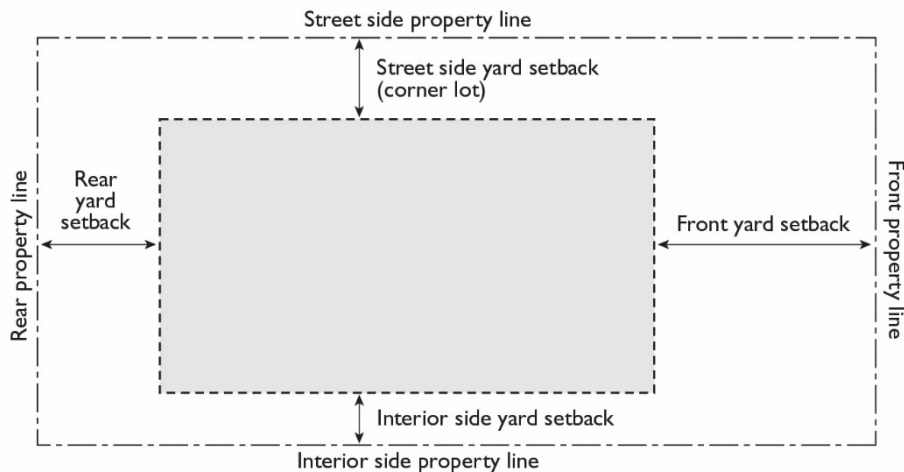
**9-102.110 Determining Setbacks**

A setback line defining a required yard is parallel to and at the specified distance from the corresponding front, side, or rear lot line. The following regulations for determining yards apply when a lot abuts a proposed street or alley.

- (a) **Yards Abutting Planned Street Expansions.** If a property abuts an existing or proposed street for which the existing right-of-way is narrower than the right-of-way ultimately required for the street, the required setback shall be established from the future right-of-way rather than the property line.
- (b) **Yards on Alleys.**
  - (1) If a side lot line abuts an alley, the yard shall be considered an interior side yard rather than a corner side yard.
  - (2) In computing the minimum yard for any lot where such yard abuts an alley, no part of the width of the alley may be considered as part of the required yard.

- (c) **Measuring Setbacks.** Setbacks shall be measured as the distance between the nearest lot line and the closest point on the exterior of a building or structure along a line at right angles to the lot line. Setbacks shall be unobstructed from the ground to the sky except where allowed pursuant to Section 15.04.601.020, Building Projections into Yards, subject to compliance with the Building Code.

**FIGURE 9-102.110: DETERMINING SETBACKS (YARDS)**



### 9-102.120 Determining Natural Slope

Natural slope, meaning the slope of the ground prior to any soil disturbance, shall be determined by measuring the horizontal distance between adjacent contours on a United States Geologic Survey (USGS) 7.5 minute quadrangle map or other topographic map acceptable to the Zoning Administrator with a scale of not less than 1:24000 (one inch = 2,000 feet) and contour intervals of not more than 20 feet, and then dividing the difference in elevation between the two contours by the measured horizontal distance. The horizontal distance shall be measured perpendicular to the contours.

### 9-102.130 Measuring Signs

The calculations of measurements related to signs are described in Chapter 9-406, Signs.

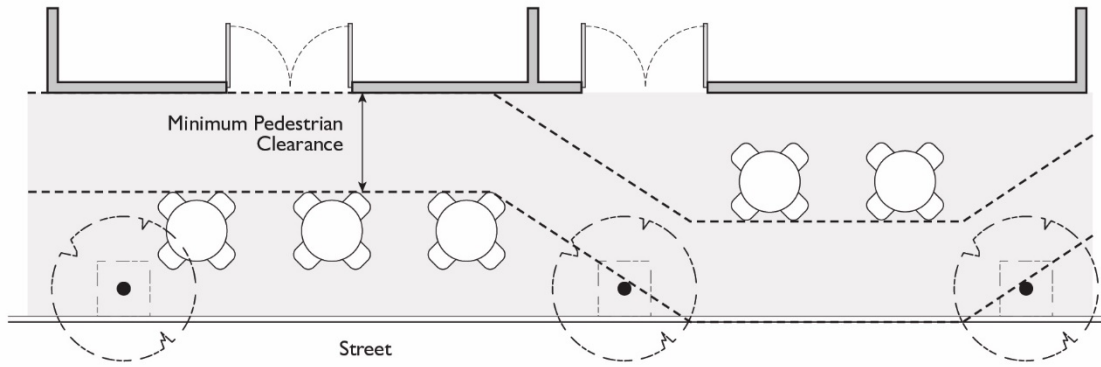
### 9-102.140 Measuring Parking Lot Landscaping

For the purpose of calculating required parking lot landscaping, parking lot areas are deemed to include parking and loading spaces as well as aisles, vehicle entry and exit areas, and any adjacent paved areas. Parking lot area does not include enclosed vehicle storage areas.

### 9-102.150 Measuring Pedestrian Clearance

The minimum distance shall be measured from the edge of any table, chair, bench, planter, or other appurtenance used as part of an outdoor dining area to any obstruction within the sidewalk area.

**FIGURE 9-102.140: MEASURING PEDESTRIAN CLEARANCE**



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# Series 800: Administration and Permits

## Chapter 9-800 Administrative Provisions Overview

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### Sections:

9-800.010	Purpose
9-800.020	Applicability

### **9-800.010 Purpose**

This Series constitutes the Administrative Provisions of the Development Title. It establishes the overall responsibilities of review and decision-making bodies and the criteria and procedures to be used to review and approve proposed land uses and development for compliance with the Development Title. The intent of this Division is to prescribe regulations and permitting procedures for the administration of this Title.

### **9-800.020 Applicability**

All use and development of land or structures, construction of buildings and improvements to the land, and changes in the use of land or structures must obtain permits and approvals in accordance with this Title, unless specifically exempted.

## Chapter 9-801 Planning and Review Authorities

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*This chapter expands the Planning Agency to include a Zoning Administrator, which will streamline the process. The responsibilities of the Director have been refined, reflecting this new position, and now include the authority of a Building Official, Code Enforcement Manager, and Fire Warden. The Director may serve as the Zoning Administrator.*

### Sections:

9-801.010	Purpose
9-801.020	Planning Agency
9-801.030	Board Of Supervisors
9-801.040	Planning Commission
9-801.050	Director of the Community Development Department
9-801.060	Zoning Administrator
9-801.070	Planning And Development Services Division
9-801.080	Environmental Review Officer

### **9-801.010 Purpose**

The intent of this Chapter is to specify the roles and responsibilities of all bodies, officials, and administrators in implementing and enforcing this Title.

### **9-801.020 Planning Agency**

A Planning Agency for San Joaquin County is hereby created and established. It shall consist of the following:

- (a) Board of Supervisors;
- (b) Planning Commission;
- (c) Director of the Community Development Department;
- (d) Zoning Administrator;
- (e) Planning and Development Services Divisions; and
- (f) Environmental Review Officer.

### **9-801.030 Board Of Supervisors**

The Board of Supervisors has the following functions as they apply to this Title:

- (a) **Appointments.** To exercise all appointing power provided under state law and this Title, including the appointment of the Director of the Community Development Department and the members of the Planning Commission;
- (b) **Adoptions.** To adopt the General Plan, Master Plans, Public Financing Plans, Specific Plans, regulations, ordinances, and environmental guidelines;



- (c) **Amendments.**
  - (1) To initiate, consider, and adopt, reject, or modify amendments to the General Plan map and text as required by the provisions of Chapter 9-807, General Plan Amendments, following a public hearing and recommended action by the Planning Commission;
  - (2) To initiate, consider, and adopt, reject, or modify amendments to the Zoning Map and to the text of the Development Title as required by the provisions of Chapter 9-808 (Development Title Text and Zoning Map Amendments) following a public hearing and recommended action by the Planning Commission;
  - (3) To initiate, consider, and adopt, reject, or modify amendments to Master Plans, Public Financing Plans and Specific Plans, as appropriate, consistent with the procedures of Chapters 9-302, 9-612, and 9-303, respectively;
- (d) **Appeals.** To be the final appellate body on all matters as specified in this Title;
- (e) **Annual Reviews.** To annually review the Capital Improvement Program of the County for its conformity with the General Plan, pursuant to Chapter 7 (commencing with Section 65400) of the Government Code;
- (f) **Legislative Body.** To serve as the legislative body as that term is used in the Subdivision Map Act; and
- (g) **Environmental Reviews.** To determine that there has been adequate environmental review under the provisions of the California Environmental Quality Act, of all matters the Board of Supervisors is considering.

#### **9-801.040 Planning Commission**

The Planning Commission role as part of the Planning Agency shall be as provided in this Section.

- (a) **Membership.** The Planning Commission shall consist of five members who shall be appointed by the Board of Supervisors in the following manner:
  - (1) Five members composed of one resident from each of the five Supervisorial Districts;
  - (2) If a member is moved from one Supervisorial District into another because of a change in District boundaries, that member may complete the remainder of his or her term.
- (b) **Term.** The term of office of each member of the Planning Commission shall be four years beginning on the first day of the term of office of the Supervisor from whose Supervisorial District the member is appointed and ending on the last day of such Supervisorial term; provided that the term of office of members appointed in July from the 2nd and 4th Supervisorial Districts shall begin on the date of appointment and shall end on the last day of the term of office of the Supervisors from the 2nd and 4th Supervisorial Districts, which Supervisorial terms end in January; provided further that the term of office of the member appointed in July, from the 5th Supervisorial District shall begin on the date of appointment and shall end on the last day of the term of office of the Supervisor from the 5th Supervisorial District, which Supervisorial term began in January; provided further that the terms of office of

members appointed in June, from the 1st and 3rd Supervisorial Districts shall end on the last day of the term of office of the Supervisors from the 1st and 3rd Supervisorial Districts, which Supervisorial terms began in January. A member of the Planning Commission may continue in office after the end of the term of office until a successor member has been appointed by the Board of Supervisors and has taken the oath of office.

- (c) **Vacancies and Removal.** Vacancies in the office of an appointed member of the Planning Commission shall be filled by appointment of the Board of Supervisors for the unexpired term. Any member of the Planning Commission may be removed for cause by majority vote of the Board of Supervisors. The Board of Supervisors shall declare a vacancy in the office of any member who is absent from three consecutive regular meetings of the Planning Commission without prior notification given to the Planning Commission Chairperson. A vacancy in the office of Planning Commissioner shall occur upon the vacancy in the office of Supervisor of the Supervisorial District from which the Planning Commissioner is appointed.
- (d) **Advisory Staff.** The County Counsel, the Director of Environmental Health, and the Director of Public Works are designated as advisory staff to the Planning Commission. Each advisory staff may designate one deputy or assistant to attend Planning Commission meetings.
- (e) **Officers and Rules.** Annually, the Planning Commission shall elect a Chairperson and a Vice-Chairperson from among the appointed members. No appointed member shall be elected Chairperson or Vice-Chairperson for more than two consecutive terms. The Director of the Community Development Department shall be the Secretary to the Planning Commission. The Planning Commission shall adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, and determinations. All decisions and recommendations of the Planning Commission shall be carried by the affirmative votes of not less than a majority of its total voting members.
- (f) **Functions.** The Planning Commission shall have the following functions in the administration of this Title and related regulations and policies:
  - (1) Prepare, periodically review, and revise, as necessary, the General Plan for the County and any Master Plans, Specific Plans, and Planned Development zones, as necessary or desirable for the implementation of the General Plan;
  - (2) Consider and recommend amendments to the General Plan, Master Plans, Specific Plans, Planned Development zones, Zoning Maps, and this Title, as appropriate, to the Board of Supervisors;
  - (3) Investigate and make recommendations regarding reasonable and practical means for implementing the General Plan;
  - (4) Annually review the Capital Improvement Program of the County for its conformity with the General Plan, any Specific Plans, and all elements and parts of the General Plan, and provide a report concerning said Capital Improvement Plan to the Board of Supervisors;
  - (5) Serve as the appellate body for discretionary staff decisions;
  - (6) Review and act upon referrals or appeals from the Floodplain Administrator;

- (7) Act as the advisory agency, as that term is used in the Subdivision Map Act, on Major Subdivisions;
  - (8) Approve, conditionally approve, modify, or deny applications for Conditional Use Permits and Variances;
  - (9) Determine that there has been adequate environmental review under the provisions of the California Environmental Quality Act, of all matters the Planning Commission is considering;
  - (10) Recommend changes to the environmental guidelines for the County; and
  - (11) Perform such other functions as the Board of Supervisors may require, including conducting studies and preparing plans other than those authorized by Title 7 of the Government Code.
- (g) **Compensation.** Members attending Planning Commission meetings shall receive \$100.00 per meeting, plus mileage and actual and necessary expenses incurred in connection with carrying out the duties of a member of the Planning Commission. Such compensation may be changed by subsequent Resolution of the Board of Supervisors.

#### **9-801.050 Director of the Community Development Department**

The Director of the Community Development Department shall have the following functions in the administration of the Title and related regulations and policies:

- (a) **Secretary.** Serve as Secretary to the Planning Commission, or as designated by the Director;
- (b) **Advisor.** Act as the advisory agent or agency, as provided in Government Code Section 66415, for Mergers, Minor Subdivisions, and Notices of Violation;
- (c) **Administrator.** Act as the chief administrative officer of the Planning and Development Services Divisions;
  - (1) Maintain, interpret, and administer the Development Title, including oversight of processing of applications, abatements and other enforcement actions;
  - (2) Prepare and effect rules and procedures necessary or convenient for the conduct of the Director's business. These rules and procedures may include the administrative details of hearings officiated by the Director or the Zoning Administrator (e.g., scheduling, rules of procedure and recordkeeping) as well as other written policies and procedures needed to implement this Title;
  - (3) Issue administrative regulations for the submission and review of applications subject to the requirements of this Title and Government Code Section 65950 (Deadlines for Project Approval Conformance; Extensions), including determining what constitutes a complete application; and
  - (4) Negotiate specific components and provisions of development agreements, as provided by Chapter 9-813; and
- (d) **Review Authority.** Conduct the review of public projects as specified in Section 65402 of the Government Code;

- (e) **Environmental Review.** Serves as or appoints the Environmental Review Officer or his/her designee;
- (f) **Staff Review.** Review and act upon all applications requiring Director approval; and
- (g) **Zoning Administrator.** Oversee the staff member who serves as the Zoning Administrator, which may be the Director himself/herself.
- (h) **Building Official and Code Enforcement.** Oversee the staff members who serve as the Building Official and Code Enforcement Manager, which may be the Director himself/herself.
- (i) **Fire Warden.** Oversee the staff member who serves as the Fire Warden, which may be the Director himself/herself.

#### **9-801.060 Zoning Administrator**

- (a) **Zoning Administrator's Responsibilities.** The powers and duties of the Zoning Administrator under this Title include but are not limited to the following.
  - (1) Interpret the Development Title for members of the public and to other County Departments.
  - (2) Review applications for discretionary permits and approvals under this Title for conformance with applicable submission requirements and time limits in accordance Chapter 9-802, Common Procedures, and determine when applications are complete
  - (3) Provide public notice, as required pursuant to Section 9-802.080, Public Notice.
  - (4) Hear and decide applications for Administrative Use Permits pursuant to Chapter 9-804, Use Permits.
  - (5) Hear and decide requests for minor modifications to approved permits, pursuant to Section 9-802.130, Modification of Approved Plans.
  - (6) Make decisions on requests for waivers of dimensional requirements, pursuant to Chapter 9-806, Waivers.
  - (7) Review and make decisions on applications for signs under Chapter 98-406, Signs.
  - (8) Make recommendations to the Planning Commission and Board of Supervisors on all matters on which they have decision-making authority;
  - (9) Investigate and make reports to the Planning Commission on violations of permit terms and conditions when the County has initiated revocation procedures, pursuant to Section 9-802.140, Revocation.
  - (10) Review applications for permits and licenses for conformance with this Title, pursuant to Chapter 9-803, Waivers.
  - (11) Refer items to the Planning Commission where, in his/her opinion, the public interest would be better served by a Planning Commission public hearing and action.
  - (12) Refer an application for investigation and a report to one or more expert consultant(s) qualified to advise as to whether the proposal will conform to the General Plan or any applicable Master Plans, Specific Plans, regulations, policies, development standards, and performance standards.

### 9-801.070 Planning And Development Services Division

The Planning and Development Services Division shall have the following functions in the administration of this Title and related regulations and policies:

- (a) **Administer General Plan.** Perform the duties required for the proper preparation and administration of the General Plan, as provided by law and ordinance;
- (b) **Administer Master Plans and Public Financing Plans.** Perform the duties required for the proper preparation and administration of Master Plans and Public Financing Plans and regulations as provided by ordinance;
- (c) **Administer Specific Plans.** Perform the duties required for the proper preparation and administration of Specific Plans and regulations as provided by law and ordinance;
- (d) **Administer Planned Development zones.** Perform the duties required for the proper preparation and administration of Planned Development zone as provided by this Title;
- (e) **Advise Board and Commission.** Provide administrative support and professional advice to the Planning Commission and Board of Supervisors;
- (f) **Special Studies and Surveys.** Perform special studies and surveys as directed by the Board of Supervisors;
- (g) **Publicize General Plan.** Endeavor to promote public interest in, comment on, and understanding of the General Plan and regulations relating to it;
- (h) **Consult on General Plan.** Consult and advise with public officials and agencies; public utility companies; civic, educational, professional, and other organizations; and citizens concerning the preparation and implementation of the General Plan;
- (i) **Coordinate Plans and Programs.** Promote the coordination of local plans and programs with the plans and programs of other public agencies; and
- (j) **Report to Board.** Provide an annual report to the Board of Supervisors on the status of the General Plan and progress in its implementation.

### 9-801.080 Environmental Review Officer

The role of the Environmental Review Officer shall be as provided in this Section.

- (a) **Appointment.** The Environmental Review Officer shall be appointed by and serve at the pleasure the Director of the Community Development Department.
- (b) **Term.** The term of the appointment shall be at the discretion of, and subject to the termination by, the Director of the Community Development Department.
- (c) **Functions.** The Environmental Review Officer shall have the following functions in the administration of this Title and related regulations and policies:

- (1) Be responsible for the preliminary screening of projects to determine which are exempt from and which are subject to the requirements of the California Environmental Quality Act;
- (2) Conduct Initial Studies and hold meetings, when necessary, to make determinations as to whether a Notice of Exemption will be issued, a Negative Declaration prepared, or an Environmental Impact Report required for a project;
- (3) Prepare Negative Declarations on projects that will have no significant effect on the environment; and
- (4) Prepare and maintain guidelines for the implementation of the California Environmental Quality Act by San Joaquin County.

## Chapter 9-802 Common Procedures

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*This chapter consolidates and streamlines existing procedures. It also explicitly allows for electronic submission of applications and modification of application requirements where appropriate.*

### Sections:

9-802.010	Purpose
9-802.020	Application Forms and Fees
9-802.030	Pre-Application Review
9-802.040	Review of Applications
9-802.050	Multiple Applications
9-802.060	Environmental Review
9-802.070	Public Notice
9-802.080	Conduct of Public Hearings
9-802.090	Action
9-802.100	Effective Date
9-802.110	Expiration and Extension
9-802.120	Modification of Approved Plans
9-802.130	Revocation
9-802.140	Appeals
9-802.150	Time Limit On Approvals
9-802.160	One Year Wait On Denials
9-802.170	Summary of Decision Making, Public Hearing, and Notice Requirements

### **9-802.010 Purpose**

This Chapter establishes the procedures that are common to the application for and processing of all permits and approvals provided for in the Development Title, except as superseded by a specific requirement of this Title or State law.

### **9-802.020 Application Forms and Fees**

- (a) **Authority to File Applications.** The following persons and/or entities are considered qualified applicants and have authority to file an application for review or approval under this Title:
- (1) The owner of the subject property (“owner”), including any person, corporation, partnership or other legal entity that has a legal or equitable title to land that is the subject of a development proposal.
  - (2) The owner’s agent, with written consent of the owner.
  - (3) The purchaser of the subject property, with written consent of the owner.
  - (4) A lessee, with written consent of the owner.
- (b) **Application Contents.**

- (1) **Application Forms.** The Director must prepare and issue application forms that specify the information and materials required from applicants for projects subject to the provisions of the Development Title.
  - (2) **Electronic Submissions and Supporting Information and Materials.** The Zoning Administrator may require the electronic submission of application materials, consistent with the Government Code, and also is authorized to request the submission of additional information and materials from the applicant when necessary to complete the review of the project. The information and materials may include, but are not limited to, written descriptions, photographs, plans, drawings, maps, renderings, models, material samples and other items necessary to describe existing conditions and the proposed project. Unless otherwise specified, all renderings must depict the proposed structure, landscaping, and other improvements, and surrounding uses as they would appear after project completion.
  - (3) **Submittal Waivers.** The Zoning Administrator may waive certain submittal requirements to tailor the requirements to the information necessary to review the particular application.
  - (4) **Public Review.** All forms, information, and materials submitted in support or in opposition to an application become property of the County, may be distributed to the public, and will be made available for public inspection. Upon reasonable request and during normal business hours, any person may examine these submittals in the Planning and Development Services Division. Unless prohibited by law, copies of these submittals will be made available at a reasonable cost.
- (c) **Application Fees.**
- (1) **Schedule of Fees.** The Board of Supervisors is responsible for maintaining a Master Fee Schedule for fees and deposits for permits, appeals, amendments, penalties, copying, and similar items to defray the cost of processing applications under this Title.
  - (2) **Payment of Fees.** Payment of the fee is required in order for an application to be complete, unless a fee waiver has been granted. Previously paid fees may be applied toward the cost of a full application if the full application is submitted no more than three years from the date the pre-application is deemed complete for processing and if the full application is substantially in conformance with the pre-application.
  - (3) **Multiple Applications.** The County's processing fees are cumulative. For example, if the application for a Master Plan includes a Conditional Use Permit, both fees will be charged.
  - (4) **Refund of Fees.** Application fees are non-refundable unless otherwise provided for in the County Code or by a policy of the Board of Supervisors.

#### **9-802.030 Pre-Application Review**

- (a) **Purpose.** Pre-Application Review is an optional review process for discretionary permits. This review's purpose is to provide information on relevant policies, zoning regulations, and procedures. This review is intended for large, complex projects and/or potentially controversial projects.
- (b) **Exemption from Permit Streamlining Act.** An application that is accepted for Pre-Application Review is not complete under the California Permit Streamlining Act unless and until the Zoning Administrator has received the application, reviewed it, and determined it to be complete as required by Section 9-802.050, Review of Applications.



- (c) **Review Procedure.** The Zoning Administrator conducts the Pre-Application Review. The Zoning Administrator may consult with or request review by any County agency, department, or official with interest in the application.
- (d) **Recommendations are Advisory.** Neither Pre-Application Review nor the information conveyed during the Pre-Application Review is a recommendation for approval or denial of an application by County representatives. Any recommendations that result from Pre-Application Review are advisory; they are not binding on the applicant or the County.

#### **9-802.040 Review of Applications**

- (a) **Review for Completeness.**
  - (1) The Zoning Administrator must determine whether an application is complete within 30 days of the date that the application is filed with the required fee. If the Zoning Administrator does not make such determination, the application is deemed complete pursuant to State law and shall be processed accordingly.
  - (2) The Zoning Administrator and the applicant may mutually agree in writing to extend this time period.
- (b) **Incomplete Application.**
  - (1) **Zoning Violations.** An application is incomplete if conditions exist on the site in violation of this Title or any permit or other approval granted in compliance with this Title, unless the proposed project includes a correction of the violation(s) or resolution of the violation is being addressed in a concurrent enforcement action.
  - (2) **Notification of Deficiencies.** If an application is incomplete, the Zoning Administrator must provide written notification to the applicant specifically identifying how the application is deficient and stating that the Planning and Development Services Division will not process an incomplete application. The application must then be classified as “incomplete.”
  - (3) **Correcting Deficiencies.** The applicant must provide the materials and/or information required to correct the deficiencies in the application within the time limit specified by the Zoning Administrator, which must not be sooner than 30 days. The Zoning Administrator may grant one extension of up to 90 days.
  - (4) **Expiration of Application.** If an applicant fails to correct any specified deficiency within the specified time limit, the application will be deemed expired. After the expiration of an application, the submittal of a new, complete application is required.
  - (5) **Appeal of Determination.** The decision that an application is incomplete may be appealed to the Planning Commission in accordance with Section 9-802.150, except that there must be a final written determination on the appeal no later than 60 days after the Planning Commission’s receipt of the appeal.
- (c) **Complete Application.**
  - (1) **Complete Application Required.** An application must be complete before review of the application begins.

- (2) **Determination of Complete Application.** An application is complete when the Zoning Administrator determines that it is submitted on the required form, includes all the necessary information to decide whether the application will comply with the requirements of this Title, and is accompanied by the applicable fee(s). The Zoning Administrator's decision under this paragraph is final and not subject to review by a decision-making body.
- (3) **Recording Date and Scheduling Hearing.** When an application is determined to be complete, the Zoning Administrator must make a record of that date. If the application requires a public hearing, the Zoning Administrator must schedule it within a reasonable period of time (not more than 60 days from the date of the application is determined to be complete) and notify the applicant of the date and time.

### 9-802.050 Multiple Applications

When multiple applications that require public hearings are filed for the same projects, all issues shall be heard together by the review authority with the most authority, and other review bodies shall provide recommendations to that review authority unless more specific procedures for a specific application or procedure are prescribed elsewhere in the Development Title. In other words, if a rezoning also is required along with a Use Permit, then the Planning Commission shall make recommendations to the Board of Supervisors.

### 9-802.060 Environmental Review

Before approving any application subject to discretionary review under this Title, the requirements of the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 *et seq.*) and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) must be met.

- (a) **Procedures.** The County adopts and incorporates by reference the State CEQA Guidelines as its environmental review procedures.
- (b) **Determination of Exemption.** The Environmental Review Officer must determine whether a project is exempt from environmental review under CEQA and, if so, must make a record of that determination. If the project is not exempt, a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report must be prepared at the applicant's expense.
- (c) **Exempt Projects.** Prior to approving the project, the decision-maker(s) must first approve the Environmental Review Officer's determination of an exemption. Following project approval, a Notice of Exemption need not be filed with the Recorder-County Clerk unless the applicant requests it, or the County determines that it is necessary. The applicant must pay all filing fees for the Notice of Exemption.
- (d) **Non-exempt Projects.** If the Environmental Review Officer determines that the project is not exempt from environmental review under CEQA, the applicant must be notified and must deposit with the County sufficient funds to pay the anticipated cost of preparation and processing of the required environmental document, including the County's administration fee. Prior to approving the project, the decision-maker must first approve the Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report. Any identified mitigation measures must be incorporated into the conditions of approval of the project unless a Statement

of Overriding Considerations is adopted. Following project approval, a Notice of Determination must be filed with the San Joaquin Clerk of the Board-Recorder's Office, County Recorder Division at the applicant's expense.

### **9-802.070 Public Notice**

Whenever the provisions of this Title require public notice, notification must be provided in compliance with this section and State law. Unless otherwise specified in the Development Title or applicable State law, all notice must be provided at least 10 days prior to the public hearing or, where no hearing is required, 15 days before the date of action. The type of notice(s) required is indicated in Table 9-802.170, Decision Making, Public Hearing, and Notice Requirements.

(a) **Contents of Notice.** The notice must include the following information:

- (1) The location of the real property, if any, that is the subject of the application;
- (2) A general description of the proposed project or action;
- (3) The date, time, location, and purpose of the public hearing or the date of action when no public hearing is required;
- (4) The identity of the hearing body or officer;
- (5) The names of the applicant and the owner of the property that is the subject of the application;
- (6) The location and times at which the complete application and project file may be viewed by the public;
- (7) If a public hearing is required, a statement that any interested person or authorized agent may appear and be heard; and
- (8) A statement describing how to submit written comments, what the appeal procedures are, and that failure to raise an issue may limit appeal rights.

(b) **Types of Notice.**

- (1) ***On-Site Poster (Type A).*** The applicant erects a poster on the site of the proposed project, readily visible to the public, in a format prescribed by the Zoning Administrator. This poster must remain in place until the public hearing or date of action, after which the applicant must remove the poster.
- (2) ***Limited Notice (Type B).*** Notice is provided by first class mail delivery to the applicant, the owner, any occupant of the subject property, and all property owners of record within 300 feet of the subject property as shown on the latest available assessment role.
- (3) ***Posted and Online Notice (Type C).*** Notice is posted at County's Administrative Office and on the County's website and at two additional public places within the County.
- (4) ***Newspaper Notice (Type D).*** A display advertisement of sufficient size to convey the required information, consistent with Government Code Sections 6040 through 6044, is published in a newspaper of general circulation.
- (5) ***Mailed Notice (Type E).*** Notice is provided by first class mail delivery to the parties listed below. If the number of owners to whom notice would be mailed or delivered to is greater than 1,000, Type D newspaper notice may be used instead.

- (A) The applicant, the owner, and any occupant of the subject property.
  - (B) Depending on the General Plan designation of the property involved, a notice of the hearing, for property-specific applications only, shall be mailed to all owners of real property as shown on the latest tax rolls, as follows:
    - (i) In agricultural and conservation areas, and in freeway service and industrial areas outside of communities, all owners of property within 2,600 feet of the perimeter of the property. However, property owners of no more than 10 parcels in any direction need to be notified, provided all owners within 1,000 feet are notified;
    - (ii) In rural residential and very low-density residential areas, all owners of property within 1,000 feet of the perimeter of the property. However, property owners of no more than five parcels in any direction need to be notified, provided all owners within 500 feet are notified; and
    - (iii) In all other areas, all property owners within 500 feet of the perimeter of the property.
    - (iv) All neighborhood and community organizations that have previously filed a written request for notice of projects in the area where the site is located.
  - (C) For property-specific applications only, notice of the hearing shall be mailed or sent by email to each local agency expected to provide water, sewage disposal, streets, roads, schools, parks, or other essential facilities or services to the project.
  - (D) Any person or group who has filed a written request for notice regarding the specific application and has paid any required fee that the Board of Supervisors has adopted to provide such service.
- (6) **Additional Notice (Type F).** Notice may be provided in any other manner deemed necessary or desirable by the Zoning Administrator.
- (c) **Failure to Receive Notice.** The validity of the proceedings is not affected by the failure of any person or entity to receive notice under this Section.

### 9-802.080 Conduct of Public Hearings

Whenever the provisions of this Title require a public hearing, the hearing must be conducted in compliance with the requirements of State law and as follows.

- (a) **Staff Report.** At least five days prior to the hearing, the Zoning Administrator must issue a staff report containing an analysis of the project, recommendation for action, and any recommended conditions of approval deemed necessary to ensure that the project will comply with the General Plan, any applicable Master Plan, Public Financing Plan, Specific Plan, or Planned Development zone, the Development Title, and any other applicable County regulations.
- (b) **Presentations.** At the hearing, the Zoning Administrator must briefly present his or her analysis of the project and recommendation for action. If the hearing is before the Board of Supervisors, the Planning Commission's recommendation must also be presented. The applicant must also be provided an opportunity to make a presentation.

- (c) **Testimony.** Any person may appear at the public hearing and submit oral or written evidence, either individually or as a representative of a person or an organization.
- (d) **Time Limits.** The presiding officer may establish time limits for individual testimony and may request that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals.
- (e) **Continuation of Public Hearing.** The body conducting the public hearing may continue it to a fixed date, time and place, in which case no additional notification is required. Or, the body conducting the public hearing may continue it to an undetermined date and provide notice of the continued hearing when the date, time and place for the hearing have been determined.
- (f) **Investigations.** The body conducting the public hearing may require investigations to be conducted, as it deems necessary and in the public interest, in any matter to be heard by the hearing body. The investigation may be made by a committee of one or more members of the hearing body or by County staff. Facts established by the investigation will be submitted to the hearing body either in writing, to be filed with the records of the matter, or in testimony before the hearing body, and may be considered by the body in making its decision.

#### **9-802.090 Action**

When making a decision to approve, approve with conditions, modify, revoke or deny any discretionary permit under this Title, the responsible decision-maker must issue a Notice of Action and make findings as required by this Title.

- (a) **Date of Action.** After the close of the public hearing or, if no hearing is required, no sooner than ten days after any notice was provided, the decision-maker must make a decision to approve, approve with conditions, or deny the application. Decisions must also be made within any applicable time period set forth below.
  - (1) ***Project Exempt from Environmental Review.*** Within 30 days of the date the County has determined an application to be complete, a determination must be made whether the project is exempt from Environmental Review per State CEQA requirements.
  - (2) ***Project for which a Negative Declaration or Mitigated Negative Declaration is Prepared.*** Within 60 days of the date a Negative Declaration or Mitigated Negative Declaration has been completed and adopted for project approval, the County must take action on the accompanying discretionary project.
  - (3) ***Project to Develop Affordable Housing for which an Environmental Impact Report is Prepared.*** Within 90 days from the date that the decision-making authority certifies the Final Environmental Impact Report for an affordable housing project that meets the criteria set forth in California Government Code Section 6590(a)(2) for environmental review of affordable housing projects, the County must take action on the accompanying project.
  - (4) ***Project for which an Environmental Impact Report is Prepared.*** Within 180 days from the date the decision-making authority certifies a Final Environmental Impact Report, the County must take action on the accompanying discretionary project.

- (b) **Findings.** The decision must be based on the findings required by this Title. The findings must be based on consideration of the application, plans, testimony, reports, and other materials that constitute the administrative record and must be stated in writing. They may refer to a County resolution, ordinance, or record of the action on the application.
- (c) **Conditions of Approval.** In approving an application, the decision-maker may impose reasonable conditions it deems necessary to ensure that the project will comply with the General Plan, any applicable Master Plan, Public Financing Plan, Specific Plan, or Planned Development zone, the Development Title, and any other applicable County regulations.
- (d) **Referral Back to Planning Commission.** In approving applications requiring Board approval upon a recommendation of the Planning Commission, the Board of Supervisors may add, modify, or delete any terms of the permit itself or any provisions of the conditions of approval. Such action may, but need not be, referred back to the Planning Commission for its review and recommendation.
- (e) **Notice of Decision.** After the decision is made, the Zoning Administrator must issue a notice of decision. For a Planning Commission or Board action, this notice must consist of the approved resolution or ordinance and any associated conditions of approval. For a decision by any other decision-maker, a letter must be issued to the applicant indicating the decision and any written findings and conditions of approval. A copy of the notice must also be provided to any other person or entity that has filed a written request of such notification.

#### **9-802.100 Effective Date**

A final decision on an application for any discretionary approval subject to appeal is effective after the expiration of the 10-day appeal period following the date of action, unless an appeal is filed. No Building Permit or Business License for the structure or use that is the subject of the application may be issued until after the close of the 10-day appeal period.

#### **9-802.110 Expiration and Extension**

- (a) **Expiration.** The decision-maker, in the granting of any permit or approval, may specify a time within which the proposed use or construction must be undertaken and actively and continuously pursued. If no time period is specified, any permit or approval granted under this Title automatically expires if it is not exercised or extended within one year of its issuance.
  - (1) **Exercise of Use Permit.** A permit for the use of a building or land that does not involve construction is exercised when the permitted use has commenced on the site.
  - (2) **Exercise of Building Permit.** A permit for the construction or alteration of a building or structure is exercised when a valid County Building Permit, if required, is issued, and construction has lawfully commenced.
- (b) **Extensions.** The Zoning Administrator may grant a two-year extension of any permit or approval granted under this Title upon receipt of a complete written application with the required fee prior to the approval's expiration date. In order to grant an extension, the Zoning Administrator must make all of the following findings:

- (1) The applicant has clearly documented that he or she has made a good faith effort to commence and diligently pursue work;
  - (2) It is in the best interest of the County to extend the approval;
  - (3) There are no substantial changes to the project, no substantial changes to the circumstances under which the project is undertaken, and no new information of substantial importance that would require any further environmental review pursuant to the California Environmental Quality Act; and
  - (4) The applicant is maintaining the property in compliance with all applicable County regulations.
- (c) In granting an extension pursuant to subsection (b) above, the decision-maker may modify the conditions of approval as deemed necessary to fulfill the purposes of the Development Title.

### **9-802.120 Modification of Approved Plans**

- (a) **Minor Modifications.** The Zoning Administrator may approve minor modifications to approved plans or conditions of approval that are substantially consistent with the original findings and conditions of approval and that would not intensify any potentially detrimental effects of the project.
- (b) **Major Modifications.** Modifications that the Zoning Administrator determines are not minor require the approval of the original decision-maker. Any person holding a permit granted under this Title may apply for such modification by following the same procedure required for the initial application for the permit. Such modifications may be to the terms of the permit itself or to conditions of approval.

### **9-802.130 Revocation**

*This section allows the Zoning Administrator or County Counsel to initiate revocation proceedings, not just the Planning Commission or the Board. The revocation is done by the original decision-maker and is subject to appeal.*

Any permit granted under this Title may be revoked or modified for cause if any of the conditions or terms of the permit are violated or if any law or regulation is violated. The provisions of this section are not applicable to the termination of nonconforming uses, which are governed by the provisions of Chapter 9-403, Nonconforming Uses, Structures, and Lots.

- (a) **Automatic Revocation.** A development approval that has been granted or modified subject to one or more conditions, shall cease to be valid, and all rights or privileges that were granted shall lapse, even if other provisions in the Title are to the contrary, if any final judgment of a court of competent jurisdiction declares that one or more of the conditions are void or ineffective, or if the enforcement or operation of one or more of the conditions are enjoined or otherwise prohibited.
- (b) **Initiation of Proceeding.** The Zoning Administrator, County Counsel, the Planning Commission or the Board of Supervisors may initiate revocation proceedings.
- (c) **Public Notice.** Notice of Revocation must be provided if the original permit required notice.

- (d) **Required Findings.** After a duly-noticed public hearing, a permit may be revoked by the original decision-maker under any one of the following findings:
  - (1) The approval was obtained by means of fraud or misrepresentation of a material fact;
  - (2) One or more of the conditions upon which such development approval was granted have been violated;
  - (3) The use or facility for which the development approval was granted is so conducted or maintained as to be detrimental to the public health or safety, or as to be a public nuisance of the conditions upon which such development approval was granted have been violated; or
  - (4) The use, building, or structure has been substantially expanded beyond what is set forth in the original permit, thereby causing substantial adverse impacts to the surrounding neighborhood;
  - (5) The use in question has ceased to exist or has been suspended for one year or more; or
  - (6) There is or has been a violation of or failure to observe the terms or conditions of the permit or approval, or the use has been conducted in violation of the provisions of this Title or any other applicable law or regulation.
- (e) **Notice of Action.** A written determination of the revocation must be mailed to the permit holder within five days of determination.
- (f) **Appeals.** A revocation decision of the Zoning Administrator, the Director, or the Planning Commission may be appealed pursuant to Section 9-802.0140, Appeals.

### 9-802.140 Appeals

- (a) **Purpose and Applicability.** This section establishes the procedures for appeals of any action by the Zoning Administrator, Director, or Planning Commission in the administration or enforcement of the provisions of this chapter, as long as the decision is not prescribed as final in the individual section that authorizes the decision.
  - (1) **Appeals of Zoning Administrator Decisions.** Decisions of the Zoning Administrator may be appealed to the Planning Commission by filing a written appeal with the Planning Division.
  - (2) **Appeals of Director Decisions.** Decisions of the Director may be appealed to the Planning Commission by filing a written appeal with the Community Development Department.
  - (3) **Appeals of Planning Commission Decisions.** Decisions of the Planning Commission on permits and related approvals may be appealed to the Board of Supervisors by filing a written appeal with the Community Development Department. Appeal decisions of the Planning Commission are final and not subject to appeal to the County Council.
- (b) **Appeal Period.** Unless otherwise specified, appeals shall be filed within 10 days of the date of action, with the first day of the appeal period beginning the day after action is taken on the project, and if filed, shall stay any further action on the permit until finally resolved. If the end of the appeal period falls on a nonbusiness day, the appeal period shall be extended to include the close of the next business day.



- (c) **Who May Appeal.** Appeals may be filed only by one of the following: The applicant or the applicant's representative;
  - (1) The applicant or the applicant's representative;
  - (2) A person who may be adversely affected by the decision or who has participated in the review process by submitting written or oral testimony on the application or by attending a public hearing on the application; or
  - (3) A person who was prevented from participating in the review by circumstances beyond his or her control.
- (d) **Time Limits.** Unless otherwise specified in State or Federal law, all appeals must be filed in writing within 10 days of the date of the action, decision, motion, or resolution from which the action is taken. In the event an appeal period ends on a Saturday, Sunday, or any other day the County is closed, the appeal period is extended to the close of business on the next consecutive business day.
- (e) **Procedures.**
  - (1) **Filing.** The appeal must be written on the appropriate form provided by the County, identify the decision being appealed, clearly and concisely state the reasons for the appeal, and also state specifically how and where the underlying decision constitutes an abuse of discretion and/or is not supported by substantial evidence in the record. The appeal must be accompanied by the required fee.
  - (2) **Proceedings Stayed by Appeal.** The timely filing of an appeal shall stay all proceedings in the matter appealed including, but not limited to, the issuance of County building permits and business licenses.
  - (3) **Transmission of Record.** The Director or, in the case of appeals to the Board, the Clerk of the Board must schedule the appeal for consideration by the authorized hearing body within 60 days of the date the appeal is filed. The Director must forward the appeal, the notice of action, and all other documents that constitute the record to the hearing body. The Director must also prepare a staff report that responds to the issues raised by the appeal and may include a recommendation for action.
- (f) **Standard of Review.** The appellate body will review whether the underlying decision is supported by substantial evidence and/or constitutes an abuse of discretion. The same standards and evaluation criteria, including the findings required, apply as they were for the original application. The appellate body's review is limited to the issue(s) raised in the petition for appeal.
- (g) **Public Notice and Hearing.**
  - (1) **Notice.** Public notice must be provided, and the hearing conducted by the applicable appeal body in accordance with Sections 9.802.070 and 9.802.080. Notice must be provided in the same manner that was required for the action that is the subject of the appeal. Notice of the hearing must also be given to the applicant, the party filing the appeal, and any other interested person who has filed with the Clerk of the Board a written request for such notice. In the case of an appeal of a Planning Commission decision, notice of the appeal must also be given to the Planning Commission. The Planning Commission may be represented at the hearing.

- (2) **Hearing.** At the hearing, the appellate body must review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.
- (h) **Action.** The appellate body may affirm, modify, or reverse the original decision. When a decision is modified or reversed, the appellate body must state the specific reasons for modification or reversal. Decisions on appeals must be rendered within 30 days of the close of the hearing. An action to grant an appeal requires a majority vote of the hearing body members. A tie vote has the effect of rejecting the appeal.
- (i) **Referral Back by Board of Supervisors.** The Board of Supervisors may choose to refer a matter back to the Planning Commission for further consideration and a decision if significant new evidence is presented in conjunction with the appeal, which may include substantial changes to the original proposal.
- (j) **Judicial Action.** The appellate body's final decision may be subject to litigation in the Superior Court. Exhaustion of the administrative remedies provided in in this Title, in accordance with Government Code Section 65009 and common law, may be required for the Court to hear the merits of the litigation.

#### **9-802.150 Time Limit On Approvals**

Unless otherwise specified, applications shall be approved for a maximum of 36 months from the effective date of approval. In order for Zoning Clearances and other land use permits to remain active, the following must occur:

- (a) **Requirements or Conditions.** All conditions of approval must be complied with;
- (b) **Building Permits.** All required Building Permits (excluding any future permits allowed with an alternative phasing timeline by an approved land use permit) shall be issued prior to the expiration date of the land use permit;
- (c) **Improvement Plans.** All required Improvement Plans (excluding any future permits allowed with an alternative phasing timeline by an approved land use permit) shall be approved prior to the expiration date of the land use permit;
  - (1) Improvement Plans shall be submitted to the Community Development Department no less than one (1) month prior to the expiration date of the land use permit, unless permitted by the Director;
- (d) **Other Permits.** All required permits from other public agencies (excluding any future permits allowed with alternative phasing by an approved land use permit) shall be issued prior to the expiration date of the land use permit, unless otherwise stated.

#### **9-802.160 One Year Wait On Denials**

No application may be accepted if a similar application has been finally denied during the immediately preceding one-year period. For the purposes of this Section, "similar application" shall mean an application under the same regulation applicable to the same property. This Section shall not apply to applications denied without prejudice, which can be resubmitted within one year upon payment of a fee as set forth by resolution of the Board of Supervisors.

**9-802.170 Summary of Decision Making, Public Hearing, and Notice Requirements**

Table 9-802.170 summarizes decision-making responsibilities for the various discretionary permits and actions under this Title and the public notice required for them if applicable.

<b>TABLE 9-802.170: SUMMARY OF DECISION MAKING, PUBLIC HEARING, AND NOTICE REQUIREMENTS</b>								
Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice <sup>4</sup>		Findings
		Advisory	Decision	Appeal <sup>1</sup>		Required	Optional	
<b>Ministerial</b>								
Zoning Compliance Review	Chapter 9-803	N/A	ZA	PC	No	None	N/A	None
Grading Permit – Ministerial Review	Chapter 9-812	N/A	ZA	PC	No	None	N/A	None
Minor Changes to an Approved Permit <sup>2</sup>	Section 9-802.130	N/A	ZA	PC	No	None	N/A	None
<b>Quasi-Judicial Actions</b>								
Administrative Use Permit <sup>3</sup>	Chapter 9-804	N/A	ZA	PC	Yes	A, B, C	E, F	Section <b>Error! Reference source not found.</b>
Conditional Use Permit	<b>Error! Reference source not found.</b>	N/A	PC	BOS	Yes	A, B, C, D, E	F	Section <b>Error! Reference source not found.</b>
Grading Permit – Discretionary Review	Chapter 9-812	N/A	ZA	PC	No	B, C	N/A	None
Major Subdivisions	Chapter 9-504	PC	BOS	BOS	Yes	A, B, C, D, E	F	Section 9-505.040
Permit Modifications - Major	Section 9-802.130	N/A	PC	BOS	Yes	A, B, C, D, E	F	Section 9-802.130
Temporary Use Permit	Chapter 9-804	N/A	ZA	PC	No	None		Section 9-804.080(g)
Variance	<b>Error! Reference source not found. 9-805</b>	N/A	PC	BOS	Yes	A, B, C, D, E	F	Section 9-805.030
Waiver	Chapter 9-806	N/A	ZA	PC	No	None	A, B, F	Section <b>Error! Reference source not found.</b>
Revocation	Section 9-802.140	N/A	PC	BOS <sup>2</sup>	Yes	B, C, D, E	A, F	Subsection 9-802.130(d)

**TABLE 9-802.170: SUMMARY OF DECISION MAKING, PUBLIC HEARING, AND NOTICE REQUIREMENTS**

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice <sup>4</sup>		Findings
		Advisory	Decision	Appeal <sup>1</sup>		Required	Optional	
<b>Legislative Actions</b>								
Development Agreements	<b>Error! Reference source not found.</b>	D	BOS <sup>2</sup> Ordinance	None	Yes	B, C, D, E	F	Section <b>Error! Reference source not found.</b>
General Plan Amendments	<b>Error! Reference source not found.</b>	PC	BOS <sup>2</sup> Resolution	None	Yes	B, C, D, E	A, F	Section 9-807.060
Development Title and Zoning Map Amendments	<b>Error! Reference source not found.</b>	PC	BOS Ordinance	None	Yes	B, C, D, E	A, F	Section <b>Error! Reference source not found.</b>
Master Plans	Chapter 9-302	PC	BOS Ordinance	None	Yes	B, C, D, E	A, F	Section 9-302.050
Planned Development Zone	Chapter 9-304	PC	BOS Ordinance	None	Yes	B, C, D, E	A, F	Section 9-304.090
Specific Plans	Chapter 9-303	PC	BOS Ordinance	None	Yes	B, C, D, E	A, F	Section 9-30.060

Key: BOS = Board of Supervisors  
 D = Community Development Director  
 PC = Planning Commission  
 ZA = Zoning Administrator

- Notes:
1. All appeals require a public hearing with required notice Types A, C, D, and E and optional notice Type F.
  2. Major modifications to permits must be processed the same as the original permit, pursuant to subsection 9-802.130(B) (Major Modifications).
  3. Administrative Use Permits may be referred by the Zoning Administrator to the Planning Commission for decision, in which case they are processed as Conditional Use Permits.
  4. Notice Types are described in Section 9-802.080.

## Chapter 9-803 Zoning Compliance Review

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*This is a new procedure to streamline ministerial review of “by right” projects. It can include checking for compliance with objective standards, as allowed by State law.*

### Sections:

9-803.010	Purpose
9-803.020	Applicability
9-803.030	Review and Decision
9-803.040	Appeals

### **9-803.010 Purpose**

This Chapter establishes ministerial procedures for conducting a zoning compliance review to verify that each new or expanded use or structure complies with all of the applicable requirements of this Title.

### **9-803.020 Applicability**

Zoning compliance review is required for buildings or structures erected, constructed, altered, repaired or moved, the use of vacant land, changes in the character of the use of land or building, or for substantial expansions in the use of land or building that are allowed as a matter of right by this Title. Before the County may issue any business license, building permit, subdivision approval, lot line adjustment, or any other license, approval, or permit, the Zoning Administrator must review the application to determine whether the use, building, or change in lot configuration complies with all provisions of this Title and any applicable Master Plan, Specific Plan, or Planned Development zone, Use Permit or Variance approval, and that all conditions of such permits and approvals have been satisfied.

### **9-803.030 Review and Decision**

- (a) **Application.** An application for zoning compliance review must be filed and processed in accordance with the provisions of Chapter 9-802, Common Procedures.
- (b) **Determination.** The Zoning Administrator must review the application to determine whether the proposed use or construction is allowed by right, requires any type of discretionary planning permit, is allowed pursuant to any previously approved permit, or is prohibited. If the Zoning Administrator determines that the proposal conforms to the requirements of this Title and any applicable Master Plan, Specific Plan, or Planned Development zone, a Zoning Certificate will be issued. If the Zoning Administrator determines that the proposal does not conform to the requirements of this Title or any applicable master plan, specific plan, or Planned Development zone, a Zoning Certificate will not be issued, and the applicant will be advised as to how the proposal can be brought into compliance.

### **9-803.040 Appeal**

The Zoning Administrator’s determination may be appealed to the Planning Commission in accordance with Section 9-802.140, Appeals.

# Chapter 9-804 Use Permits

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*To streamline further the approval process, this chapter creates two tracks for use permits: an Administrative Use Permit approved by the Zoning Administrator and a Conditional use Permit approved by the Planning Commission. Additional findings are added for adequate public facilities and services and conformance to the Development Title. Also added are provisions for Temporary Use Permits with various time limits for specific activities. The Administrative Use Permit would replace Site Approvals.*

**Sections:**

- 9-804.010 Purpose and Applicability
- 9-804.020 Planning Commission's and Zoning Administrator's Responsibilities
- 9-804.030 Procedures
- 9-804.040 Expansion of an Existing Use or Structure
- 9-804.050 Findings Required
- 9-804.060 Conditions of Approval
- 9-804.070 Decisions; Appeals, Expirations and Extensions; Modifications; Revocations
- 9-804.080 Temporary Use Permits

**9-804.010 Purpose and Applicability**

The purpose this Chapter is to provide a method of reviewing proposed uses which possess characteristics that require special appraisal in order to determine if the uses have the potential to adversely affect other land uses, transportation, or facilities in the vicinity. More specifically, this Chapter establishes procedures for the approval, conditional approval or disapproval of Use Permits when required by this Title. A Use Permit is an administrative permission for uses not allowed as a matter of right in a zone. The decision-maker (the Planning Commission or the Zoning Administrator) may require conditions of approval necessary to eliminate, or minimize to an acceptable level, any potential adverse effects of the use.

**9-804.020 Planning Commission's and Zoning Administrator's Responsibilities**

- (a) **Conditional Use Permits.** The Planning Commission must approve, conditionally approve, or deny applications for Conditional Use Permits based on consideration of the requirements of this Title.
- (b) **Administrative Use Permits.** The Zoning Administrator must approve, conditionally approve, or deny applications for Administrative Use Permits based on consideration of the requirements of this Title. The Zoning Administrator may, at his/her discretion, refer any application for an Administrative Use Permit for a project that may generate substantial public controversy or involve significant land use policy decisions to the Planning Commission for a decision rather than acting on it himself/herself. In that case, the application must be processed as a Conditional Use Permit.

### 9-804.030 Procedures

- (a) **Common Procedures.** Applications for Use Permits must be filed and processed in compliance with procedures in Chapter 9-802, Common Procedures.
- (b) **Public Notice and Hearing.** All applications for Conditional Use Permits require public notice and hearing before the Planning Commission, and all applications for Administrative Use Permits require public notice and hearing before the Zoning Administrator. All hearings shall be conducted in accordance with Chapter 9-802, Common Procedures.

### 9-804.040 Expansion of an Existing Use or Structure

Existing uses subject to a Use Permit may be expanded pursuant to this Section.

- (a) **Required Conditions.** When an existing use has a Use Permit, the Zoning Administrator may approve plans for the expansion of the existing use when the expansion complies with all of the following conditions:
  - (1) The building or use expansion is incidental to the existing use;
  - (2) The building or use expansion does not result in a change of use;
  - (3) No building expansion involves more than a 25 percent increase in existing building floor area or over 10,000 square feet; whichever is less;
  - (4) The building or use expansion, in the opinion of the Zoning Administrator, would not have a substantial adverse effect on adjacent property; and
  - (5) The building or use expansion complies with existing requirements of agencies having jurisdiction and any other appropriate regulatory agency as determined by the Zoning Administrator.
- (b) **Conditions Not Met.** If a proposed expansion does not comply with the above conditions in Subsection (a), a new Use Permit shall be required.

### 9-804.050 Findings Required

Prior to approving an application for a Use Permit, the decision-maker (the Planning Commission or the Zoning Administrator) shall find that all of the following are true:

- (a) **Consistency.** The proposed use is consistent with the goals, policies, standards, and maps of the General Plan; any applicable Master Plan, Specific Plan, and Planned Development zone; and any other applicable plan adopted by the County;
- (b) **Improvements.** Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways;
- (c) **Site Suitability.** The site is physically suitable for the type of development and for the intensity of development;

- (d) **Land Use Compatibility.** The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;
- (e) **No Nuisance Created.** The proposed use will not create any nuisances arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding ambient conditions;
- (f) **Adequate Public Services and Facilities.** The site of the proposed use is adequately served by highways, streets, water, sewer, and other public facilities and services and
- (g) **Conformance with Development Title.** The proposed use complies with all applicable provisions of the Development Title.

#### **9-804.060 Conditions of Approval**

The decision-maker has the authority to impose reasonable conditions that are related and proportionate to what is being requested by the applicant, as deemed necessary and appropriate to ensure that the provisions of the General Plan, any applicable master plan, specific plan or Planned development zone adopted by the Board of Supervisors, and this Title are met. The decision-maker may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

#### **9-804.070 Decisions; Appeals, Expirations and Extensions; Modifications; Revocations**

- (a) **Appeals.** A decision of the Zoning Administrator may be appealed to the Planning Commission, and a decision of the Planning Commission may be appealed to the Board of Supervisors, in accordance with Section 9-802.140, Appeals.
- (b) **Expiration, Extensions and Modifications.** Use Permits are effective and may only be extended or modified as provided for in Chapter 9-802, Common Procedures.
- (c) **Revocations.** A Use Permit may be revoked pursuant to Section 9-802.130, Revocation.

#### **9-804.080 Temporary Use Permits**

- (a) **Applicability.** A Temporary Use Permit is required for temporary uses that are not otherwise permitted in the base zoning district regulations but meet the standards of this section and for temporary uses identified in the regulations for individual zones in the 200 Series or the regulations for specific uses in Chapter 9-407, Standards for Specific Uses and Activities
- (b) **Procedures.** An application for a Temporary Use Permit must be filed and processed in compliance with procedures in Chapter 9-802, Common Procedures. An application must be submitted at least 30 days before the use is intended to begin. The application must include the written consent of the owner of the property or the agent of the owner.
- (c) **Decision-Maker.** The Zoning Administrator may approve, approve with conditions, or deny applications for temporary uses without a public hearing.
- (d) **Temporary Uses: Seventy-Two Hour Limit.** Within a nonresidential zone and the R-L and R-M zones, a temporary use may be authorized for a period not to exceed 72 hours per event once a month for up to 8 events per year per site for any of the following uses:



- (1) A performance, exhibition, dance, celebration, or festival requiring a liquor license, entertainment police permit, and/or other County permit when sponsored by an organized group of residents and/or business operators in the neighborhood; or
  - (2) A performance, dance, or party requiring a liquor license, entertainment and/or other County permit, an art exhibit, or other similar exhibition in each case if sponsored by a residential or commercial tenant or group of tenants or owner-occupants of the property or structure in which the temporary use is authorized.
  - (3) When multiple events are proposed within the allowable time limit and County permits are to be issued to a particular applicant and premises, only one permit need be granted per annual time period. When an individual special event is scheduled for no more than eight hours, then three such events are allowed within the 72-hour limit for the month.
- (e) **Temporary Uses: 60 Day Limit.** The following uses may be authorized in a nonresidential zone for a period not to exceed 60 days:
- (1) Exhibition, celebration, festival, circus, or neighborhood carnival;
  - (2) Booth for charitable, patriotic or welfare purposes;
  - (3) Open air sale of agriculturally-produced seasonal decorations including, but not necessarily limited to, holiday or evergreen trees and Halloween pumpkins;
  - (4) New and used auto sales;
  - (5) Outdoor sales in a parking lot; and
  - (6) Parking that is accessory to any temporary use listed above.
- (f) **Temporary Uses: One to Five Year Limit.** Temporary uses authorized pursuant to this subsection may not exceed an initial approval period of up to five years. Extensions of this approval period may be authorized by the Zoning Administrator in increments of up to five-year periods if the authorized use is consistent with the General Plan and applicable Master Plan, Specific Plan, or Planned Development zone. More specifically, the following uses may be authorized in a nonresidential zone as temporary uses, subject to securing a Building Permit, if required:
- (1) Temporary structures and uses incidental to the construction of a building or a group of buildings, including but not limited to construction staging of materials and equipment;
  - (2) Rental or sales office incidental to a new development, provided that it is located in the development project or in an adjacent temporary structure;
  - (3) Structures and uses incidental to environmental cleanup and staging; and
  - (4) Parking that is accessory to any temporary use listed above.
- (g) **Required Findings.** The Zoning Administrator may approve an application for a Temporary Use only upon making both of the following findings:
- (1) The proposed use will not unreasonably affect adjacent properties, their owners and occupants, or the surrounding neighborhood, and will not in any other way constitute a nuisance or be detrimental to the health, safety, peace, comfort, or general welfare of

persons residing or working in the area of such use or to the general welfare of the County;  
and

- (2) The proposed use will not unreasonably interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed temporary use and will not create a demand for additional parking that cannot be safely and efficiently accommodated by existing or proposed parking areas on the site of the temporary use.
- (h) **Conditions of Approval.** The Zoning Administrator may impose reasonable conditions deemed necessary to ensure compliance with the required findings for a Temporary Use Permit listed above, including, but not limited to: regulation of ingress and egress and traffic circulation; fire protection and access for fire vehicles; regulation of lighting; regulation of hours and/or other characteristics of operation; and removal of all trash, debris, signs, sign supports and temporary structures and electrical service. The Zoning Administrator may require reasonable guarantees, such as a performance bond or financial security equal to the estimated cost of cleanup and removal of temporary structures, and evidence that such conditions are being, or will be, complied with.
- (i) **Effective Date.**
- (1) **Permit Period 10 Days or Less.** A Temporary Use Permit issued for 10 days or less becomes effective on the date the permit is approved by the Zoning Administrator but cannot expire before the event/use that is subject to the Temporary Use Permit occurring.
  - (2) **Permit Period More than 10 Days.** A Temporary Use Permit for more than 10 days becomes effective 11 days from the date the permit is approved by the Zoning Administrator.
- (j) **Appeals.** Any party aggrieved by the decision of the Zoning Administrator to approve, approve with conditions, or deny a permit for a temporary use or structure may appeal the decision to the Planning Commission, in accordance with Section 9-802.150 (Appeals).
- (k) **Expiration and Extensions.** Temporary Use Permits are effective only for the initial time limit approved; however, the Zoning Administrator may grant extension of the permit period only if the required findings of subsection (g) above can be affirmed.

## Chapter 9-805 Variances

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*Minor additions include additional findings related to no detriment and for variances for parking and open space, per the Government Code. Authority to impose conditions also is explicitly stated and provisions for appeals, extensions and modifications are added.*

### Sections:

9-805.010	Purpose and Applicability
9-805.020	Procedures
9-805.030	Findings Required
9-805.040	Conditions of Approval
9-805.050	Appeals; Expiration, Extensions and Modifications

### **9-805.010 Purpose and Applicability**

The purpose of this Chapter is to provide a means of altering the requirements of this Title in specific instances where the strict application of those requirements would deprive a property of privileges enjoyed by other properties in the vicinity and under identical zoning because of special circumstances applicable to the property involved.

- (a) Variances may be granted to vary or modify dimensional and performance standards; Variances cannot be granted to allow uses or activities that the Development Title does not authorize for a specific lot or site.
- (b) Notwithstanding the above, a Variance may be granted from parking and/or open space requirements as set forth in Government Code Sections 65906.5 and 65911, respectively.

### **9-805.020 Procedures**

- (a) **Application Requirements.** Applications for Variances may be initiated by the property owner or the owner's authorized agent. Applications shall be filed with the Community Development Department on the prescribed application forms in accord with Chapter 9-802, Common Procedures. In addition to any other application requirements, the application for a Variance must include data or other evidence showing that the requested variance conforms to the required findings set forth in Section 9-805.030, Findings Required. A fee, as specified by resolution of the Board of Supervisors, shall be required.
- (b) **Public Notice and Hearing.** An application for a Variance requires public notice and hearing before the Planning Commission in accordance with Chapter 9-802, Common Procedures.

### **9-805.030 Findings Required**

Prior to approving an application for a Variance, the Planning Commission shall find that all of the following are true:

- (a) **Special Circumstances.** Because of the special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the

regulation deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification;

- (b) **No Detriment.** The Variance will not be detrimental or injurious to property or improvements in the vicinity of the subject property, or the public health, safety or general welfare;
- (c) **No Special Privileges.** The granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated; and
- (d) **Use Authorized.** The Variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.
- (e) **Variations for Parking.** In the case of parking regulations, a Variance may be granted in order that some or all the required parking spaces be located off-site, or that in-lieu fees or facilities be provided instead of the required parking spaces, provided that the Planning Commission determines that:
  - (1) The Variance will be an incentive to, and a benefit for nonresidential development; and
  - (2) The Variance will facilitate access to nonresidential development by patrons of public transit facilities.
- (f) **Variance for Open Space.** In the case of open space regulations, a Variance may be granted only if doing so is consistent with Government Code Section 65911 and the requested Variance will not conflict with General Plan policies governing orderly growth and development and the preservation and conservation of open space lands.

#### **9-805.040 Conditions of Approval**

In approving the Variance, the Planning Commission may impose reasonable conditions that are related and proportionate to what is being requested by the applicant, as deemed necessary and appropriate to ensure that the provisions of the General Plan, and applicable Master Plan, Specific Plan, or Planned Development zone, and this Title are met. The decision-maker may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

#### **9-805.050 Appeals; Expiration, Extensions and Modifications**

- (a) **Appeals.** A decision of the Planning Commission may be appealed to the Board of Supervisors, in accordance with Section 9-802.140, Appeals.
- (b) **Expiration, Extensions and Modifications.** Variances are effective and may only be extended, if a time limit has been set as a condition of approval, or modified as provided for in Chapter 9-802, Common Procedures.

## Chapter 9-806 Waivers

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*This scope of this chapter, formerly titled “Deviations,” has been expanded to clarify the purpose or waivers, as distinct from variances, and include provisions for granting waivers for reasonable accommodations that may exceed the percentage limitations. The provisions for reasonable accommodations also have been expanded to cover churches and other religious institutions, as required by the Religious Land Use and Institutionalized Persons Act. The findings also have been clarified to provide more flexibility. Finally, certain standards cannot be waived if they would create a conflict with General Plan density and intensity limits.*

### Sections:

9-806.010	Purpose and Applicability
9-806.020	Permitted Waivers
9-806.030	Exclusions
9-806.040	Procedures
9-806.050	Findings Required
9-806.060	Conditions of Approval
9-806.070	Appeals

### **9-806.010 Purpose and Applicability**

The Chapter is intended to provide an alternate means of granting relief from the requirements of the Development Title for minor deviations from dimensional and development standards when so doing would be consistent with the purposes of the Development Title and it is not possible to grant a Variance. Further to this end, it is the policy of the County to comply with the federal Fair Housing Act, the Americans with Disabilities Act, the Religious Land Use and Institutionalized Persons Act, and the California Fair Employment and Housing Act to provide reasonable accommodation for protected uses and for persons with disabilities seeking fair access to housing through a waiver of the application of the requirements of this Title. This Chapter authorizes the Zoning Administrator to grant administrative relief from the Development Title’s dimensional requirements to achieve these objectives.

### **9-806.020 Permitted Waivers**

Applications for waivers may be accepted in all zones. The Zoning Administrator may only grant relief from the following dimensional requirements, as follows. The Zoning Administrator also may grant a waiver that would exceed the percentage limitations below where such a waiver is necessary to comply with the reasonable accommodation provisions of State and/or federal law, based on a determination that the specific circumstances of the application warrant such an accommodation.

- (a) **Setback Requirements.** Setback requirements may be altered as follows:
- (1) Up to 40 percent of the front yard setback requirement, but not closer to the property line than 15 feet;
  - (2) Up to 40 percent of the side yard setback requirement, but no closer to the property line than three feet;

- (3) Up to 40 percent of the street side yard setback requirement, but no closer to the property line than 15 feet; or
- (4) Up to 30 percent of the rear yard setback requirement, but no closer to the property line than 10 feet.
- (b) **Area and Width Requirements.** Area and width may be altered as follows provided General Plan density and intensity limits are not exceeded for the site:
  - (1) Up to 30 percent of the area requirements for uses or use types; or
  - (2) Up to 10 percent of the lot area and lot width requirements.
- (c) **Height Requirements.** Height requirements may be altered up to 30 percent in excess of height limits, but not to exceed five feet.
- (d) **Build-to Lines.** Up to 10 percent of the standards for building façade location.
- (e) **Parking.** Up to 10 percent of the dimensional standards for parking spaces, aisles, driveways, landscaping, garages on sloping lots, and parking facility design.
- (f) **Fences.** Up to 10 percent of the standards for the maximum height and location of fences.
- (g) **Lot Coverage** (*only if standard is maintained; it may be deleted*). Up to 10 percent of the maximum amount of lot coverage.
- (h) **Landscaping.** Up to 10 percent of the required landscaping.
- (i) **Other Standards.** Up to 10 percent of other development standards not listed in Section 9-806.030 below.

### 9-806.030 Exclusions

Waivers cannot be granted for any of the following standards:

- (a) Minimum number of required parking spaces;
- (b) Minimum or maximum residential density; or
- (c) Maximum floor area ratio (FAR).

### 9-806.040 Procedures

- (a) **Authority and Duties.** The Zoning Administrator must approve, conditionally approve, or deny applications for waivers based on consideration of the requirements of this Title.
- (b) **Application Requirements.** An application for a waiver must be filed and processed in accordance with the procedures in Chapter 9-802, Common Procedures. In addition to any other application requirements, the application for a waiver must include data or other evidence explaining why the findings necessary to grant the waiver, set forth in Section 9-806.050 (Findings Required) are satisfied.
- (c) **Review of Waiver Requests for Reasonable Accommodation to Ensure Access to Housing.** An application for a waiver based on a request for a reasonable accommodation to ensure access to housing will be referred to the Zoning Administrator for review and

consideration. Such a request may exceed the percent limits above. The Zoning Administrator must issue a written decision within 45 days of the date the application is deemed complete, and may grant the reasonable accommodation request, grant with modifications, or deny the request. All written decisions must give notice of the right to appeal and to request reasonable accommodation in the appeals process.

- (d) **Concurrent Processing.** If a request for waiver is being submitted in conjunction with an application for another approval, permit, or entitlement under this Title, it must be heard and acted upon at the same time and in the same manner as that application.

### 9-806.050 Findings Required

Prior to approving an application for a waiver, the Zoning Administrator shall find that all of the following are true:

- (a) **Not Detrimental.** The granting of the waiver will not be materially detrimental to other properties or land uses in the area or result in a change in land use or density that would be inconsistent with the requirements of this Title;
- (b) **Specific Circumstances.** The waiver is necessary due to the physical characteristics of the property and the proposed use or structure or other circumstances, including, but not limited to, topography, noise exposure, irregular property boundaries, or other unusual circumstance.
- (c) **No Alternatives.** There are no alternatives to the requested waiver that could provide an equivalent level of benefit to the applicant with less potential detriment to surrounding owners and occupants or to the general public.
- (d) **Denial of Privileges.** The strict application of the regulation deprives the property of privileges enjoyed by other properties in the vicinity; and
- (e) **Consistency.** The proposed use is consistent with the goals, policies, standards, and maps of the General Plan; any applicable Master Plan, Specific Plan, Planned Development zone, and any other applicable plan adopted by the County.
- (f) **For Reasonable Accommodations.** If the waiver requested is to provide reasonable accommodation pursuant to State or federal law, the review authority must also make the following findings in addition to any other findings that this Article requires:
  - (1) That the housing or other property that is the subject of the request for reasonable accommodation will be used by an individual or organization entitled to protection;
  - (2) If the request for accommodation is to provide fair access to housing, that the request for accommodation is necessary to make specific housing available to an individual protected under State or federal law;
  - (3) That the conditions imposed, if any, are necessary to further a compelling public interest and represent the least restrictive means of furthering that interest; and
  - (4) That denial of the requested waiver would impose a substantial burden on religious exercise or would conflict with any State or federal statute requiring reasonable accommodation to provide access to housing.

**9-806.060 Conditions of Approval**

The decision-maker has the authority to impose reasonable conditions that are related and proportionate to what is being requested by the applicant, as deemed necessary and appropriate to ensure that the provisions of the General Plan, any applicable Master Plan, Specific Plan, Planned Development zone, and this Title are met. The decision-maker may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Waivers approved based on State or federal requirements for reasonable accommodation may be conditioned to provide for rescission or automatic expiration based on a change of occupancy or other relevant change in circumstance.

**9-806.070 Appeals**

The Zoning Administrator's decision on a waiver may be appealed to the Planning Commission in accordance with Section 9-802.140, Appeals.



## Chapter 9-807 General Plan Amendments

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*This chapter expands on current requirements with additional detail to ensure conformance with the Government Code. A Director's report is required, and changes the Board makes that had not previously been considered by the Planning Commission must be referred back to them for comment.*

### **Section:**

9-807.010	Purpose and Applicability
9-807.020	Applicability
9-807.030	Initiation
9-807.040	Procedure
9-807.050	Findings
9-807.060	Planning Commission Hearing and Action
9-807.070	Board of Supervisors Hearing and Action

### **9-807.010 Purpose and Applicability**

This Chapter establishes procedures for making changes to the General Plan as provided for in State law when there are compelling reasons to do so. These circumstances include, but are not limited to, changes in State or federal law and problems and opportunities that were unanticipated at the time of General Plan adoption or the last amendment.

### **9-807.020 Applicability**

The procedures of this Chapter apply to all proposals to change the text of the General Plan and the diagrams that illustrate the application of its provisions.

### **9-807.030 Initiation**

An amendment to the General Plan may be initiated by:

- (a) Any qualified applicant identified in Section 9-802.030, Application Forms and Fees; or
- (b) An order of the Board of Supervisors or Planning Commission, on its own motion or on the recommendation of the Director.

### **9-807.040 Procedure**

An application for an amendment to the General Plan must be filed and processed in accordance with the provisions of Chapter 9-802, Common Procedures, and considered by the Board of Supervisors with a recommendation from the Planning Commission. It must be processed in conformance with Government Code Section 65350 *et seq.* Its approval must be by resolution, and it is subject to referendum.

- (a) **Required Information.** In addition to any other application requirements, an application for a General Plan amendment must include a statement, supported by documentation, that describes

how the proposed amendment conforms to the General Plan's goals and the benefit to the public that will result from approving the proposed change or changes to the General Plan.

- (b) **Director's Report.** The Director must prepare a report and recommendation to the Planning Commission, which must include, but is not limited to, a discussion of how the proposed amendment complies with the purposes of this Chapter and the General Plan's goals, and a determination as to whether the proposed amendment will require amendment to other plans that the Board of Supervisors has adopted.
- (c) **Planning Commission Recommendation.** The Commission's recommendation must be forwarded to the Board of Supervisors for action on the proposed amendment except in the situation specified in subsection 9-807.060(a), Recommendation against Private Application.

### **9-807.050 Findings**

The Planning Commission in recommending, and the Board of Supervisors in approving, an amendment to the General Plan, must make all of the following findings:

- (a) The proposed amendment will contribute to the public health, safety, and general welfare or will be of benefit to the public.
- (b) The proposed amendment is consistent with the General Plan goals, unless the goals themselves are proposed to be amended.
- (c) The proposed amendment retains the internal consistency of the General Plan and is consistent with other adopted plans, unless a concurrent amendment to those plans is also proposed and will result in consistency.
- (d) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

### **9-807.060 Planning Commission Hearing and Action**

The Planning Commission must hold a public hearing noticed and conducted as required by Chapter 9-802, Common Procedures, and must then vote on its recommendation on the proposed amendment.

- (a) **Recommendation Against Private Application.** If the amendment under consideration was initiated by an applicant, and the Planning Commission recommends against the adoption of such amendment, the application is denied, and the Board of Supervisors is not required to take any further action on the amendment unless the Planning Commission's decision is appealed pursuant to Section 9-802.150, Appeals.
- (b) **All Other Situations.** Following the public hearing, the Planning Commission must submit a recommendation on the proposed amendment and environmental determination to the Board of Supervisors. The recommendation must include the reasons for the recommendation; the extent to which the proposed amendment meets the purposes of this Title; the consistency of the proposed amendment with the General Plan and any other adopted plan; and any changes to the amendment that the Commission deems necessary to ensure internal consistency of the General Plan and consistency with other adopted plans, or to reduce environmental impacts.

**9-807.070 Board of Supervisors Hearing and Action**

- (a) **Public Hearing.** After receiving the report from the Planning Commission, the Board of Supervisors must hold a public hearing noticed and conducted as required by Chapter 9-802, Common Procedures. The notice must include a summary of the Planning Commission's recommendation.
- (b) **Action.** After the conclusion of the hearing, the Board of Supervisors may approve, modify, or deny the proposed General Plan amendment. If the Board proposes any substantial modification not previously considered by the Planning Commission during its hearings, the proposed modification will first be referred back to the Planning Commission for its recommendation, but the Planning Commission will not be required to hold a public hearing on the matter. If the Planning Commission fails to report back to the Board of Supervisors within 45 days after the referral, the modification will be deemed to have been recommended for approval.
- (c) **Resolution Adopted.** The Board's approval of an amendment to the General Plan must be by resolution, adopted by the affirmative vote of not less than a majority of the total membership of the Board.
- (d) **Public Release.** Following the Board action, the Clerk of the Board will make the documents amending the General Plan, including the diagrams and text, available for public inspection.

# Chapter 9-808 Development Title Text and Zoning Map Amendments

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*This chapter follows the same procedure as proposed for General Plan amendments to ensure conformance with the Government Code.*

**Sections:**

- 9-808.010 Purpose and Applicability
- 9-808.020 Applicability
- 9-808.030 Initiation
- 9-808.040 Procedure
- 9-808.050 Findings Required
- 9-808.060 Planning Commission Hearing and Action
- 9-808.070 Board of Supervisors Hearing and Action

**9-808.010 Purpose and Applicability**

It is the intent of this Chapter to provide for the method to amend this Title and the Zoning Maps, consistent with the California Government Code, provided such amendments are consistent with the General Plan.

**9-808.020 Applicability**

The procedures of this Chapter apply to all proposals to change the text of the Development Title or to revise a zoning classification or boundary line shown on the Zoning Map.

**9-808.030 Initiation**

An amendment to the Development Title and/or the Zoning Map may be initiated by:

- (a) Any qualified applicant identified in Section 9-802.030, Application Forms and Fees; or
- (b) An order of the Board of Supervisors or Planning Commission, on its own motion or on the recommendation of the Director.

**9-808.040 Procedure**

- (a) An application for an amendment to the Development Title and/or the Zoning Maps must be filed and processed in accordance with the provisions of Chapter 9-802, Common Procedures, and must be considered by the Board of Supervisors with a recommendation from the Planning Commission. Its approval must be by ordinance and is subject to referendum. The Director must prepare a report and recommendation to the Commission that must include, but is not limited to, a discussion of how the proposed amendment meets the findings in Section 9-808.050. The Commission’s recommendation must be forwarded to the Board of Supervisors for action on the proposed amendment except in the situation specified in Section 9.808.060(a), Recommendation against Private Application.

### **9-808.050 Findings Required**

The Planning Commission in recommending, and the Board of Supervisors in approving, an amendment to the Development Title or the Zoning Maps, must make all of the following findings:

- (a) The proposed amendment is consistent with the General Plan and any applicable Master Plan.
- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.
- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.
- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zone is not detrimental to the use of adjacent properties.

### **9-808.060 Planning Commission Hearing and Action**

- (a) The Planning Commission must hold a public hearing noticed and conducted as required by Chapter 9-802, Common Procedures, and must then vote on its recommendation on the proposed amendment.
- (b) **Recommendation Against Private Application.** If the amendment under consideration was initiated by an applicant, and the Planning Commission recommends against the adoption of such amendment, the application is denied, and the Board of Supervisors is not required to take any further action on the amendment unless the Planning Commission's decision is appealed pursuant to Section 9-802.140, Appeals.
- (c) **All Other Situations.** Following the public hearing, the Planning Commission must submit a recommendation on the proposed amendment and environmental determination to the Board of Supervisors. The recommendation must include the reasons for the recommendation; the extent to which the proposed amendment meets the purposes of this Title; the consistency of the proposed amendment with the General Plan and any other adopted plan; and any changes to the amendment that the Commission deems necessary to comply with the General Plan and ensure internal consistency of the Development Title and consistency with other adopted plans, or to reduce environmental impacts.

### **9-808.070 Board of Supervisors Hearing and Action**

- (a) **Public Hearing.** After receiving the report from the Planning Commission, the Board of Supervisors must hold a public hearing noticed and conducted as required by Chapter 9-802, Common Procedures. The notice must include a summary of the Planning Commission's recommendation.
- (b) **Action.** After the conclusion of the hearing, the Board of Supervisors may approve, modify, or deny the proposed Development Title and/or Zoning Map amendment. If the Board proposes any substantial modification not previously considered by the Planning Commission during its

hearings, the proposed modification will first be referred back to the Planning Commission for its recommendation, but the Planning Commission will not be required to hold a public hearing on the matter. If the Planning Commission fails to report back to the Board of Supervisors within 45 days after the referral, the modification will be deemed to have been recommended for approval.

- (c) **Ordinance Adopted.** The Board's approval of an amendment to the Development Title and/or Zoning Map must be by ordinance, adopted by the affirmative vote of not less than a majority of the total membership of the Board.
- (d) **Public Release.** Following the Board action, the Clerk of the Board will make the documents amending the Development Title and/or Zoning Map available for public inspection.

## Chapter 9-809 Agricultural Excavation Permits

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*This chapter carries forward the current permitting procedure for agricultural excavations with approval responsibility assigned to the Zoning Administrator. The process would be the same as for a Zoning Clearance.*

### **Sections:**

9-809.010	Purpose
9-809.020	Permitted Zones
9-809.030	Requirements For Application
9-809.040	Review Procedures
9-809.050	Findings
9-809.060	Development Standards
9-809.070	Time Limit On Approvals
9-809.080	Expansion
9-809.090	Surface Mining And Reclamation Act

### **9-809.010 Purpose**

The purpose of this Chapter is to establish a permit procedure to:

- (a) Allow the removal of excess material from property in order to increase the property's agricultural potential, while protecting people, property, and the environment from impacts caused by the grading excavation; and
- (b) Ensure the reclamation of excavation sites.

### **9-809.020 Permitted Zones**

Applications for Agricultural Excavation Permits may be accepted in the following zones:

- (a) AL zone;
- (b) AG zone; and
- (c) AU zone.

### **9-809.030 Requirements For Application**

An application for an Agricultural Excavation Permit shall include the following:

- (a) A Certified Grading Plan prepared by a registered civil engineer;
- (b) An Operational Statement;
- (c) A soils report, prepared by a soil scientist qualified to analyze agricultural soils, shall be required for all proposals where the topsoil is not proposed to be replaced;
- (d) An Excavation/Reclamation Plan and schedule prepared by a registered civil engineer;
- (e) Proposed methods of financial guarantees of performance;

- (f) An Erosion, Sediment and Pollution Control Plan to minimize impacts on waterways and/or roadways during excavation; and
- (g) The required fee as specified by the Board of Supervisors.

#### **9-809.040 Review Procedures**

The review procedure for an Agricultural Excavation Permit Application shall that established for a Zoning Clearance in Chapter 9-803.

#### **9-809.050 Findings**

Prior to approving an application for an Agricultural Excavation Permit, the Zoning Administrator shall find all of the following true:

- (a) The amount of the material being removed is the least amount required to enhance the agricultural suitability of the property;
- (b) The excavation will not have a detrimental effect on any surrounding agricultural lands; and
- (c) Issuance of the permit shall not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity.

#### **9-809.060 Development Standards**

Approved Agricultural Excavation Permits shall be subjected to the development standards specified in Chapter 9-702.

#### **9-809.070 Time Limit On Approvals**

If the excavation does not commence within three years after the date of approval of the Agricultural Excavation Permit, the permit shall lapse and become void.

#### **9-809.080 Expansion**

A new Agricultural Excavation Permit shall not be required for the expansion of an existing or approved agricultural excavation, provided the Zoning Administrator determines that all of the following requirements are satisfied:

- (a) Any proposed expansion(s) may involve no more than a ten percent (10%) increase in the overall site area covered by the existing or approved agricultural excavation;
- (b) The proposed expansion, in the opinion of the Zoning Administrator, will not have a substantial, adverse effect on adjacent property or on significant biotic resources on the site;
- (c) The proposed expansion will comply with existing requirements of agencies having jurisdiction and any other appropriate regulatory agency; and
- (d) An Improvement Plan pursuant to Chapter 9-514 is submitted to the County.



**9-809.090 Surface Mining And Reclamation Act**

Approved Agricultural Excavation Permits shall be subject to the regulations adopted by the State Mining and Geology Board as authorized by the California Surface Mining and Reclamation Act (SMARA) of 1975 (Public Resource Code Section 2710 *et seq.*), as amended; Public Resource Code Section 2207; and the California Code of Regulations adopted pursuant thereto (Title 14, Section 3500 *et seq.*).

# Chapter 9-810 Evacuation Plans

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*This chapter carries forward existing procedures and requirements.*

**Sections:**

- 9-810.010 Purpose
- 9-810.020 Evacuation Plan Required
- 9-810.030 Review Procedure
- 9-810.040 Minimum Standards
- 9-810.050 Evacuation Plan Implementation
- 9-810.060 Exceptions And Alternatives To Preparing Evacuation Plans

**9-810.010 Purpose**

The purpose of this Chapter is to require plans for the evacuation of recreational vehicle parks and mobile home parks during times of flood hazard.

**9-810.020 Evacuation Plan Required**

An Evacuation Plan shall be required for all existing mobile home and recreational vehicle parks and shall be a condition of issuance of permits for all proposed mobile home and recreational vehicle parks located or proposed to be located within floodways or flood fringe areas. A fee, as specified by resolution of the Board of Supervisors, shall be required.

**9-810.030 Review Procedure**

The agency conducting the Evacuation Plan review for recreational vehicle and mobile home parks shall be the San Joaquin County Office of Emergency Services. The review procedure for an Evacuation Plan shall be that set out in Chapter 9-802 for a Zoning Clearance with the decision-maker being the Director of the Office of Emergency Services.

**9-810.040 Minimum Standards**

At a minimum, Evacuation Plans shall meet the following standards:

- (a) **Storage Sites.** No storage site for the storage of unoccupied mobile homes or recreation vehicles shall be in an area subject to flooding during a 100-year flood;
- (b) **Risk Reduction.** The Evacuation Plan will operate to reduce damage to property and hazards to health and safety during floods;
- (c) **Feasibility of Performance.** The Evacuation Plan shall be feasible of performance during a flood;
- (d) **Clarity.** The criteria for initiating the Evacuation Plan shall be sufficiently clear to determine when the evacuation should occur; and
- (e) **Timely Evacuation.** The criteria for initiating an evacuation shall allow for timely evacuation prior to inundation of the site.

### **9-810.050 Evacuation Plan Implementation**

The following provisions shall apply to all mobile home parks and recreational vehicle parks with approved Evacuation Plans:

- (a) **Posting.** A copy of a summary of the Evacuation Plan shall be posted in a conspicuous place on the premises to be evacuated;
- (b) **Impediments and Obstructions.** All impediments or obstructions to the evacuation routes shall be removed or relocated;
- (c) **Changes.** A new Evacuation Plan must be approved for any change in an existing plan;
- (d) **Implementation of Evacuation Plan.** When the criteria for evacuation occur, the Evacuation Plan shall be carried out as planned; and
- (e) **Distribution of Evacuation Plan.** A copy of the approved Evacuation Plan shall be given to the following persons and kept on file for public review:
  - (1) The Community Development Department;
  - (2) The park owner;
  - (3) The park manager;
  - (4) The Director of the County Emergency Services Office; and
  - (5) The County Flood Control Engineer.

### **9-810.060 Exceptions And Alternatives To Preparing Evacuation Plans**

The requirements of this Chapter may be altered as follows:

- (a) **Ground Anchors.** As an alternative to preparing an Evacuation Plan, owners of mobile home parks that were established before September 30, 1980, and that are outside of a floodway may require park residents to provide ground anchors to be used as tie downs to prevent movement and flotation of mobile homes during a flood. Park owners shall provide proof of compliance by residents with said requirements.
- (b) **Mobile Home Parks in Zone AO.** Mobile home parks in Flood Insurance Rate Map Zone AO with a flood depth of one foot or less shall be exempt from the provisions of this Chapter.

# Chapter 9-811 Flood Variances

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*This chapter carries forward existing procedures for flood variances, with minor editing for clarity and conformance with this updated Development Title. The process shall be the same as for a Conditional Use Permit.*

**Sections:**

- 9-811.010 Nature Of Flood Variances
- 9-811.020 Conditions For Flood Variances
- 9-811.030 Appeal Board
- 9-811.040 Review Procedure
- 9-811.050 Exceptions And Exclusions
- 9-811.060 Findings
- 9-811.070 Notice Of Increased Risk

**9-811.010 Nature Of Flood Variances**

The issuance of a Flood Variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a Flood Variance.

The Flood Variance criteria set forth in this Chapter are based on the general principle of zoning law that Flood Variances pertain to a piece of property and are not personal in nature. A Flood Variance may be granted for a parcel of land with physical characteristics so unusual that complying with the requirements of this Title for flood protection established in Chapter 9-301, Flood Hazard Overlay Zone, would create an exceptional hardship to the applicant. These characteristics must be unique to the property; they must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the Community Development Department and the Department of Public Works to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that Flood Variances from the flood elevation or from other requirements in Chapter 9-301, Flood Hazard Overlay Zone, are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if Flood Variances are strictly limited. Therefore, the Flood Variance criteria provided in this Chapter are more detailed and contain multiple provisions that must be met before a Flood Variance can be properly granted. The criteria are designed to screen-out those situations in which alternatives other than a Flood Variance are more appropriate.

**9-811.020 Conditions For Flood Variances**

- (a) Generally, Flood Variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Chapter 9-301, Flood Hazard Overlay Zone, have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the Flood Variance increases.

- (b) Flood Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the Flood Variance is the minimum necessary to preserve the historic character and design of the structure.
- (c) Flood Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (d) Flood Variances shall only be issued upon a determination that the Flood Variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of Flood Variances to an elevation requirement, this means the Community Development Department and the Department of Public Works need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Community Development Department and the Department of Public Works believe will both provide relief and preserve the integrity of this Title.
- (e) Any applicant to whom a Flood Variance is granted shall be given written notice over the signature of the Zoning Administrator that:
  - (1) The issuance of a Flood Variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage, and
  - (2) Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the San Joaquin County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- (f) The Floodplain Administrator will maintain a record of all Flood Variance actions, including justification for their issuance, and report such Flood Variances issued in its biennial report submitted to the Federal Emergency Management Agency.

### **9-811.030 Appeal Board**

- (a) In passing upon requests for Flood Variances, the Community Development Department and the Department of Public Works shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Title, and the:
  - (1) Danger that materials may be swept onto other lands to the injury of others;
  - (2) Danger of life and property due to flooding or erosion damage;
  - (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
  - (4) Importance of the services provided by the proposed facility to the community;
  - (5) Necessity to the facility of a waterfront location, where applicable;
  - (6) Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

- (7) Compatibility of the proposed use with existing and anticipated development;
  - (8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (9) Safety of access to the property in time of flood for ordinary and emergency vehicles;
  - (10) Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
  - (11) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- (b) Flood Variances shall only be issued upon a:
- (1) Showing of good and sufficient cause;
  - (2) Determination that failure to grant the Flood Variance would result in exceptional "hardship" to the applicant; and
  - (3) Determination that the granting of a Flood Variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (see "Public safety and nuisance"), cause "fraud and victimization" of the public, or conflict with existing local laws or ordinances.
- (c) Flood Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of 9-811.020(a) through 9-811.020(d) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.
- (d) Upon consideration of the factors of 9-811.020(a) and the purposes of this Chapter, the Community Development Department and the Department of Public Works may attach such conditions to the granting of Flood Variances as it deems necessary to further the purposes of this ordinance.

#### **9-811.040 Review Procedure**

The review procedure for a Flood Variance Application shall be the same as for a Conditional Use Permit, as required by Chapter 9-804, Use Permits, and include a Public Hearing by the Planning Commission, subject to the noticing and procedures in Chapter 9-802, Common Procedures.

#### **9-811.050 Exceptions And Exclusions**

The following provisions shall apply:

- (a) Flood Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter; and
- (b) Flood Variances shall not be issued within a floodway if an increase in flood levels during the 100-year flood discharge would result.

**9-811.060 Findings**

Prior to approving an application for a Flood Variance, the Planning Commission shall find that all of the following are true:

- (a) There is good and sufficient cause for the Flood Variance;
- (b) Failure to grant the Flood Variance would result in exceptional hardship to the applicant;
- (c) The Flood Variance will not result in increased flood heights, create additional threats to public safety, produce extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- (d) The Flood Variance is the minimum necessary, considering the flood hazard, to afford relief; and
- (e) Granting of the Flood Variance will not constitute a grant of special privileges inconsistent with the limitations on similarly situated properties subject to the County's flood regulations.

**9-811.070 Notice Of Increased Risk**

Any applicant to whom a Flood Variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the regulatory flood elevation and that the cost of insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. The notice shall be prepared by the Community Development Department and recorded by the office of the San Joaquin County Recorder in such a manner to make it appear in the chain of title of the affected parcel of land.

## Chapter 9-812 Grading and Drainage Permits

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### Sections:

9-812.010	Purpose
9-812.020	Construction grading permit requirements.
9-812.030	Construction drainage permit requirements.
9-812.040	Procedures.
9-812.050	Permit Review Procedures.
9-812.060	Permit Approval.
9-812.080	Appeals; Effective Date, Extensions and Modifications
9-812.090	Performance of Work

### 9-812.010 Purpose

The purpose of this Chapter is to establish permit procedures for construction grading and drainage in order to:

- (a) Allow for construction grading and drainage that will not adversely affect the environment and the public health, safety, and welfare of the county and will minimize hazards to life and property;
- (b) Ensure implementation of standards to protect against soil loss, adverse effects of flooding, and pollution of watercourses with soil and other pollutants, and protect the safety, use, and stability of public rights-of-way and watercourses;
- (c) Protect aquatic resources and wildlife habitat; and
- (d) Promote water conservation and groundwater recharge.

### 9-812.020 Construction Grading Permits

- (a) **Permit required.** A construction grading permit shall be required prior to commencing any construction grading or related work, including preparatory land clearing, vegetation removal, or other ground disturbance, except where exempted from permit requirements by Subsection (c). A separate construction grading permit shall be required for each site.
- (b) **Designation and performance.** Construction grading shall be designated as "regular construction grading" or "engineered construction grading" in compliance with Table 9-812.020, and shall be undertaken as follows:
  - (1) **Regular construction grading.** Regular construction grading shall be performed in compliance with approved plans and specifications prepared by the project applicant, the property owner, or a licensed professional acting within the scope of their license.
  - (2) **Engineered construction grading.** Engineered construction grading shall be performed in compliance with approved plans and specifications prepared by a California-licensed civil engineer.



<b>TABLE 9-812.020 CONSTRUCTION GRADING DESIGNATION</b>		
<b>Parameter</b>	<b>Threshold</b>	
	<b>Regular Construction Grading</b>	<b>Engineered Construction Grading</b>
Volume (cut or fill)	Does not exceed 5,000 cubic yards	Exceeds 5,000 cubic yards
Cut	No greater than 3 feet in depth and does not create a cut slope greater than 5 feet in height <sup>1</sup>	Greater than 3 feet in depth or creates a cut slope greater than 5 feet in height <sup>1</sup>
Fill	No greater than 3 feet in depth <sup>1</sup>	Greater than 3 feet in depth <sup>1</sup>
Fill inside the flood-prone urban area or special flood hazard areas	Does not exceed 50 cubic yards	Exceeds 50 cubic yards
Natural slope of grading area	No greater than 15 percent	Greater than 15 percent
<b>Note:</b>		
1. The references to depths and heights for cuts and fills are between existing grade and finished grade.		

- (c) **Exemptions.** The following construction grading activities may be conducted without obtaining a construction grading permit, provided that these activities conform to the standards in Chapter 9-702, Grading and Excavation.
- (1) **Cemeteries.** Routine excavations and fills for graves.
  - (2) **Construction grading within a public right-of-way.** Where authorized by an encroachment permit, construction grading within a public right-of-way.
  - (3) **Emergency construction grading.** Construction grading necessary to protect life or property or to implement erosion prevention or control measures, where a situation exists that requires immediate action; provided that only the volume of construction grading necessary to abate an imminent hazard may be performed prior to obtaining a construction grading permit. The person performing the emergency construction grading or the property owner shall:
    - (A) Notify the Zoning Administrator and provide evidence acceptable to the Zoning Administrator of the scope and necessity of the emergency construction grading on or before the next business day after the onset of the emergency situation; and
    - (B) Apply for a construction grading permit within ten days after the commencement of the emergency construction grading.
    - (C) The Zoning Administrator may order emergency construction grading to be stopped or restricted in scope based upon the nature of the emergency.
  - (4) **Environmental remediation.** Construction grading for environmental remediation ordered or approved by the County or another public agency exercising regulatory jurisdiction over a site contaminated with hazardous materials, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the

work. The Zoning Administrator shall be notified in writing at least 30 days prior to the commencement of such work to qualify for this exemption.

- (5) ***Excavations and fills for buildings or structures.*** Where authorized by a valid building or demolition permit, excavations below existing or finished grade for basements, and footings of buildings, retaining walls, or other structures, and fills using only material from the excavation. The placement of fill must be shown on the approved plans and specifications. Fill that is intended to support structures or surcharges may be greater than one foot in depth only if a soils report justifies the use of the fill. This exemption shall not apply to any fill that is engineered construction grading.
- (6) ***Excavations and fills for wells or on-site sewage disposal systems.*** Where authorized by a valid well or septic permit, excavations and fills for wells or on-site sewage disposal systems. The placement of fill must be shown on the approved plans and specifications.
- (7) ***Exploratory excavations.*** Exploratory excavations to investigate subsurface conditions, affecting or disturbing an area of less than 10,000 square feet and involving the movement of less than 50 cubic yards, under the direction of a California-licensed civil engineer, soils engineer, engineering geologist, or registered environmental health specialist, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the work.
- (8) ***Landfills.*** Construction grading at landfills regulated by the State Integrated Waste Management Act.
- (9) ***Maintenance, repair, or resurfacing of existing private roads and driveways.*** Maintenance, repair, or resurfacing of existing, lawfully constructed private roads and driveways, where the length, width, and design capacity are not changed. This exemption shall not apply to any fill in a floodplain or floodway designated by the County.
- (10) ***Minor cut.*** A cut that does not exceed 50 cubic yards and:
  - (A) Is no greater than three feet in depth, or
  - (B) Does not create a cut slope greater than five feet in height and greater than two feet horizontal to one foot vertical.
- (11) ***Minor fill.*** Fill outside a flood hazard area that does not exceed 50 cubic yards or alter or obstruct a watercourse or wetland and is:
  - (A) No greater than one foot in depth, placed on terrain with a natural slope no greater than 15 percent and intended to support structures or surcharges; or
  - (B) No greater than three feet in depth (one foot in a flood hazard area) and not intended to support structures or surcharges.
  - (C) This exemption shall not apply to any fill that is engineered construction grading.
- (12) ***Pipelines and utilities.*** Excavations and fills for pipelines, routine pipeline maintenance practices, or installation, testing, maintenance, or replacement of utility connections, distribution or transmission systems, or telecommunication facilities, on a single site or within a public right-of-way, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the work. This exemption shall not apply to any fill that is used for any purpose other than restoring the ground surface to its previous topographic condition.

- (13) **Public projects.** Where a public agency takes full responsibility for the work, construction grading for public projects on public property, including public trails. The Zoning Administrator shall be notified in writing at least 30 days prior to the commencement of the work.
- (14) **Resource conservation, restoration, or enhancement projects.** Where a public agency takes full responsibility for the work, construction grading for soil, water, wildlife, or other resource conservation, restoration, or enhancement projects. The Zoning Administrator shall be notified in writing at least 30 days prior to the commencement of the work.
- (15) **Soil profiling test pits.** Excavations for soil profiling test pits, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the work.
- (16) **Surface mining.** Mining, quarrying, excavating, processing, or stockpiling rock, sand, gravel, aggregate, or clay in compliance with this Title.

**9-812.030 Construction Drainage Permit Requirements**

- (a) **Permit required.** A construction drainage permit shall be required prior to commencing any construction drainage involving construction or modification of drainage facilities or related work, including preparatory land clearing, vegetation removal, or other ground disturbance, except where exempted from permit requirements by Subsection (c). A separate construction drainage permit shall be required for each site.
- (b) **Designation and performance.** Construction drainage involving the construction or modification of drainage facilities shall be designated as "regular construction drainage" or "engineered construction drainage" in compliance with Table 9-812.030 and shall be performed as follows:
  - (1) **Regular construction drainage.** Regular construction drainage shall be performed in compliance with approved plans and specifications prepared by the project applicant, the property owner or a licensed professional acting within the scope of their license.
  - (2) **Engineered construction drainage.** Engineered construction drainage shall be performed in compliance with approved plans and specifications prepared by a civil engineer.

<b>TABLE 9-812.030 CONSTRUCTION DRAINAGE DESIGNATION</b>		
<b>Parameter</b>	<b>Threshold <sup>1</sup></b>	
	<b>Regular Construction Drainage</b>	<b>Engineered Construction Drainage</b>
Cross-sectional area of drainage facility	Does not exceed 2 square feet	Exceeds 2 square feet
1. Examples: a. Circular: Diameter is less than or equal to 19 inches or 1.6 feet, effectively 18 inches or 1.5 feet. b. Vee-ditch: Depth of 1 foot and top width equal to 4 feet (assumes 2:1 side slopes).		

- (c) **Exemptions from permit requirements.** The following construction drainage activities are exempt from the provisions of this section and may be conducted without obtaining a construction drainage permit, provided that these activities shall still be subject to the standards in Chapter 9-702, Construction and Excavation.

- (1) **Drainage facilities for construction grading, buildings or structures, septic systems, or within a public right-of-way.** Where authorized by a valid construction grading, building, septic, or encroachment permit, construction or modification of drainage facilities for construction grading, buildings or structures, septic systems, or within a public right-of-way.
- (2) **Emergency construction drainage alteration.** Construction or modification of drainage facilities necessary to protect life or property, or to implement erosion prevention or control measures, where a situation exists that requires immediate action; provided that only the work necessary to abate an immediate hazard may be performed prior to obtaining a construction drainage permit. The person performing the emergency construction drainage alteration or the property owner shall:
  - (A) Notify the Zoning Administrator and provide evidence acceptable to the Zoning Administrator of the scope and necessity of the emergency construction drainage alteration on or before the next business day after the onset of the emergency situation; and
  - (B) Apply for a construction drainage permit within ten days after the commencement of the emergency construction drainage alteration.
  - (C) The Zoning Administrator may order emergency construction drainage alteration to be stopped or restricted in scope based upon the nature of the emergency.
- (3) **Maintenance, repair, or replacement of existing private drainage facilities.** Maintenance, repair, or replacement of existing, lawfully constructed private drainage facilities, where the location and design capacity are not changed.
- (4) **Minor pipe and vee-ditch swale systems.** Construction or modification of pipe and vee-ditch swale systems that meet all of the following criteria:
  - (A) The drainage area is less than one-half acre for a smooth-walled pipe or vee-ditch swale system, or less than one-quarter acre for a corrugated pipe system.
  - (B) The pipe or vee-ditch swale system is not located in the flood hazard area.
  - (C) The pipe system is a single run, with a minimum diameter of eight inches and installed slopes between two and four percent or the vee-ditch swale system is made of earth, grass, or rock, with side slopes no greater than fifty percent, maximum depth of nine inches, and installed slopes between two and four percent.
- (5) **Public projects.** Where a public agency takes full responsibility for the work, construction or modification of drainage facilities for public projects on public property, including public trails. The Zoning Administrator shall be notified in writing at least thirty (30) days prior to the commencement of the work.
- (6) **Resource conservation, restoration, or enhancement projects.** Where a public agency assumes full responsibility for the work, construction or modification of drainage facilities for soil, water, wildlife, or other resource conservation, restoration, or enhancement projects. The Zoning Administrator shall be notified in writing at least 30 days prior to the commencement of the work.

### 9-812.040 Procedures

- (a) **Application Requirements.** Applications for construction grading and construction drainage permits may be initiated by the property owner or the owner's authorized agent. Applications shall be filed with the Community Development Department on the prescribed application forms in accord with Chapter 9-802 (Common Procedures). In addition to any other application requirements, the application must include specifications, maps, reports, and other information and materials required by the department's list of required application contents for the specific type of application, and any other reports necessary to verify compliance with this chapter.
- (1) A permit application may include a request for relief from the standards in Chapter 9-702 (Grading and Excavation). The request shall state in writing each standard proposed to be varied, the proposed substitute measure, when it would apply, and its advantages. The director may require additional information to evaluate the requested relief.
  - (2) A fee, as specified by resolution of the Board of Supervisors, shall be required.
- (b) **Discretionary Review; Environmental Review.** An application for a relief from the standards in Chapter 9-702 (Grading and Excavation) is considered a discretionary permit application and is subject to environmental review under Section 9-802.060.

### 9-812.050 Permit Approval and Issuance.

- (a) **Findings for approval.** The Zoning Administrator may approve a permit application and issue a construction grading or drainage permit when the Zoning Administrator makes the following determinations.
- (1) **Ministerial approvals.** A permit application shall be approved ministerially and a ministerial construction grading or drainage permit issued when the director determines that the proposed construction grading or drainage complies with all the provisions of this chapter and any applicable permit for development.
  - (2) **Discretionary approvals.** A permit application may be approved as a discretionary action and a discretionary construction grading or drainage permit issued when the Zoning Administrator determines that:
    - (A) There are special circumstances affecting the site that make the strict application of the standards in Chapter 9-702 impractical;
    - (B) The proposed construction grading or drainage is consistent with the purpose and intent of the standards in Chapter 9-702 and does not diminish the health, safety, and environmental protection benefits that would be obtained from the strict application of those standards; and
    - (C) The proposed construction grading or drainage complies with all other provisions of this Chapter and any applicable permits for development.
- (b) **Conditions of Approval for Discretionary Permits.** For approval of any application for a relief from the standards in Chapter 9-702 (Grading and Excavation,) the Zoning Administrator may impose any conditions deemed reasonable and necessary to protect the public health, safety, and welfare; prevent adverse environmental impacts, or the creation of hazards to site or

adjacent land uses; and ensure proper completion of the work. The decision-maker may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

- (c) **Distribution and use of approved plans and specifications.** The Zoning Administrator shall retain one or more sets of the approved permit and dated plans and specifications for inspection and record keeping. Two sets of the approved permit and dated plans and specifications shall be provided to the permittee. The permittee shall maintain one set of the approved permit and dated plans and specifications on the site at all times during the work.

**9-812.060 Appeals; Expiration, Extensions and Modifications.**

- (a) **Appeals.** A decision of the Zoning Administrator on a discretionary permit may be appealed to the Planning Commission in accordance with Section 9-802.140. All other decisions of the Zoning Administrator are final and not appealable.
- (b) **Expiration, Extensions and Modifications.** Construction grading and construction drainage permit are effective and may only be extended or modified as provided for in Chapter 9-802 (Common Procedures).
- (c) **Time limits.** A construction grading or construction drainage permit shall expire three years from the effective date of the permit, unless an extension has been granted in writing, provided that the Zoning Administrator may limit a permit to a lesser time period where the permit is required to abate dangerous or hazardous conditions. All work for which a construction grading or construction drainage permit is issued shall be completed and finalized prior to expiration of the permit or any extension granted.

**9-812.070 Performance of Work.**

All work for which a construction grading or drainage permit is required shall be subject to the following requirements.

- (a) **Pre-construction consultation.** The permittee and the Zoning Administrator shall have a pre-construction consultation prior to the commencement of the work.
- (b) **Responsibility for the work.** The permittee shall be responsible for ensuring that the work is performed in compliance with the approved plans and specifications and the standards in Chapter 9-807.
- (c) **Notification of change in ownership.** The permittee shall notify the Zoning Administrator of any change in ownership of the site prior to completion of the work.
- (d) **Inspections.** All work shall be subject to inspection as required by the Zoning Administrator.
  - (1) **Site access.** The permittee shall provide adequate access to the site for inspection by inspectors designated by the Zoning Administrator during the performance of all work and for a minimum of one year after final inspection.
  - (2) **Type of inspections and certifications.** The Zoning Administrator may require the permittee to have a California-licensed civil engineer, soils engineer, or engineering geologist perform inspections of work in progress, identify any work done that does not comply with

approved plans and specifications and recommend corrective measures, as needed, and certify completion of work.

- (3) **Transfer of responsibility for approval.** If a required civil engineer, soils engineer, engineering geologist, or other professional is changed during the course of the work, the work shall be stopped until the permittee notifies the Zoning Administrator in writing of the change of professional and the new professional notifies the Zoning Administrator in writing of their agreement to accept responsibility for approval of the completed work within the area of their technical competence.
  - (4) **Field changes.** After permit issuance, no change to the approved work shall occur without the prior written approval of the Zoning Administrator. If the Zoning Administrator determines that the changes are minor, the changes shall be shown on as-built plans. If the Zoning Administrator determines that the changes are major, a request for a modification to the approved plans and specifications shall be filed as provided in Section 9-802.120.
  - (5) **Protection of utilities.** As required by Government Code section 4216.2, the permittee shall contact the Underground Service Alert (USA) prior to starting any excavation that will be conducted in an area that is known, or reasonably should be known, to contain subsurface utility installations. Contact shall occur at least two working days, but not more than fourteen calendar days, before the excavation starts. If practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.
  - (6) **Stop work orders.** The Zoning Administrator may order that any work performed contrary to the requirements of this chapter, other applicable provisions of this code, the approved plans and specifications, or any permit conditions, or any work that has otherwise become hazardous to property or the public, be immediately stopped. It shall be unlawful and a violation of this chapter for any person to resume work that was ordered to be stopped by the director, unless the director has required and the permittee has agreed to any necessary corrective measures, and the director has authorized resumption of the work in writing.
- (e) **Completion of work.**
- (1) **Final reports.** Upon completion of all work for which a construction grading or drainage permit is required, the Zoning Administrator may require the following plans, records, and declarations to be submitted to the Department.
    - (A) *As-built plans.* A set of as-built plans including original and finished contours at intervals acceptable to the Zoning Administrator, parcel drainage patterns with directional arrows, locations and elevations of all surface and subsurface drainage facilities, and locations of all post-development stormwater best management practices.
    - (B) *Testing records.* A complete record of all field and laboratory tests, including the location and elevation of all field tests and any soils reports prepared for the site.
    - (C) *Declarations about completed work.* Declarations by any civil engineer, soils engineer, engineering geologist, or other professional retained by the permittee, that all work was done in compliance with the approved plans and specification.
  - (2) **Final inspection.** No permittee shall be deemed to have complied with this chapter until a final inspection of the work has been completed and approved by the Zoning

Administrator. Final approval shall not be given until all work has been completed in compliance with the approved plans and specifications and any materials required by Subsection (1) have been submitted and accepted.



## Chapter 9-813 Quarry Excavation Permits

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*This chapter carries forward existing procedures for quarry excavation permits, with minor editing for clarity and conformance with this updated Development Title.*

### Sections:

9-812.010	Purpose
9-812.020	Permitted Zones
9-812.030	Requirements For Application
9-812.040	Review Procedures
9-812.050	Findings
9-812.060	Development Standards
9-812.070	Expansion Of An Existing Quarry Excavation
9-812.080	Surface Mining And Reclamation Act

### **9-813.010 Purpose**

The purpose of this Chapter is to provide a permitting procedure to:

- (a) Allow the extraction of mineral resources, while at the same time protecting people, property, and the environment from potential hazards associated with excavations; and
- (b) Ensure the reclamation of excavation sites.

### **9-813.020 Permitted Zones**

Quarry Excavation Permit applications may be accepted in the following zones:

- (a) I-G Zone;
- (b) C-R Zone; and
- (c) AG and AU Zones, provided that:
  - (1) Areas for excavation are designated "Resource Conservation" on the County's 2035 General Plan Land Use Map and the State Mines and Geology Board has identified the areas as construction aggregate deposits of regional significance; and
  - (2) The portion of the property to be excavated contains substantial deposits of mineral resources, or a portion of a deposit of substantial mineral resources; or
  - (3) For areas zoned AG, the Farmland Mapping and Monitoring Program's soil classification for that portion of the property to be excavated is neither Prime Farmland, Farmland of Statewide Significance, nor Unique Farmland.

### **9-813.030 Requirements For Application**

An application for a Quarry Excavation Permit shall include the following:

- (a) A Site Plan prepared and stamped and signed by a registered civil engineer;

- (b) An Excavation/Reclamation Plan and schedule prepared by a registered civil engineer;
- (c) Proposed methods of financial guarantees of performance; and
- (d) The required fee as specified by the Board of Supervisors.

#### **9-813.040 Review Procedures**

The review procedure for Quarry Excavation Permit applications shall be the same as for a Conditional Use Permit under Chapter 9-804, Use Permits. The Public Hearing shall be noticed and conducted as specified in Chapter 9-802, Common Procedures.

#### **9-813.050 Findings**

Prior to approving an application for a Quarry Excavation Permit, the Planning Commission shall find that all of the following are true:

- (a) The proposal is for the removal of regionally significant or scarce deposits of mineral resources and not for the removal of prime farmland;
- (b) The proposed reclamation of the property upon completion of the excavation will leave the property in a condition which will allow its reuse; and
- (c) Issuance of the permit shall not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity.

#### **9-813.060 Development Standards**

Approved Quarry Excavation Permits shall be subject to the development standards specified in Chapter 9-702.

#### **9-813.070 Expansion Of An Existing Quarry Excavation**

Existing excavations subject to a Quarry Excavation Permit may be expanded pursuant to this Section.

- (a) **Required Criteria.** In those instances involving excavations that require a Quarry Excavation Permit and a Quarry Excavation Permit has been approved, the Zoning Administrator may approve plans for the expansion of the existing permit when the expansion complies with all of the following criteria:
  - (1) The excavation expansion is incidental to the existing excavation;
  - (2) No building expansion involves more than a 25 percent increase in building floor area covered by existing structures associated with the excavation;
  - (3) No use expansion involves more than an increase of 25 acres, or more than a ten percent (10%) increase in the overall site area covered by the existing Quarry Excavation Permit, whichever is less;
  - (4) The excavation expansion, in the opinion of the Zoning Administrator, would not have a substantial adverse effect on significant biotic resources on the site;
  - (5) The excavation expansion, in the opinion of the Zoning Administrator, would not have a substantial adverse effect on adjacent property;

- (6) The excavation expansion complies with existing requirements of agencies having jurisdiction and any other appropriate regulatory agency as determined by the Zoning Administrator; and
- (7) An Improvement Plan is submitted pursuant to Chapter 9-514, Improvement Plans.
- (b) **Criteria Not Met.** If a proposed expansion does not meet with the above criteria in Subsection (a), a new Quarry Excavation Permit shall be required.

**9-813.080 Surface Mining And Reclamation Act**

Approved Quarry Excavation Permits shall be subject to the regulations adopted by the State Mining and Geology Board as authorized by the California Surface Mining and Reclamation Act (SMARA) of 1975 (Public Resource Code Section 2710 et seq.), as amended; Public Resource Code Section 2207; and the California Code of Regulations adopted pursuant thereto (Title 14, Section 3500 *et seq.*).

# Chapter 9-814 Development Agreements

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*This chapter carries forward existing requirements for development agreements, with minor editing and technical additions for greater clarity and conformance to State law. The contents of an application to enter into an agreement are prescribed in greater detail; many sections now considered optional would be required. This is best practice.*

**Sections:**

- 9-813.010 Purpose
- 9-813.020 Applicability
- 9-813.030 Authority and Duties
- 9-813.040 Procedure
- 9-813.050 Review Procedures: Public Notice and Hearing
- 9-813.060 Findings Required
- 9-813.070 Execution; Recordation
- 9-813.080 Annual Review
- 9-813.090 Amendment or Cancellation
- 9-813.100 Effect of Approved Agreement
- 9-813.110 Enforcement
- 9-813.120 Emergency Situations

**9-814.010 Purpose**

This Chapter establishes procedures and requirements for considering and entering into legally binding agreements with applicants for development projects, as provided for in State law. Such agreements may provide a greater degree of certainty than the normal permit approval process by granting assurance that an applicant may proceed with development in accord with policies, rules, and regulations in effect at the time of approval subject to conditions to promote the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved.

**9-814.020 Applicability**

A Development Agreement may be considered for a large, multi-phase development project that will require a developer to make a substantial investment at the early stages of the project for planning and engineering for the entire project and for public facilities and services. In order to be considered for a Development Agreement, a project must be consistent with the General Plan and any applicable Master Plan, Specific Plan, or Planned Development zone, unless the applicant has submitted an application for any necessary amendments to the General Plan, Master Plan, Specific Plan, or Planned Development zone.

**9-814.030 Authority and Duties**

- (a) The Director, in consultation with the County Administrator, will negotiate the specific components and provisions of the Development Agreement on behalf of the County for recommendation to the Board of Supervisors.

- (b) The Board of Supervisors has the exclusive authority to approve a Development Agreement.

#### **9-814.040 Procedure**

An applicant for a development project may request that the County review the application as a Development Agreement application in accordance with the following procedures. The County incorporates by reference the provisions of Government Code Sections 65864-65869.5. In the event of any conflict between these statutory provisions and this section, State law controls.

- (a) **Application Requirements.** An applicant must submit an application for a Development Agreement on a form prescribed by the Director, accompanied by the required fees. The Director must identify submittal requirements for applications for Development Agreements and may require an applicant to submit such additional information and supporting data as considered necessary for environmental review and to process the application. In addition to any other information that the Director requires, each application for a Development Agreement must be accompanied by the general terms and conditions of the agreement proposed by the applicant and must include the contents required in subsection (b) below.
- (b) **Contents of Development Agreements.**
- (1) **Required Contents.** A Development Agreement must specify its duration; the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes. It must contain provisions concerning its transferability.
  - (2) **Improvements and Fees.** A Development Agreement may include requirements for construction and maintenance of on-site and off-site improvements or payment of fees in lieu of such dedications or improvements.
  - (3) **Conditions.** A Development Agreement may also include conditions, terms, restrictions, and requirements for subsequent discretionary actions but does not eliminate the applicant's responsibility to obtain all required land use approvals.
  - (4) **Environmental Mitigation.** A Development Agreement may include, without limitation, conditions and restrictions imposed by the County with respect to the project, including those conditions, restrictions and mitigation measures proposed in any Mitigated Negative Declaration or Final Environmental Impact Report applicable to the project that eliminate or mitigate adverse environmental impacts of the project.
  - (5) **Phasing.** A Development Agreement may provide that the project be constructed in specified phases, that construction be commenced within a specified time, and that the project or any phase thereof be completed within a specified time.
  - (6) **Financing.** If the Development Agreement requires applicant financing of necessary public facilities, it may include terms relating to subsequent reimbursement over time for such financing.
  - (7) **Indemnity.** A Development Agreement must contain an indemnity clause requiring the applicant to indemnify and hold the County harmless against claims arising out of or in any way related to the actions of applicant in connection with the application or the development process, including all legal fees and costs.

- (8) **Performance Obligation Fees.** A Development Agreement may include provisions to guarantee performance of obligations stated in the agreement.
- (c) **Initial Review of Application.** The Director will review each application to determine whether it is complete. If the application is found to be incomplete, the Director will reject the application and will inform the applicant of the items necessary to properly complete the application. If the application is complete, the Director will determine whether an environmental review is required for the project, in compliance with applicable State and local requirements.
- (d) **Negotiations.** The Director must negotiate the specific components and provisions of the Development Agreement on behalf of the County for recommendation to the Board of Supervisors.
- (e) **Recommendation by Director.** The Director must make his/her recommendation in writing to the Board of Supervisors. The recommendation must include the Director's determination and supporting reasoning whether or not the proposed Development Agreement satisfies the findings specified in Section 9-813.060, Findings Required.

#### **9-814.050 Review Procedures: Public Notice and Hearing**

The review procedure for a Development Agreement shall include a Public Hearing before the Board of Supervisors with notice as set forth in Chapter 9-802, Common Procedures, with the following additional requirements:

- (a) **Notice of Intent.** The Director must publish a notice of intent to consider adoption of a Development Agreement as provided in Section 65090 and 65091 of the Government Code.
- (b) **Signed Agreement Required.** The Applicant must execute a proposed Development Agreement before it is placed before the County Council for consideration at a public hearing.
- (c) **Decision by Board of Supervisors.** Final action on the Development Agreement shall be taken by the Board of Supervisors at a Public Hearing.

#### **9-814.060 Findings Required**

Prior to approving a Development Agreement, the Board of Supervisors shall find that all of the following are true:

- (a) **Consistency.** The provisions of the Development Agreement are consistent with the General Plan and any applicable Master Plan, Public Financing Plan, and Specific Plan for the area; and
- (b) **Development Title.** The proposed development complies with all provisions of this Title.

#### **9-814.070 Execution; Recordation**

No later than ten days after the final approval of a Development Agreement, the Clerk of the Board shall record with the County Recorder a copy of the agreement, which shall describe the land subject thereto.

### 9-814.080 Annual Review

- (a) **Frequency of Review.** The Director shall cause the Development Agreement to be reviewed annually on the anniversary date of its adoption. A more frequent review may be undertaken at the direction of the Board of Supervisors.
- (b) **Finding of Compliance.** If the Director, on the basis of substantial evidence, finds compliance by the applicant with the provisions of the Development Agreement, the Director will issue a finding of compliance, which will be in recordable form and may be recorded with the County Clerk-Recorder's Office after the conclusion of the review.
- (c) **Finding of Non-compliance.** If the Director finds the applicant has not complied with the provisions of the Development Agreement, the Director may issue a finding of noncompliance that may be recorded by the County Clerk-Recorder's Office. The Director must specify in writing to the applicant the respects in which the applicant has failed to comply and must set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. If applicant does not comply with any terms of compliance within the prescribed time limits, the Development Agreement will be subject to termination or modification pursuant to this Chapter.
- (d) **Termination or Modification.** If the County finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the agreement, the County may terminate or modify the Agreement.
  - (1) Action to terminate or modify the Agreement may be initiated only by the Board of Supervisors; and
  - (2) No action to terminate or modify the Agreement shall be taken without a Public Hearing Review noticed and conducted pursuant to Chapter 9-802, Common Procedures.
- (e) **Payment of Periodic Review.** The cost of the annual review of the Development Agreement shall be paid for by the party (or the party's successor in interest) who entered into the Development Agreement with the County. The payment shall cover the actual cost to the County of conducting said annual review, including employee salaries and benefits, overhead, and materials.

### 9-814.090 Amendment or Cancellation

A Development Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the Agreement or their successors in interest. An Agreement shall be amended or canceled using the same process as was used for its adoption.

- (a) **Recordation.** If the parties to the Agreement or their successors in interest amend or cancel the Development Agreement, or if the County terminates or modifies the Development Agreement for failure of the applicant to fully comply with the provisions of the Development Agreement, the Clerk of the Board will record notice of such action with the County Clerk-Recorder's Office.

- (b) **Rights of the Parties after Cancellation or Termination.** In the event that a Development Agreement is cancelled or terminated, all rights of the applicant, property owner or successors in interest under the Development Agreement will be terminated. If a Development Agreement is terminated following a finding of noncompliance, the County may, in its sole discretion, determine to return any and all benefits, including reservations or dedications of land, and payments of fees, received by the County.

#### **9-814.100 Effect of Approved Agreement**

- (a) **Existing Rules and Regulations.** Unless otherwise specified in the Development Agreement, the County's rules, regulations and official policies governing permitted uses of the property, density and design, and improvement standards and specifications applicable to development of the property shall be those County rules, regulations and official policies in force on the effective date of the Development Agreement. The applicant will not be exempt from otherwise applicable County ordinances or regulations pertaining to persons contracting with the County.
- (b) **Future Rules and Regulations.** A Development Agreement must not prevent the County, in subsequent actions applicable to the property, from applying new rules, regulations and policies that do not conflict with those rules, regulations and policies applicable to the property as set forth in the Development Agreement. A Development Agreement will not prevent the County from denying or conditionally approving any subsequent land use permit or authorization for the project on the basis of such existing or new rules, regulations, and policies. Unless otherwise specified in the Development Agreement, a Development Agreement will not exempt the applicant from obtaining future discretionary land use approvals.
- (c) **State and Federal Rules and Regulations.** In the event that any regulation or law of the State of California or the United States, enacted or interpreted after a Development Agreement has been entered into prevents or precludes compliance with one or more provisions of the Development Agreement, then the Development Agreement may be modified or suspended in the manner and pursuant to the procedures specified in the Development Agreement, as may be necessary to comply with such regulation or law.

#### **9-814.110 Enforcement**

The procedures for enforcement, amendment, modification, cancellation or termination of a Development Agreement specified in this section and in Government Code Section 65865.4 or any successor statute, are non-exclusive. A Development Agreement may be enforced, amended, modified, cancelled or terminated by any manner otherwise provided by law or by the provisions of the Development Agreement.

#### **9-814.120 Emergency Situations**

The County may suspend the issuance of Building Permits for the development project after a noticed public hearing if it finds in good faith that a clear and present emergency situation requires the suspension.



## Chapter 9-815 Enforcement

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*This chapter carries forward existing provisions.*

### Sections:

9-814.010	Purpose
9-814.020	Enforcement Official
9-814.030	Hearing Officer
9-814.040	Investigation/Inspections
9-814.050	Inspection Warrant
9-814.060	Inspection Warrant Exception
9-814.070	Duty of Owners
9-814.080	Violations
9-814.090	Notice Of Violation And Order To Abate
9-814.100	Administrative Fines
9-814.110	Settlement Agreement
9-814.120	Civil Liability; Criminal Penalties
9-814.130	Abatement
9-814.140	Attorney's Fees And Costs
9-814.150	Appeal Of Statement Of Expense
9-814.160	Late Charges And Interest
9-814.170	Enforcement By Civil Action
9-814.180	No Duty To Enforce

### **9-815.010 Purpose**

Pursuant to the authority granted to the Board of Supervisors in Government Code Sections 25845 and 53069.4, this Chapter sets forth the provisions for the enforcement of this Title in addition or as an alternative to Title 1. The procedures set forth in this Chapter are designed to ensure the due process rights of any affected property owner or other person having possession or control of the real property involved. This Chapter provides remedies which are in addition to and does not limit, preclude, waive or supersede any other criminal or civil remedy available by law for the enforcement of this Title or to abate any violation of this Title.

### **9-815.020 Enforcement Official**

The Enforcement Official appointed pursuant to Title 1 is responsible for enforcing this Title. The Enforcement Official's duties include but are not limited to the investigation of reported or suspected violation of this Title, determination of whether any violation of this Title has occurred and, pursuant to this Chapter or Title 1, correcting or abating any violation of this Title.

### **9-815.030 Hearing Officer**

The Hearing Officer appointed pursuant to Title 1 shall conduct hearings on appeals from notice of violation and order to abate and statements of expense issued by the Enforcement Official pursuant to San Joaquin County Code, Division 3, Chapter 5, Code 2-3300 *et seq.*

### **9-815.040 Investigation/Inspections**

The Enforcement Official may, upon presentation of proper credentials, enter private or public property to inspect and/or investigate to obtain information relative to any reported or discovered nuisance that exists or was reported to have existed on that property, including but not limited to a physical inspection of the property and/or review of the owner or other person in possession or control of the property's records (whether stored on or off the property). The Enforcement Official may also take statements of witnesses and review any other evidence that they believe may assist in making a decision regarding any reported or discovered nuisance. The Enforcement Official's inspection and/or investigation of the property and/or related evidence shall be with the goal of determining whether the reported or discovered violation of this Title occurred and/or is on-going and obtaining information on parties responsible for the reported or discovered violation of this Title.

### **9-815.050 Inspection Warrant**

Where there is a report of the existence of a violation of this Title or other reason to believe that a violation of this Title exists or occurred on a property, but the owner or other person in possession or control of the property refuses to allow the Enforcement Official onto the property to inspect and/or investigate, or when circumstances justify not first seeking consent to inspect, the Enforcement Official may seek an inspection warrant pursuant to California Code of Civil Procedure Section 1822.50 *et seq.* to enter and inspect the property. If forcible entry is allowed by the inspection warrant, then the inspection warrant must so state.

### **9-815.060 Inspection Warrant Exception**

No inspection warrant or consent shall be required when the Enforcement Official believes there is an immediate threat or danger to the public health or safety and immediate abatement of any violation of this Title is justified under Section 9-1905.21 of this Chapter. Entry pursuant to this section includes and allows forcible entry if necessary to abate an immediate threat or danger to the public health or safety.

### **9-815.070 Duty of Owners**

It is the duty of every owner of real property or other person in possession or control of real property within the unincorporated area of the County to prevent a violation of this Title from arising from or existing on any real property they own or control.

### **9-815.080 Violations**

It is a violation of this Title and County Ordinance Code Section 1-2000 for a property owner and/or other person in control of a property to maintain or permit a nuisance or a violation of this Title on real property. Any use or condition on real property which is in violation of this Title or in violation of permits approved pursuant to the provisions of this Title shall constitute a violation of this Title and, if not abated, may be subject to the enforcement procedures outlined in this Chapter or Title 1.

### **9-815.090 Notice Of Violation And Order To Abate**

- (a) **Order to Abate.** When the Enforcement Official determines that a condition constituting a violation of this Title has occurred, they may provide a written notice and order pursuant to

Section 9-1905.11 to the owner(s) of the real property involved and any other person in possession or control of the real property pursuant to County Ordinance Code Sections 1-2010 and 1-2011. If delivery of the notice/order to abate cannot be accomplished pursuant to County Ordinance Code Sections 1-2010 and 1-2011 despite diligent effort then notice may be given by posting copies of the notice/order to abate at the real property involved and recording the notice/order to abate in the official records of the County.

- (b) **Failure to Receive Notice.** The failure of an addressee to receive the notice/order to abate provided to them in compliance with this Section shall not affect in any manner the validity of any proceedings taken under this Chapter or Title 1.
- (c) **Date Of Notification.** The date of notification is presumed to have occurred as follows:
  - (1) Pursuant to County Ordinance Code Section 1-2006 Notice by mail shall be deemed served at the time of deposit in the United States mail; or
  - (2) On the date the notice/order was personally served; or
  - (3) On the date the notice/order was posted at the real property involved.
- (d) **Contents of Notice Of Violation And Order To Abate—Contents.** The notice of violation and order to abate ("notice/order to abate") shall include at least the following information, as applicable, unless otherwise determined by the Enforcement Official:
  - (1) Address and parcel number of the real property involved including the location of the real property.
  - (2) Determination by the Enforcement Official that a violation of this Title existed or currently exists on the real property involved.
  - (3) Description of the the action(s) or condition(s) that did or currently are constituting a violation of this Title, and the section of this Title and/or any other ordinance, code, statute, act, regulation, or law that the action or condition(s) were or are in continuing violation of.
  - (4) Statement of any administrative fines ordered to be paid by the property owner and/or person in possession or control of the real property for the violation described in the notice/order to abate.
  - (5) State that the violation(s) must be addressed, corrected, or abated within 30 calendar days from the date of the notice/order to abate.
  - (6) State that the County may take legal action to address, correct, or abate the violation(s) up to and including criminal action pursuant to San Joaquin County Code of Ordinances Title 1, Division 2, Chapter 1.
  - (7) State that the addressee(s) of the notice/order to abate has a right to appeal the Enforcement Official's determination of a violation of this Title and/or imposition of administrative fines by filing a written notice of appeal with the issuing department within 30 calendar days of the date of notification of the notice/order to abate. Imposition of administrative fines will be stayed pending resolution of the appeal.
  - (8) State that unless the owner and/or person in possession or control of the real property involved voluntarily abates a continuing violation of this Title or timely appeals the

notice/order to abate, then the County may take action to abate a continuing violation of this Title.

- (9) State that the owner of the real property involved may be responsible for the cost of abatement. These costs will be calculated and provided to the owner in a statement of expenses.
  - (10) State that the owner of the real property involved has a right to appeal the Enforcement Official's accounting of costs for abatement in writing within 30 calendar days of receiving the statement of expense. Collection pursuant to the statement of expense will be stayed pending resolution of the appeal.
  - (11) State that if the owner of the real property involved fails to pay the cost of abatement, then a special tax may be assessed on the property tax of the real property involved which shall have the same priority as other taxes and be collected at the same time and manner as other County taxes.
  - (12) State that in the event that the violation of this Title poses an imminent health, safety, or fire hazard the Enforcement Official may reduce the 30 calendar days' notice time and take action to abate pursuant to this Chapter.
- (e) **Appeal Of Determination Of Violation.** If the owner or other person in possession or control of the real property involved objects to the Enforcement Official's findings and conclusions in the notice/order to abate, the owner or person in possession or control may, within 30 calendar days of the date of notification of the notice/order to abate, file a written appeal with the County department that issued the notice/order to abate. The appellant shall then select a Hearing Officer pursuant to Division 3, Chapter 5 of this Code. The Hearing Officer shall conduct a hearing on the appeal pursuant to the Hearing Officer's Administrative Procedures.
- (1) The County's findings and orders in the notice/order to abate shall remain in full force and effect until modified or rescinded by the Enforcement Official or until modified, vacated, or superseded by order of the Hearing Officer.
  - (2) If a timely appeal is filed, then the orders in the notice/order to abate shall be stayed pending such appeal.
  - (3) The Board of Supervisors may, by resolution, establish a fee for filing an appeal pursuant to this section.
  - (4) Within ten days of the completion of the appeal proceeding, the Hearing Officer shall mail the final written decision on the appeal to the parties and the Clerk of the Board of Supervisors. The written decision shall be final and shall be enforceable 31 days after the Clerk of the Board of Supervisors receives the written decision. Receipt will be presumed to have occurred five days after the Hearing Officer mailed the decision.
  - (5) If the Hearing Official's final written decision is in favor of the County and against the owner or person in control and possession of the real property involved, the costs incurred by the County in holding the hearing with the Hearing Officer or, alternatively, with an Administrative Law Judge from the Office of Administrative Hearings of the State of California, shall be added to the other costs of abatement and included in the statement of expense which may be billed to the owner.
- (f) **Appeal Of Hearing Officer's Decision.** The Enforcement Official and/or the party that appealed the Enforcement Official's determination of violation(s) constituting a violation of this

Title may appeal the Hearing Officer's decision to the Board of Supervisors within 30 days of receipt of the Hearing Officer's written decision. Receipt will be presumed to have occurred five days after the Hearing Officer mailed the decision.

- (1) The Hearing Officer's written decision shall be final unless a timely appeal is filed.
- (2) If a timely appeal is filed, then the Hearing Officer's written decision shall be stayed pending such appeal.
- (3) The Board of Supervisors may, by resolution, establish a fee for filing an appeal pursuant to this Section.
- (4) The Board of Supervisors may set a hearing on the appeal or shall make a decision based on the official record from the appeal.
- (5) The Board of Supervisors shall issue a decision that affirms, reverses, or modifies the Hearing Officer's written decision.
- (6) If the Board of Supervisors affirms in whole or in part the Hearing Officer's decision and finds that a violation occurred, the owner and/or person in possession or control of the real property involved must take the action(s) ordered in the notice/order to abate within 15 days of the resolution. If the violation of this Title is not abated, then the Enforcement Official may record the notice/order to abate against the property and take action to enforce the notice/order to abate.

#### **9-815.100 Administrative Fines**

If an owner and/or person in possession or control of the real property involved has been found to have committed a violation of this Title and/or has failed to abate the violation and/or to comply with action(s) ordered in the notice/order to abate, by the Hearing Officer, or the Board of Supervisors, then the Enforcement Official may impose an administrative fine as follows:

- (a) Each violation of this Title is subject to an administrative fine, not to exceed \$100.00 for a first violation; not to exceed \$200.00 for a second violation of the same section of this Title within one year of the date of the first notice/order to abate, and not to exceed \$500.00 for each additional violation of the same section of this Title within one year of the date of the first notice/order to abate.
- (b) In determining the amount of the fine up to the maximum possible fine the Enforcement Official may take into account the facts and circumstances of the violation, including without limitation the following relevant factors:
  - (1) The number of violations included in the notice/order to abate;
  - (2) The number of previous violations of the same or related type committed by the violator in the previous 24 months;
  - (3) The good faith efforts of the violator to avoid and/or to address, correct, or abate the violation(s) of this Title;
  - (4) The impact of the violation(s) on neighboring properties and the community;
  - (5) The financial gain by the violator in violating this Title;

- (6) The seriousness of the violation; and/or
- (7) The deterrent value of the administrative fine.
- (c) Payment of the administrative fines in whole or part shall not excuse the failure to take the action(s) ordered in the notice/order to abate nor shall it bar further enforcement action by the Enforcement Official.
- (d) The Enforcement Official may stay the imposition of the fine temporarily or reduce, suspend, or eliminate an administrative fine if they determine that:
  - (1) Substantial progress is being made toward completing the action(s) ordered in the notice/order to abate and a stay, reduction, suspension, or elimination of the fine would further the goal of completing the action(s) ordered in the notice/order to abate; and/or
  - (2) Circumstances exist that are either beyond the control of the violator or were unknown at the time the administrative fines were imposed; and/or
  - (3) The correction of the violation is not feasible, and the violation does not present a threat to public health or safety.
- (e) Imposition of an administrative fine is in addition to any other remedies provided by County code or state law.
- (f) Nothing in this chapter shall prevent the District Attorney from commencing an action for a violation of this Title.
- (g) All administrative fines collected under the provisions of this Chapter, not including the reimbursement for costs of abatement pursuant to the statement of expense, shall be paid into the County treasury, to the credit of the general fund.

#### **9-815.110 Settlement Agreement**

No provision in this Title precludes the property owner from entering into a settlement agreement with the enforcement official at any time

#### **9-815.120 Civil Liability; Criminal Penalties**

- (a) **Criminal Penalties.** Enforcement of violations of this Title may be subject to criminal penalties as follows:
  - (1) ***Notice to Appear Citation.*** If an owner and/or person in possession or control of the real property involved has committed a violation of this Title and/or has failed to take the action(s) ordered in the notice/order to abate within the time allowed by the notice/order to abate, Hearing Officer, or Board of Supervisors, then law enforcement agencies or the Enforcement Official may issue a notice to appear citation to the owner and/or person in possession or control of the real property.
  - (2) ***Infraction or Misdemeanor.*** Every violation of this Title is either an infraction or a misdemeanor and, regardless of the number of violations of any section of this Title, each violation may be charged as either an infraction or misdemeanor at the discretion of the District Attorney. Each day, or portion thereof, that the violation exists shall be a new and separate violation.

- (3) **Infraction.** If the violation is determined to be an infraction pursuant to subsection (b), multiple violations of the same section of this Title on the same property shall be punished as follows:
    - (A) For the first violation, a fine of \$100.00, plus any additional penalties assessed by the Court.
    - (B) For the second violation of the same section within one year of the first violation, a fine of \$200.00, plus any additional penalties assessed by the Court.
    - (C) For the third and all subsequent violations of the same section within one year of the first violation, a fine of \$500.00, plus any additional penalties assessed by the Court.
  - (4) **Misdemeanor.** If the violation is determined to be a misdemeanor pursuant to subsection (b), the property owner shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as follows:
    - (A) By a fine of not more than \$500.00; or
    - (B) By imprisonment in the County Jail for a term of not more than six months.
  - (5) **Action by County.** Nothing in this Chapter shall prevent the District Attorney or County Counsel from seeking any legal or equitable relief permitted under law for any violation of this Title.
- (b) **Civil Liability.** There shall be no civil liability on the part of, and no cause of action shall arise against, any County official or personnel acting pursuant to this Chapter and within the scope of their authority.

### 9-815.130 Abatement

- (a) **Abatement—Voluntarily.** The property owner and/or person in possession or control of the real property involved may voluntarily abate the violation of this Title at any time. That person may then request the Enforcement Official to inspect the real property involved to confirm the voluntary abatement. If upon inspection or other review of evidence the Enforcement Official determines that the violation of this Title has been abated, then the Enforcement Official will cease all enforcement actions under this Title. Voluntary abatement does not preclude the Enforcement Official, or any other party allowed by law, from pursuing legal or equitable action against the property owner and/or person in possession for the violation of this Title or from pursuing actual cost of all time, services, and materials associated with enforcement and/or abatement of the violation of this Title.
- (b) **Abatement—Involuntary.** If the property owner and/or person in possession or control of the real property involved has failed to voluntarily abate any ongoing violation(s) of this Title within thirty (30) days of the notice/order to abate, no appeal has been filed, or the final decision on appeal upholds the Enforcement Official's findings in the notice/order to abate, then the County may commence involuntary abatement. Involuntary abatement includes but is not limited to one or more of the following actions:

- (1) Seeking written consent to enter the real property to enter and perform work to abate the violation of this Title;
  - (2) County Counsel or District Attorney commencing a civil action in the name of the people of the State of California to abate the violation of this Title pursuant to California Code of Civil Procedure 731; and/or
  - (3) District Attorney commencing action to abate the violation of this Title pursuant to Title 1, Division 2, Chapter 1, of this Code.
- (c) **Abatement—Subsequent.** Pursuant to California Government Code Section 25845.5, on a second or subsequent determination within two years from notice of a finding that an owner of property is responsible for a condition that may be abated in accordance with this Title, except for conditions abated pursuant to Health and Safety Code Section 17980, the property owner may be liable for triple the costs of the abatement.
- (d) **Abatement—Emergencies.** Notwithstanding any other provision of this Title, if the Enforcement Official determines that a violation poses an immediate threat of life, limb, health, property, safety, or welfare of anyone, the Enforcement Official may act to immediately notify the owner of the real property involved orally or in writing that the violation must be abated immediately.
- (1) If, despite diligent effort, the Enforcement Official is unable to notify the owner of the real property within a reasonable period of time, or after notification the owner has failed to abate the violation, the Enforcement Official may cause the abatement of the condition which poses an immediate threat.
  - (2) Immediately following abatement, the owner of the real property involved shall be notified of the abatement.
  - (3) The notice to the owner of the real property involved may include a Statement of Expense and a demand that the Statement of Expense be paid within 90 days of the date of notice.

#### **9-815.140 Attorney's Fees And Costs**

The prevailing party in any civil action to abate a violation of this Title may recover reasonable attorney's fees and costs. No party's fees shall be awarded at an hourly rate greater than the hourly rate charged by the County for a Deputy County Counsel.

- (a) **Recovery Of Enforcement Costs.** The County may be reimbursed for the actual cost of all time, services, and materials associated with voluntary and involuntary abatement of the violation of this Title. Reimbursement of these costs shall be in addition to and shall not limit the prevailing party's right to recover costs pursuant to Code of Civil Procedure Sections 1032 and 1033.5 or any other provision of law. If the Enforcement Official seeks reimbursement, then they shall compile the enforcement costs into a statement of expense, which shall be an itemized statement explaining all costs incurred by the Enforcement Official and any other County Department in abating any violation of this Title that the Enforcement Official seeks to recover.
- (1) Any time spent on enforcement that the Enforcement Official seeks reimbursement for shall be charged by County personnel at an hourly rate determined by the Enforcement Official.



- (2) Any costs of time, services, and/or materials spent on enforcement that the Enforcement Official seeks reimbursement for may be calculated from the time a violation of this Title is reported or discovered through and including successful abatement of the violation of this Title or any portion thereof.
- (b) **Mailing to Owner.** The statement of expense shall be mailed to the property owner of the real property involved with a demand for payment within 30 calendar days of the date the statement was mailed.
- (c) **Right to Appeal.** The statement of expense shall advise the owner that they may appeal the statement of expense in writing within 30 calendar days of the date the statement was mailed.
- (d) **Nonpayment** If the owner does not pay the amount due under the statement of expense within the time specified by the Statement, Hearing Officer, or Board of Supervisors the Enforcement Official may request placement on the consent calendar of the Board of Supervisors for a resolution approving the amount due under the statement of expense or under the written decision of the Hearing Officer. The resolution shall direct the Auditor to cause a special tax lien to be assessed on the property tax of the subject property. Said assessment shall have the same priority as other taxes. A notice of release may not be recorded with the office of the County Recorder until all assessments for the cost of abatement are paid. When the assessment in question is collected, it shall be credited to the Community Development Department.
- (e) **Lien on Property.** If the tax lien has not been recorded prior to the transfer to the real property involved before the date on which the first installment of County taxes becomes delinquent, then the cost of abatement shall not be a lien on the property but shall be transferred to the unsecured roll for collection. For the purposes of this Section, a transfer must be to a bona fide purchaser for value

#### **9-815.150 Appeal Of Statement Of Expense**

- (a) **Appeal Of Statement Of Expense (Hearing Officer).** If the owner of the real property involved objects to the statement of expense, the owner may, within 30 calendar days of notification of the statement of expense, file a written appeal with the County department that issued the statement of expense. The appellant shall then select a Hearing Officer. The Hearing Officer shall conduct a hearing on the appeal pursuant to the Hearing Officer's administrative procedures.
  - (1) The statement of expense will be final and owing unless a timely appeal is filed.
  - (2) If a timely appeal is filed, then the requirement to pay the statement of expense shall be stayed pending such appeal.
  - (3) The Board of Supervisors may, by resolution, establish a fee for filing an appeal pursuant to this section.
  - (4) Within ten days of the completion of the appeal proceeding, the Hearing Officer shall mail the final written decision on the appeal to the parties and the Clerk of the Board of Supervisors. The written decision shall be final and shall be enforceable thirty-one (31) days after the Clerk of the Board of Supervisors receives the written decision. Receipt will be presumed to have occurred five (5) days after the Hearing Officer mailed the decision.

- (5) If the matter is resolved in whole or in part in favor of the County and against the appellant, the costs incurred by the County in holding the hearing with the Hearing Officer shall be added to the statement of expense.
- (b) **Appeal Of Hearing Officer's Decision.** If the owner does not agree with the Hearing Officer's decision, the owner may file a written request to have the matter heard before the Board of Supervisors. Such written request must be filed with the Clerk of the Board within 30 days from the date of receipt of the Hearing Officer's decision. Receipt will be presumed to have occurred five days after the Hearing Officer mailed the decision.
- (1) The Hearing Officer's determination will be final unless a timely appeal is filed.
  - (2) The Board of Supervisors may, by resolution, establish a fee for filing an appeal pursuant to this Section.
  - (3) At the Board of Supervisors' hearing, the only issue shall be the amount of costs due to the County. The existence or nonexistence of a violation of this Title shall not be an issue.
  - (4) The Board of Supervisors may, by resolution uphold, modify, or reverse the statement of expense. Any amount determined by the Board of Supervisors to be due under the Statement of Expense must be paid within 15 days from the date a copy of the Board's resolution is mailed to the owner.
  - (5) If complete payment pursuant to the Board of Supervisor's resolution is not made within 15 days of the resolution, a copy of the resolution, and the Statement of Expense, shall be forwarded to the Auditor of San Joaquin County. The Auditor shall cause a special tax to be assessed on the property tax of the affected parcel. Said assessment shall have the same priority as other taxes. A notice of release shall not be recorded in the office of the County Recorder until all amounts stated in the resolution are paid. When the amounts stated in the resolution are collected, they shall be credited to the Community Development Department.

#### **9-815.160 Late Charges And Interest**

Late charges and interest may be charged for fines and/or the statement of expense not paid by the required date. These charges and interest, if any, shall be the same as those established by the Board of Supervisors for the Revenue and Recovery Department.

#### **9-815.170 Enforcement By Civil Action**

As an alternative to the procedures set forth in this Chapter the county may abate any violation of this Title by the prosecution of a civil action through the office of the county counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Title or requiring compliance with other terms.

#### **9-815.180 No Duty To Enforce**

Nothing in this Chapter shall be construed as imposing on the Enforcement Official or the County any duty to issue a notice to abate any violation of this Title, nor to take any other action with regard to any violation of this Title, and neither the enforcing officer nor the County of San Joaquin shall be held liable for failure to issue a notice of violation and order to abate any violation of this Title, nor for failure to take any other action with regard to any violation of this Title.

## Chapter 9-816 Abandoned Vehicles

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*This Chapter carries forward existing provisions.*

### Sections:

9-815.010	Purpose; Findings And Declarations
9-815.020	Enforcement Officials
9-815.030	Unlawful To Abandon, Park, Store, Or Leave Vehicle; Exceptions
9-815.040	Abandoned Vehicle Removal Procedures
9-815.050	Assessment Of Costs
9-815.060	Unlawful To Refuse To Comply With Order
9-815.070	Reporting Requirements For Licensed Dismantlers
9-815.080	Violations

### **9-816.010 Purpose; Findings And Declarations**

The intent of this Chapter is to prescribe regulations pertaining to abandoned vehicles. In addition to, and in accordance with, the determination made and the authority granted by the State of California under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as public nuisances, the Board of Supervisors hereby makes the following findings and declarations:

- (a) **Deleterious Effects.** The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof creates a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects, and to be injurious to the health, safety and general welfare; and
- (b) **Public Nuisance.** The presence of an abandoned, wrecked, dismantled, or inoperative vehicle or parts thereof, except as expressly hereinafter permitted, shall constitute a public nuisance which may be abated as such in accordance with the provisions of this Chapter. A public nuisance as described shall include a vehicle that creates a deteriorating environmental condition, reduces the value of private property, promotes deterioration of a business district or neighborhood, invites plundering, creates fire hazards, constitutes an attractive nuisance endangering the health and safety of minors, harbors rodents and insects, or jeopardizes health, safety and general welfare.

### **9-816.020 Enforcement Officials**

The Director is designated as the official responsible for the administration of this Chapter. In the administration of this Chapter, the Director may, upon presentation of proper credentials, enter upon private or public property to examine a vehicle or part thereof, or obtain information as to the identity of a vehicle, and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this Chapter and to Section 22663 of the Vehicle Code.

### 9-816.030 Unlawful To Abandon, Park, Store, Or Leave Vehicle; Exceptions

It shall be unlawful for any person to abandon, park, store, or leave, or permit the abandonment, parking, storing, or leaving, of any vehicle or part thereof which is in an abandoned, wrecked, dismantled, or inoperative condition within the unincorporated area of the County for a period in excess of seven days.

This Chapter shall not apply to:

- (a) **Vehicle's Enclosed Within Building.** A vehicle or part thereof which is completely enclosed within a building where it is not visible from the street or other public or private property;
- (b) **Vehicles that are Part of Business.** A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise; or
- (c) **Historic Vehicles.** A vehicle or part thereof which qualifies as a vehicle of historic value and has special identification plates for a historical vehicle as described in Section 5004 of the California Vehicle Code.
- (d) **General Agriculture.** Parcels that are a minimum of five acres in any General Agriculture zone.

### 9-816.040 Abandoned Vehicle Removal Procedures

The Director shall proceed as follows in the investigation and enforcement of violations of this Chapter as follows:

- (a) **Notice of Intention to Abate and Remove Vehicle.** When the Director determines that a violation of this Chapter exists, the owner of the property in violation, as shown on the latest assessment roll, and the last registered and legal owner of the vehicle, shall be notified by registered or certified mail of the intention to abate and remove the vehicle or part thereof as a public nuisance. The Notice shall state that the owner of the property and/or vehicle has ten business days in which to correct the violation or appeal the determination of the Director to the Planning Commission for a public hearing. This required Notice may be waived by the owner(s) of the property and/or vehicle with a signed release authorizing removal and waiving further interest in the vehicle or part thereof.
- (b) **Statement of Non-responsibility.** If a vehicle was abandoned without the consent or knowledge of the property owner, and he/she has direct control of the property, the property owner may submit a Statement of Non-responsibility within business days of the mailing of the Notice of Intention to Abate and Remove the Vehicle. If the Director determines the property owner is not responsible for the abandoned vehicle, the administration fee will be waived. If staff determines the owner is responsible for the abandoned vehicle, he/she will be so advised. This determination can be appealed pursuant to Chapter 9-802
- (c) **Appeals.** Appeals of the Notice of Intention to Abate and Remove Vehicle shall be filed pursuant to Section 9-802.150 (Appeals), except that the owner of the vehicle and/or the owner of the property may file this appeal.

- (d) **Public Hearing Procedure.** The public hearing shall allow for the submittal of oral and written evidence relative to the existence of a violation of this Chapter on the property and whether the property owner is responsible for or has consented to the placement of the vehicle on the property. The property owner may appear in person or submit a sworn statement denying responsibility for the presence of the vehicle on the property. At the conclusion of the public hearing, the existence of a violation shall be determined and if a violation exists, it shall be determined whether the property owner is responsible for such violation. If it is found that a violation exists but the property owner is not responsible, the County shall not assess costs of administration or removal of the vehicle against the property owner. The decision of the hearing official shall be final and may not be appealed.
- (e) **Removal of the Vehicle.** If an appeal has not been filed within the required time period or the Planning Commission has made a determination that a violation exists and the vehicle or part thereof remains on the property, the vehicle or part thereof may be disposed of by removal to a scrapyard or automobile dismantler's yard. The removal shall be performed by the County or a licensed automobile dismantler authorized by the County, either of which may enter private or public property to remove the vehicle or part thereof declared to be a nuisance pursuant to this Chapter. The Director is authorized to select licensed automobile dismantlers pursuant to policies and procedures adopted by the Board of Supervisors.
- (f) **Vehicle Not to be Reconstructed.** Any vehicle removed as a result of this Chapter shall not be reconstructed or made operable unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates.
- (g) **Notice to the Department of Motor Vehicles.** Within five business days after the removal, notice shall be given to the Department of Motor Vehicles that identifies the vehicle or part thereof, and evidence shall be submitted of all available registration, including but not limited to the registration card, certificates of ownership, or license plates.

#### **9-816.050 Assessment Of Costs**

The Board of Supervisors shall establish fees for administrative and vehicle removal costs. These costs are the joint and several personal obligations of the last registered owner and the owner of the parcel of land from which the vehicle was removed, provided, however, that the last registered owner who can satisfy the requirements of Vehicle Code Section 22524 (b) shall not be personally liable for the costs and provided, further, that it has been found that the owner is not responsible for the location of the vehicle on his or her property. If the fees are not paid within 30 business days of the date of the order or the final disposition of an appeal therefrom, such fees shall be assessed against the parcel of land pursuant to Section 25845 of the Government Code and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other taxes.

#### **9-816.060 Unlawful To Refuse To Comply With Order**

It is unlawful for any person to fail or refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle or part thereof, or to refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this Chapter or state law where applicable.

**9-816.070 Reporting Requirements For Licensed Dismantlers**

Licensed dismantlers or commercial enterprises acquiring vehicles removed pursuant to this Chapter shall be excused from the reporting requirements of Section 11520 of the Vehicle Code, and any fees and penalties which would otherwise be due the Department of Motor Vehicles are hereby waived, provided that a copy of the resolution or order authorizing disposition of the vehicle is retained in the dismantlers' or commercial enterprises' business records.

**9-816.080 Violations**

Any violation of a provision of this Chapter shall be a misdemeanor punishable by imprisonment in the County Jail for a term not to exceed six months, or by a fine not to exceed \$500 dollars, or both.

## Series 900: General Terms

### New Definitions Related to Administrative Provisions

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**Agent.** A person who has been given written authorization by the property owner to represent and act for a property owner in contacts with the City.

**Agricultural drainage.** Any drainage alteration to prepare new cropland or maintain existing cropland. Agricultural drainage does not include drainage alteration for roads, dams, reservoirs, lakes, ponds, or structures.

**Agricultural grading.** Any grading to prepare new cropland or maintain existing cropland. Agricultural grading does not include grading for roads, dams, reservoirs, lakes, ponds, or structures. Agricultural grading is regulated under Chapter 36 of this code.

**Allowed Use.** A use of land as a permitted or conditional use that may be established with zoning compliance review (for an “as-of-right” or permitted use) or a use permit for a conditionally permitted use and, where applicable, design review and/or building permit approval, subject to compliance with all applicable provisions of Article XV and the Municipal Code.

**Alteration.** Any change, addition, or modification that changes the exterior architectural appearance or materials of a structure or object. Alteration includes changes in exterior surfaces, changes in materials, additions, remodels, demolitions, and relocation of buildings or structures, but excludes ordinary maintenance and repairs.

**Applicant.** Any entity or person who applies for a discretionary permit, certificate of compliance, zoning approval, or other entitlement.

**As-built plans.** Plans or drawings that depict the final installed configuration of construction grading or drainage (whether physical or functional). The plans or drawings shall indicate any construction deviations and show all features as actually built. The plans or drawings are intended to provide a permanent record of as-built conditions and aid as key references for future maintenance processes.

**Condition of Approval.** A performance standard, required change in a project, environmental mitigation measure, or other requirement imposed by the decision-making body to alter or modify a project in any manner from the description in the application originally submitted for City approval.

**Conditional Use.** A use that is generally compatible with other uses permitted in a zoning district, but that requires individual review of its location, design, configuration, and intensity and density of use and structures, and may require the imposition of conditions pertinent thereto to ensure the appropriateness of the use at that particular location.

**Construction drainage.** Any drainage alteration except drainage alteration undertaken as part of agricultural drainage.

**Construction grading.** Any grading except agricultural grading.

**Demolition.** The intentional destruction and removal of 50 percent or more of the enclosing exterior walls and 50 percent of the roof of any structure.

**Drainage.** Refers to the collection, conveyance, containment, and/or discharge of storm-water runoff.

**Effective Date.** The date on which a permit or other approval becomes enforceable or otherwise takes effect, rather than the date it was signed or circulated.

**Ground disturbance.** Any work, operation, or activity that results in the penetration or compaction of the ground, including land clearing, vegetation removal, grading, storage of supplies and equipment, use of hand tools, heavy equipment, and heavy trucks, and any other similar activities.

**Ministerial permit application.** A permit application that does not include a request for discretionary review and relief from the standards in this Title.

**Nonconforming Lot.** A legally created parcel of land having less area, frontage, or dimensions than the zoning regulations require for the zoning district in which it is located.

**Off-Site Use.** An activity or accessory use that is related to a specific primary use but is not located on the same lot as the primary use.

**Ordinary Maintenance.** Repair and maintenance activities that are periodic and that do not involve a change to the architectural or historic value, style or general design of the building, structure, or object. In-kind replacement or repair is included in this definition of ordinary maintenance.

**Permitted Use.** Any use or structure that is allowed in a zoning district without a requirement for approval of a use permit, but subject to any restrictions applicable to that zoning district.

**Pre-existing.** In existence before the effective date of the ordinance updating Article XV.



**Project.** Any proposal for a new or changed use or for new construction, alteration, or enlargement of any structure, that is subject to the provisions of this ordinance. This term includes, but is not limited to, any action that qualifies as a “project” as defined by the California Environmental Quality Act.

**Reasonable Accommodation.** Any deviation requested and/or granted from the strict application of the City’s zoning and land use laws, rules, policies, practices and/or procedures under provisions of federal or California law to make housing or other facilities readily accessible to and usable by persons with disabilities and thus enjoy equal employment or housing opportunities or other benefits guaranteed by law.

**Soils report.** A soils report prepared by a soils engineer, which identifies the nature and distribution of existing soils; conclusions and recommendations for grading procedures; soil design criteria for any structures or embankments required to accomplish the proposed grading; and, where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

**Vegetation removal.** The cutting, breaking, burning, or uprooting of vegetation, the application of herbicide to vegetation, the covering over of vegetation with earth, or the compacting of the soil under and around vegetation. Vegetation removal does not include removal of invasive plant species.

**Use.** The purpose for which land or the premises of a building, structure, or facility thereon is designed, arranged, or intended, or for which it is or may be occupied or maintained.

***Accessory Use.*** A use that is customarily associated with, and is incidental and subordinate to, the primary use and located on the same lot as the primary use and occupies no more than 30 percent of the gross floor area.

***Primary Use.*** A primary, principal or dominant use established, or proposed to be established, on a lot and occupies at least 70 percent of the gross floor area of the tenant space or building.

**Use Permit.** A discretionary permit, such as an Administrative Use Permit or a Conditional Use Permit, that provides for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, that are not permitted “as-of-right” but may be approved upon completion of a review process and, where necessary, the imposition of conditions of approval.

**Use Type.** A category that classifies similar uses based on common functional, product, or compatibility characteristics.

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