

17.08 Administration, Enforcement and Appeals

17.08.010 - Administrative duties of city council.

The City council:

- A. enacts and amends land use ordinances, temporary land use regulations, zoning districts and a zoning map;
- B. adopts and amends the general plan; and
- C. otherwise acts as the land use authority in certain land use decisions specified in section 17.08.040 of this Code.

17.08.020 – Establishment and duties of planning commission.

- A. Appointment. The mayor shall, subject to the approval of the city council, appoint a planning commission to consist of seven members, plus two alternates who shall serve without pay, except for reasonable and legitimate expenses approved by the city council.
- B. Alternates. Alternates may act in the place of any absent member at any meeting of the commission.
- C. Terms. The members shall be appointed for a period of four years and are subject to removal with or without cause by the city council at any time. The terms of two commissioners shall expire each year except in the year that the city's mayoral election is held, when the terms of one commissioner plus both alternates shall expire.
- D. Quorum. Four members shall constitute a quorum to conduct business. All actions taken shall be by majority vote of the membership present.
- E. Attendance. Attendance of any member or members at regularly scheduled meetings may be enforced by the chairperson of the commission in the same manner as provided for enforcing the attendance of city council members.
- F. Clerk. The community development department shall provide a person to act as clerk of the planning commission.
- G. Training. The city shall provide initial and ongoing training regarding the duties, responsibilities and city regulations for all commission members and alternates. Attendance at training is required of members and alternates.
- H. Bylaws. The planning commission may adopt a set of bylaws or rules of procedure.

I. Chairperson. The commission members, or commissioners, shall elect their own chairperson for a term and in the manner specified by the commission's bylaws. The chairperson of the planning commission:

1. Shall preside at all meetings of the commission; and
2. Shall vote as a regular member but shall not make or second motions.

J. Chairperson's absence. During the temporary absence or disability of the chairperson, the planning commission shall elect one of its members to act as chairperson pro tem.

K. Responsibilities.

1. The planning commission makes recommendations to the City Council for:
 - a. the general plan and amendments to the general plan;
 - b. the zoning map, and amendments to the zoning map;
 - c. amendments to land use ordinances;
 - d. approval of subdivisions of greater than ten lots; and
 - e. proposed application processes and the delegation of power under the land use ordinance.
2. The planning commission acts as land use authority as provided in section 17.08.040 of this code.
3. The planning commission acts as appeal authority for certain land use decisions as provided in section 17.08.050 of this code.

17.08.030 – Administrative duties of community development director.

A. The director is authorized to render official interpretations of code provisions when the meaning of any phrase, section or chapter, or zone district is called into question.

B. The director shall prepare staff reports for consideration by the planning commission and city council, and provides secretarial support for the planning commission.

C. The director accepts all land use applications and ensures they are forwarded to the designated land use authority in a timely manner.

D. The director may propose amendments to the zoning code and zoning map as provided in section 17.02.020.

17.08.040 – Land use authority designations.

Pursuant to state law, the following administrative land use authority designations are made:

- A. The City Council is the land use authority on issues of: planned unit developments; the approval of development agreements; the vacation of public rights of way; and enacting or amending zoning code, zoning maps and the general plan.
- B. The Planning commission is the land use authority on issues of: subdivision and subdivision plat approval, except planned unit developments; vacating, altering or amending a subdivision plat; approval of conditional use applications for apartment complexes; and the issuance of a building or demolition permit in a historic preservation zone.
- C. The director is designated as the land use authority on issues of: lot divisions, conditional use applications except for apartment complexes, lot splits, temporary use permits, sign permits, applications for variances, home occupation license approval, design review, reasonable accommodation, nonconforming use determinations, and decisions regarding amortization of legal, non-conforming uses. The director has final authority to issue building permits and business licenses.

17.08.050 – Appeals from land use authorities.

- A. Appeals from city council decisions. Appeals from decisions of the city council must be taken to the state district court, as provided by state law, by any person aggrieved by the decision who has standing to appeal.
- B. Appeals from planning commission decisions. Except from decisions rendered in its appellate capacity, appeals from the planning commission's decisions are brought before the city's administrative law judge, as provided under Title 2, Chapter 22 "Administrative Hearings" by any person aggrieved by the decision who has standing to appeal. Appeals from appellate decisions of the planning commission may be taken directly to the state district court.
- C. Appeals from community development director decisions. Appeals from the director's decision are brought as follows:
 - 1. Planning commission. The planning commission hears appeals from decisions by the director on the following issues, when requested by any person aggrieved by the decision who has standing to appeal:
 - a. conditional use applications;
 - b. temporary use permits;
 - c. sign permits;

- d. home occupation licenses;
- e. design review; and
- f. lot splits.

2. Administrative law judge. The city's administrative law judge hears appeals from all other decisions made by the director, as provided under Title 2, Chapter 22 "Administrative Hearings," when appeal is taken by any person aggrieved by the decision who has standing to appeal.
3. The planning commission conducts an appeal de novo, and that body finds facts and decides all issues associated with the appeal. No further administrative appeals are available from an appellate decision of the planning commission.
4. The administrative law judge reviews the record of the decision of the director or planning commission on the record and only reverses the decision if it is not supported by substantial evidence in the record or is otherwise arbitrary, capricious or illegal.

D. Final order of appeal authority is appealable order. An appeal authority's written, final order becomes the only order from which an appeal may be taken. Unless otherwise stated in the appeal authority's final order, an order following a de novo review vacates any official determination made by the land use authority. No further administrative appeals are permitted from a final order of an appellate authority and any subsequent review is to be made by the district court.

E. Conduct of appeals. Each appeal shall be the subject of a hearing which shall be open to the public and be conducted in an informal nature which provides each party with the opportunity to present his or her case in a civil and respectful manner. The rules of evidence do not apply to appeal proceedings. Parties are permitted to submit trial briefs or staff reports to the appeal authority prior to the proceeding. Appeal proceedings shall be recorded, and shall provide due process to all the parties. Only those with standing to appear before the appeal authority need be allowed to participate in the hearing. Additional rules governing appeal proceedings may be promulgated by the appeal authority, so long as they are distributed to the parties prior to the proceeding. The city is not required to notify any individuals of appeal proceedings except appellants or appellees, or those to whom a protected property interest belongs.

F. Record reviews. In a record review, no additional evidence may be submitted during the appeal proceedings. If the administrative law judge finds that a party's due process rights were not adequately protected in the process of creating the record, it may convert the hearing into a de novo review and continue the hearing to allow the appellant and appellee to prepare their cases. It may also allow the introduction of evidence which was presented below, but improperly excluded from the record.

G. Exhausting administrative remedies. An aggrieved party who has standing to appeal a land use authority's decision must follow the procedures of Title 2, Chapter 22 by filing a written notice of appeal at the city recorder's office within ten days after actual or constructive notice of the land use decision,

and by tendering the fee associated with the appeal proceedings. A person who fails to timely file the appeal or pay the associated fee waives the right to object to the land use decision.

H. Parties required to raise all theories of relief. During appeal proceedings, an appellant must raise every theory of relief that it wishes to raise in district court. The failure to raise a theory during an administrative appeal waives that theory in any subsequent appeals to district court.

17.08.060 – Permits and applications.

A. Official decisions in writing. Decisions on each land use application submitted to the community development department shall be made in a timely manner by the land use authority and are not official until reduced to writing.

B. Applications submitted to department. All applications related to land use must be submitted to the community development department, who shall ensure that the application is promptly brought before the land use authority for decision.

C. Director authority over building permits. No building permit shall be issued without the zoning approval of the land use authority.

D. Pre-payment of fees required. Permits are not considered submitted unless the established fee has been paid by the applicant.

E. Actions for which applications are not required. If a person is informed that a permit or application is not required for certain actions, the person may request a written confirmation by the director stating that this is the case. No person may claim as a defense to any land use enforcement action that he or she was advised not to submit an application for a permit or land use approval without providing such written confirmation.

17.08.070 – Fees.

Fees for applications and permit requests shall be established by resolution in the city's consolidated fee schedule.

17.08.080 – Public hearings and meetings.

A. Public hearings. Public hearings shall be conducted for the following land use decisions:

1. when enacting or amending zoning ordinances or the zoning map, a hearing before the planning commission is required, but is not required before the city council;

2. vacation or amendment of platted street, right of way or easement;
3. annexation policy plans and applications;
4. vacating or changing a subdivision plat, but only as required by state law;
5. any other land use decision for which a public hearing is required by law.

B. Public comment may also be allowed in any public meeting at the discretion of the land use authority. Except as provided above, a land use authority need not allow public comment where a hearing is not required by this section or state law..

C. Public meetings. All land use decisions made by the city council or planning commission shall be rendered during open and public meetings. The director may also conduct public meetings related to land use applications or other land use issues when the director deems it appropriate to do so.

D. Regardless of whether a meeting is held, prior to making a land use decision the land use authority may solicit input from affected citizens and property owners and provide a reasonable opportunity for those individuals to express themselves. This may be accomplished through public outreach activities conducted prior to the land use decision in a manner that is consistent with the requirements of due process and fair review and provides an opportunity for the applicant and others participating in the review of the application to respond to the information presented. Relevant information gathered in the process of review is to be included in the record of the decision.

17.08.090 – Development committee.

The mayor may form a standing committee composed of city staff, property owners, or elected and appointed officials to comment on land use applications and render advice to applicants. The recommendations of the development committee are advisory only. Consideration by the development committee is not a pre-requisite for application approval.

17.08.100 – Enforcement.

A. Authority. The director is authorized to enforce the provisions of this code through either criminal or civil proceedings.

B. Delegation. The director may delegate enforcement authority to any city official. No written delegation of power is necessary.

C. Violations. Any building or use of land or any construction thereon which was not authorized by or under the City Code which is illegal under such ordinances, shall remain unauthorized and illegal unless expressly authorized or permitted in the provisions of this Code. The use or continuation of such a use or construction is punishable under this Code.

D. Number of offenses. Every person, firm or corporation shall be deemed responsible or guilty of a separate offense for each and every day that a violation is committed or continued.

E. Criminal penalties. Violations of the provisions of this code are class C misdemeanors, subject to criminal prosecution.

F. Civil penalties. Violations of the provisions of this code may also be pursued through administrative citation or summons, as provided in Title 8, Chapter 14 "Code Enforcement Program." Orders of abatement may be issued by the administrative law judge pursuant to those provisions.

G. Remedies.

1. The City, or any adversely affected owner of real estate within the City in which violations of this Code occur or are about to occur, may, in addition to other remedies provided by law, institute:
 - a. Injunctions, mandamus, abatement, or any other appropriate action; or
 - b. Proceedings to prevent, enjoin, abate or remove the unlawful building, use or act.
2. The City need only establish the violation to obtain an injunction.
3. The City may, in addition to other remedies provided by law, enforce the ordinance by:
 - a. Withholding building permits; or
 - b. Taking action to cancel any permit or approval for failure to comply with the terms of any permit or approval. The land use authority that issued the permit or approval shall consider the matter preceded by at least 10 days' notice. Cancellation or revocation of a permit or approval may be appealed in the same manner as the original action.

H. Nuisance and abatement. All buildings or uses of land which are established, conducted, or maintained contrary to the provisions of this Code shall be and are declared to be unlawful and a public nuisances. In addition to other remedies provided by the law, the City Attorney may immediately commence a court action or proceedings for abatement, removal or injunction to correct the nuisance. These remedies are cumulative to other civil and criminal actions, and not exclusive.