

TITLE 11: ZONING

PART V: LAND USE AND ZONING DECISIONS

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Chapter 11.5.05 Review Authority

§ 11.5.05.005 City Council.

The City Council shall:

- A. Adopt, reject or modify amendments to the General Plan.
- B. Adopt, reject or modify Specific Plans, Planned Development Plans and amendments to Specific Plans, Planned Development Plans, the official zoning map, and the Zoning Code.
- C. Approve, reject, modify or amend Development Agreements.
- D. Consider appeals of conditional use permits, variances and any other permits that can be appealed pursuant to Title 1: *General Provisions*, Chapter 1.20: *Review of Quasi-Judicial Decisions*.
- E. Decide appeals on environmental determinations by the Director or the Planning Commission.

§ 11.5.05.010 Planning Commission.

The Commission shall:

- A. Recommend to the City Council amendments to the General Plan.
- B. Recommend to the City Council Specific Plans, Planned Development Plans and amendments to Specific Plans, Planned Development Plans, the official zoning map, or the Zoning Code.
- C. Recommend Development Agreements and amendments thereto.
- D. Approve, conditionally approve, modify, or disapprove conditional use permits, variances, and requests for reasonable accommodation.
- E. Revoke conditional use permits, variances, or other zoning permits.
- F. Decide appeals on Director decisions as listed on Table 11.5.05.025: *Review Authority*.
- G. Make environmental determinations on any Commission approvals that are subject to environmental review under the California Environmental Quality Act.

H. Determine incentives for eligible developers proposing affordable housing.

I. Make other decisions delegated by the City Council.

§ 11.5.05.015 Director of Development Services.

The Director of Development Services shall:

A. Issue written regulations for the administration of this Zoning Code.

B. Determine if applications are complete and may be accepted for processing.

C. Review projects for compliance with the California Environmental Quality Act ("CEQA"). The Director shall:

1. Determine whether applications are exempt under CEQA.

2. Propose project revisions to mitigate environmental impacts.

3. Determine whether an environmental impact report is required.

D. Approve administrative modifications to the discretionary permits and other types of approvals listed in Chapter 11.5.25: *Director Determinations*.

E. Grant the minor modifications listed in Chapter 11.5.25: *Director Determinations*, Section 11.5.25.020: *Minor Modifications*.

F. Determine whether applications would require a zoning change or amendment to the General Plan.

G. Determine zoning conformance pursuant to Chapter 11.5.25: *Director Determinations*, Section 11.5.25.010: *Zoning Conformance Review Procedures*.

H. Interpret the Zoning Code upon request.

I. Verify zoning regulations, the scope and viability of previously issued permits and other matters related to the applicability of city regulations on an application.

J. Make any other determinations listed on Table 11.5.05.025: *Review Authority*.

K. Forward Commission requests to initiate General Plan amendments, Specific Plans, Specific Plan amendments to the City Council for concurrence.

The Director may refer any request to the Commission for a decision. Additional fees shall not be charged to the applicant in the event of a Director's referral.

§ 11.5.05.020 City Building Official.

The City Building Official shall enforce regulations pertaining to the construction and alteration of structures pursuant to the California Building Code.

§ 11.5.05.025 Review Authority.

Table 11.5.05.025: *Review Authority*, identifies the city official or body responsible for reviewing and making decisions on each type of application, land use permit, and other entitlements required by this Zoning Code.

TABLE 11.5.05.025 REVIEW AUTHORITY				
		Review Authority and Role¹		
TYPE OF PERMIT OR DECISION	PROCEDURE IS IN:	DIRECTOR	PLANNING COMMISSION	CITY COUNCIL
Land Use Permits and Other Development Entitlements:				
Adult Business Zoning Clearance	Chapter 11.4.50	Decision		Appeal
Conditional Use Permit	Chapter 11.5.20		Decision	Appeal
Development Agreement	Chapter 11.5.15		Recommend	Decision
Development Permits	Chapter 11.5.25	Decision	Appeal	Appeal
Director Determination	Chapter 11.5.25	Decision	Appeal	Appeal
Minor Use Permit	Chapter 11.5.20		Decision	Appeal
Special Event Permit	Article 7, Chapter 7.50	Decision		Appeal
Specific Plan	Chapter 11.5.15		Recommend	Decision

TABLE 11.5.05.025 (Continued) REVIEW AUTHORITY				
		Review Authority and Role¹		
TYPE OF PERMIT OR DECISION	PROCEDURE IS IN:	DIRECTOR	PLANNING COMMISSION	CITY COUNCIL
Land Use Permits and Other Development Entitlements: (continued)				
Temporary Use Permit	Chapter 11.5.25	Decision	Appeal	Appeal
Parcel Maps, Tentative and Final Tract Maps	Article 10		Recommend	Decision
Variance	Chapter 11.5.20		Decision	Appeal
Minor Modifications	Chapter 11.5.25	Decision	Appeal	Appeal
Reasonable Accommodations	Chapter 11.5.30		Decision	Appeal
Zoning Conformance Review	Chapter 11.5.25	Decision	Appeal	Appeal
General Plan Amendments	Chapter 11.5.15		Recommend	Decision
Zoning Code Administration and Amendments:				
Interpretations	Chapter 11.5.25	Decision	Appeal	Appeal
Zoning Map Amendments	Chapter 11.5.15		Recommend	Decision
Zoning Text Amendments	Chapter 11.5.15		Recommend	Decision

Note 1: “Recommend” means that the review authority makes a recommendation to a higher decision-making body;
“Decision” means that the review authority makes the final decision on the matter;
“Appeal” means that the review authority may take action upon appeals to the decision of an earlier decisionmaking body.

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Chapter 11.5.10 General Procedures

§ 11.5.10.005 Applicability.

This Chapter establishes general procedures for processing applications. Specific procedures set forth in other portions of this Title control if there is any conflict or inconsistency. No City action, inaction, or recommendation on any matter subject to this Title shall be invalid by reason of any error, irregularity, informality or omission as to any matter pertaining to applications, notices, findings, records, hearings, reports, recommendations, appeals or any procedural matter.

§ 11.5.10.010 Application Forms and Fees.

- A. **Applicants.** The following persons may file applications:
1. The owner of the subject property.
 2. An agent representing the owner, duly authorized to do so in writing by the owner, including a person with a duly executed written contract or exclusive option to purchase the subject property or a lessee in possession of the subject property.
 3. A lessee of the subject property applying for a Zoning Certificate may file without the consent of the owner, provided the lessee provides notice of the application to the owner of the property.

B. **Application Forms and Supporting Materials.**

1. The Director may prepare and issue application forms and lists that specify the information that will be required from applicants for projects subject to the provisions of this Zoning Code.
2. The Director may require the submission of supporting materials as part of the application, including but not limited to, statements, photographs, plans, drawings, renderings, models, material samples, and other items necessary to describe existing conditions and the proposed project. The Director may require sufficient information to permit the City to determine the level of environmental review that shall be required pursuant to the California Environmental Quality Act. Unless otherwise specified, all renderings shall depict the proposed structure, landscaping, other improvements, and surrounding land uses as they would appear one year after project completion.

3. All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection upon request.

4. Upon request, any person may examine an application and materials submitted in support of or in opposition to an application during normal business hours. Unless barred by law, copies of such materials shall be made available at the reasonable cost established pursuant to Municipal Code Title I: *General Provisions*, Section 1.10.055: *Fees for Applications and Appeals*.

C. Payment, Waiver and Refund of Application Fees.

1. Pursuant to Municipal Code Title I: *General Provisions*, Section 1.10.055: *Fees for Applications and Appeals*, the Council has established reasonable fees for the processing of permits. The Applicant shall submit all required fees concurrently with the application. No application will be processed or deemed complete without payment of all required fees, unless the City waives or defers required fees.

2. No fee shall be required when the applicant is the City or another governmental organization, or if it is waived under any other provision of this Code.

3. If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Director based on the level of staff review conducted prior to the withdrawal. No refund shall be made for any application that has been denied.

§ 11.5.10.015 Optional Pre-Application Review.

An applicant may apply for Pre-Application Review to obtain information on relevant General or Specific Plan policies, zoning regulations, and procedures for large or complex projects, and projects that are potentially controversial.

A. The applicant shall submit the fee established pursuant to Municipal Code Title I: *General Provisions*, Section 1.10.055: *Fees for Applications and Appeals* and any materials requested by the Director.

B. Submission of materials for pre-application review shall not be considered an application for a development project under the terms of the Permit Streamlining Act (PSA) or California Environmental Quality Act (CEQA) and shall not trigger any obligation on the part of the City to act on any project within a specified period of time.

C. An applicant may request, or the Director may recommend, preliminary review by the Planning Commission. Any recommendations that result from such review shall be considered advisory only and shall not be binding on either the applicant or the City.

D. Following pre-application review, Staff shall provide the applicant with a written summary of the procedures and requirements applicable to the potential project.

§ 11.5.10.020 Review of Applications.

A. The Director shall determine whether an application is complete within 30 days of the date the application is filed with all required fees.

B. If an application is incomplete, the Director shall provide written notification to the applicant listing the applications for permit(s), forms, information and any additional fees that are necessary to complete the application. If the applicant fails to correct the specified deficiencies within 30 days of notification, the Director shall deem the application withdrawn and will return it to the applicant.

C. The Director shall document the date the application is deemed complete, schedule any required public hearing, and notify the applicant of the date and time of the hearing.

D. The Director may, upon written request and for good cause, grant extensions of any time limit imposed by this Zoning Code.

§ 11.5.10.025 Public Notification.

A. **Mailed Notices, Minor Use Permit Matters.** At least 10 days before taking action on a Minor Use Permit that can be issued without a public hearing, the City shall provide notice by First Class mail to:

1. All property owners of record and building occupants within a 300-foot radius of the proposed project;
2. All neighborhood and community organizations that have previously requested notice of projects in the area where the site is located in writing; and
3. Any person or group who has provided a written request for notice regarding the application.

B. **Mailed Notices, Public Hearing Matters.** At least 10 days before the date of the public hearing, the City shall provide notice by First Class mail to:

1. All property owners of record and building occupants within a 500-foot radius of the proposed project;

2. All neighborhood and community organizations that have previously requested notice of projects in the area where the site is located in writing; and

3. Any person or group who has provided a written request for notice regarding the application.

C. Additional Hearing Notice. In addition to providing mailed notice pursuant to subsection B, the City shall provide notice within 10 days of the hearing by publication in at least 1 newspaper of general circulation.

D. Alternate Method for Large Mailings. If the number of owners to whom notice would be mailed or delivered is greater than 1,000, instead of mailed notice required in subsection B, the City may provide notice by placing a display advertisement of at least one-eighth page in at least 1 newspaper of general circulation at least 10 days prior to the hearing.

E. Contents of Notice. The notice shall include the following information:

1. A general description of the proposed project or action and the property included in the application;

2. The date, time, location, and purpose of the public hearing;

3. The names of the applicant and the owner of the property that is the subject of the application;

4. A general description of the environmental review conducted and any proposed environmental determination concerning the application;

5. The location and times at which the complete application and project file, including the environmental documentation, may be viewed by the public;

6. A statement that any interested person or authorized agent may appear and be heard; and

7. A statement describing how to submit written comments.

§ 11.5.10.030 Discretionary Actions by the Planning Commission or City Council.

A. Public Hearings.

1. Rights of All Persons. Except as otherwise provided in Paragraph 2 below, any person may appear at a public hearing and submit oral or written evidence, either individually or as a representative of a person or an organization. Each person testifying shall state his or her name, may state an address and, if appearing on behalf of a person or organization, state the name of the person or organization being represented.

2. Time Limits. The Chair of the hearing may establish time limits for individual testimony and may require that individuals with shared positions select 1 or more spokespersons to present testimony on behalf of those individuals. Due process may require relaxation of such limits.

B. Decision. The decisionmaker shall take action within 30 days of the conclusion of the public hearing.

C. Notice of Decision. The City shall notify the Applicant of the decision. Such notice may be in the form of a Planning Commission or City Council resolution, a City Ordinance or other written document. The City Clerk shall mail such notice to the Applicant at the mailing address stated in the application and to any other person or entity who has filed a written request of such notification with the City.

§ 11.5.10.035 Acceptance of Conditions.

Land use entitlements shall not become effective for any purpose until the applicant signs and returns a notarized City "Acceptance of Conditions" form.

§ 11.5.10.040 Limitation on Resubmittal of Applications.

A denial precludes the filing of an identical application within 1 year of the date of denial, unless the denial was without prejudice.

§ 11.5.10.045 Scope of Approvals; Compliance with Conditions.

A. Any approval permits only those uses and activities specifically proposed in the application. Unless otherwise specified therein, the approval of a use shall terminate all rights and approvals for previous uses no longer occupying the same site or location.

B. Unless otherwise specified or required by the City, the applicant must develop, maintain and operate the project in substantial compliance with

the site plan, floor plans, building elevations and/or any additional information or representations, indicating the proposed structure or manner of operation, submitted during the processing of the application. Any approval may be subject to a condition that the permittee ensures compliance with the submitted plans and conditions imposed thereon and acknowledges that inconsistency with the application, submitted plans and conditions invalidates the entitlement.

C. Any land use entitlement is subject to, and shall comply with, all applicable City ordinances, resolutions or regulations, laws and regulations of other governmental agencies and conditions imposed thereon.

D. Approvals may be subject to periodic review to determine compliance with the permit and conditions. If a condition specifies that activities or uses allowed under a discretionary permit are subject to periodic reporting, monitoring, or assessments, it shall be the responsibility of the permit holder, the property owner or successor property owners to comply with such conditions.

§ 11.5.10.050 Effective Date for Appealable Decisions.

A. Appealable Decisions. No building permit or business license shall be issued for any project where a permit is subject to appeal until the 11th day following the date of the action on the permit.

B. Ordinances. No building permit or business license shall be issued for any project where an ordinance is required until the effective date of the ordinance.

§ 11.5.10.055 Expiration and Extension.

A. **Automatic Lapse.** The entitlements conferred by any permit granted pursuant to this Zoning Code expire if not exercised or extended within 1 year of issuance.

1. Exercise of Discretionary Permits. A discretionary permit is deemed exercised on the date the permitted use has commenced.

2. **Exercise of Building Permit.** A permit for the construction of a structure is deemed exercised on the date construction has lawfully commenced pursuant to a valid City building permit.

B. **Extension.** The Director may approve a single 1-year extension of any land use entitlement upon receipt of a written application with the required fee prior to expiration of the permit. The Planning Commission may approve any other extensions.

C. **Lapse by Written Notice.** The Director may declare that any permit has lapsed by providing 15 days written notice to the permit holder. The permit holder may seek reinstatement of the permit by filing a request with the Planning Commission within 10 days of the date of the notice. The Commission shall hold a public hearing to consider the request.

§ 11.5.10.060 Revocation of Permits.

A. **Procedure and Notification.** The City may revoke any permit if the use or operation violates any of the permit's terms or conditions or any law or ordinance. The Planning Commission shall hold a public hearing. The City shall provide written notice to the permit holder at least 10 days before the public hearing that includes:

1. The specific land use entitlement permits being considered for revocation.
2. The address and Assessor's Parcel Number of the affected property.
3. The reason or reasons for the proposed revocation.
4. The time and place of the revocation hearing.

B. **Public Notification.** The City shall provide the same public notice of the hearing that is required for the permit that is proposed for revocation.

C. **Conduct of Public Hearing.** The public hearing shall be conducted in the same manner as for the permit that is proposed for revocation.

D. **Required Findings.** The Planning Commission may revoke or modify the permit if it makes any of the following findings:

1. The permit has lapsed as provided for in Section 11.5.10.055: *Expiration and Extension*.
2. The permit holder has failed to comply with 1 or more of the conditions of approval.
3. The use, building, or structure has been substantially changed in character or substantially expanded beyond the entitlement.
4. The use has created criminal or anti-social behavior, including but not limited to the congregation of minors, violence, public drunkenness, vandalism, solicitation, or litter.

5. The property has been vacant or the use permitted by the permit has not been in continuous operation for at least 1 year prior to the date of the notice. The permit holder shall have the burden of establishing its good faith effort to occupy the property and reestablish the use. The Planning Commission may require the permit holder to produce documentation to substantiate that intent.

E. **Notice of Action.** In the event the Planning Commission revokes, modifies or imposes additional conditions on a permit, the Commission shall adopt a Resolution containing its determinations and findings. The City shall mail a copy of the Resolution to the permit holder and to any person requesting notice of the action and provide the City Council with a copy of the Resolution prior to its next regular meeting.

F. **Appeals.** Any person may appeal the Planning Commission's action pursuant to Title 1: *General Provisions*, Chapter 1.20: *Review of Quasi-Judicial Decisions*, in which case the City Council shall be the hearing officer as that term is used in Title 1: *General Provisions*, Chapter 1.20: *Review of Quasi-Judicial Decisions*.

§ 11.5.10.065 Performance Guarantees.

A permit applicant may be required by conditions of approval or by action of the Director to provide adequate security to guarantee the faithful performance and proper completion of any approved work, and/or compliance with conditions of approval.

A. **Form and Amount of Security.** The required security shall be in a form approved by the Director and City Attorney. The amount of security shall be as determined by the Director to be necessary to ensure proper completion of the work and/or compliance with conditions of approval.

B. **Security for Maintenance.** In addition to any improvement security required to guarantee proper completion of work, the Director may require security for maintenance of the work, in an amount determined by the Director to be sufficient to ensure the proper maintenance and functioning of improvements.

C. **Duration of Security.** Required improvement security shall remain in effect until final inspections have been made and all work has been accepted by the Director, or until any warranty period required by the Director has elapsed. Maintenance security shall remain in effect for 1 year after the date of final inspection.

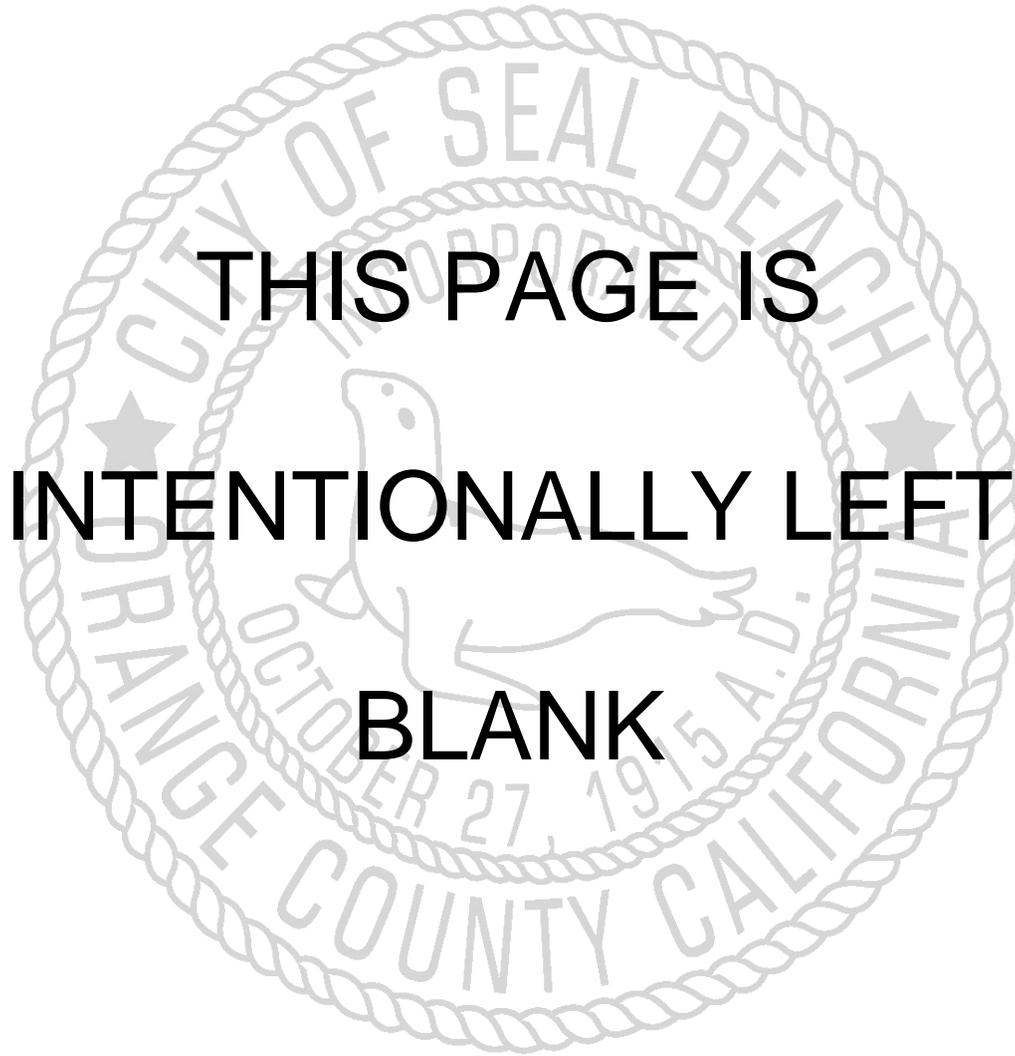
D. **Release or Forfeit of Security.**

1. Upon satisfactory completion of work and the approval of a final inspection, or after the end of the required time for maintenance security, the improvement and/or maintenance deposits or bonds shall be released.

2. Upon failure to complete the work, failure to comply with all of the terms or conditions of any applicable permit, or failure of the completed improvements to function properly, the City may do the required work or cause it to be done, and collect from the permittee or surety all the costs incurred by the City, including all costs and expenses associated with the work, all administrative and inspection costs and actual attorneys fees incurred in connection therewith.

3. Any unused portion of the security shall be refunded to the funding source after deduction of all costs, expenses, and fees mentioned in subsection 2 above.

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Chapter 11.5.15 Legislative Actions

§ 11.5.15.005 General Plan, Specific Plans, Planned Development Plans, Zone Changes and Development Agreements.

A. **Ordinance or Resolution Required.** The City Council shall adopt specific plans, development agreements, planned development plans and amendments to the official zoning map, zoning code, specific plans, development agreements and planned development plans by ordinance. The City Council shall adopt the General Plan, and amendments thereto by Resolution.

B. **Initiation.** The City Council may initiate the legislative actions governed by this chapter. The Planning Commission, City Manager or the Director may initiate zoning text amendments, subject to City Council concurrence. A person who has a legal or equitable interest in real property may apply for legislative actions to facilitate development of that property. The applicant shall submit proof of legal or equitable interest and of the authority of any agent to act on behalf of the applicant. (Ord. No. 1611)

C. **Annual Review and Schedule for General Plan Amendments.** The Planning Commission shall establish a schedule for considering General Plan amendments in compliance with the requirements of State law. At least 1 public hearing per year shall be scheduled to review the General Plan and the schedule.

§ 11.5.15.010 Specific Procedure for Processing Applications.

Unless otherwise indicated, the following procedure applies to applications filed by a property owner for a Specific Plan, development agreement, planned development plans, and amendments to the General Plan, any Specific Plan, zoning map, and zoning code.

A. **Application.** The owner shall submit an application for each action governed by this Chapter in accordance with Section 11.5.10.010: Application Forms and Fees.

B. **Coordination of Multiple Applications.** The Director may require that any applications affecting the same property be processed concurrently. An application for legislative action is not a development project within the meaning of the Permit Streamlining Act (PSA) and thus such applications shall not be subject to the time limits specified therein for processing development project applications. Any PSA time periods applicable to applications for development projects processed concurrently with applications for legislative action do not commence until the effective date of the legislative action.

C. **Initial Review.** The Director shall review each application to determine whether it is complete in accordance with Section 11.5.10.020: Review of Applications. If the application is complete, the Director shall determine whether an Initial Study, Negative Declaration, Environmental Impact Report, or other environmental documentation is required in compliance with applicable State and local requirements.

D. Preliminary Planning Commission or Council Review of General Plan Amendments, Specific Plans or Specific Plan Amendments. The Director may recommend preliminary review by the Planning Commission or the City Council of any General Plan Amendments, Specific Plans, or Specific Plan Amendments.

1. Within 45 days after determining an application for a Plan amendment or adoption is complete, the Director shall prepare a written report for the reviewing body and place the preliminary review on the agenda at the earliest practicable date. The Director shall analyze whether the proposed change:

a. Is compatible with the goals, objectives, and policies of the General Plan and any applicable Specific Plan policies, zoning regulations, and design guidelines;

b. May have a significant impact on the environment;
and

c. Necessitates the need for amendments to the Zoning Code.

2. Any resulting recommendations shall be considered advisory only and shall not be binding on either the applicant or the City. If the reviewing body directs Staff to continue processing the proposed amendment or adoption, the direction shall not signify support for the proposed amendment or adoption. The reviewing body may identify any additional materials or documentation that it deems necessary to take action on the application.

§ 11.5.15.015 Public Notice.

At least ten 10 days before the date of any public hearing, the City shall provide notice in compliance with the requirements of Section 11.5.10.025: Public Notification. In addition, the City shall comply with the following requirements:

A. **Coordination with General Plan Amendment Schedule.** General Plan Amendments shall be scheduled in accordance with the City's Annual General Plan Amendment Schedule.

B. **Coordination of Notices.** The public hearing notice shall identify each proposed action to be considered at the public hearing.

C. **Notice to Affected Service Providers.** At least 10 days prior to the date of the public hearing, notice shall be sent to the Los Alamitos Unified School District and any other agency expected to provide essential facilities or services to the property that is the subject of the proposed action.

D. **Notice of Intent to Approve Development Agreement.** The City shall publish a notice of intent to consider adoption of a development agreement pursuant to Government Code Sections 65864 et seq., as may be amended from time to time.

§ 11.5.15.020 Public Hearing and Action.

A. **Planning Commission Hearing and Action.**

1. The Planning Commission shall conduct a public hearing on the proposed legislative action in conformance with Chapter 11.5.10: General Procedures. If an applicant has also applied for quasi-judicial action such as a subdivision, conditional use permit or variance, the Commission shall consider those applications at the same hearing.

2. Within 30 days after concluding the hearing, the Commission shall adopt a resolution recommending to the Council its recommended action.

a. For City Council initiated actions, failure of the Commission to adopt a resolution shall be deemed to be a recommendation of approval.

b. For Commission initiated actions, adoption of a resolution recommending disapproval or failure of the Commission to adopt a resolution terminates the processing of the action.

c. For applications filed by property owners, adoption of a resolution recommending disapproval becomes final unless an appeal is filed with the City Clerk within 10 days of the Commission's adoption of the resolution.

B. **City Council Hearing and Action.**

1. The City Council shall conduct a public hearing on the proposed legislative action in conformance with Chapter 11.5.10: General Procedures.

2. After the conclusion of the hearing, the City Council may:

a. Adopt an ordinance adopting a specific plan, planned development plan, zone text amendment, zone change or development agreement.

b. Adopt a resolution approving the General Plan or amendments thereto.

§ 11.5.15.025 Required Findings.

In general, no findings are required for legislative acts. Notwithstanding this general rule, the Council shall make any environmental findings required pursuant to Chapter 11.5.35: Environmental Review, and determine whether the proposed action is consistent with the General Plan and any applicable Specific Plan. Further, state law requires special findings for certain zoning decisions related to, for example, affordable housing.

§ 11.5.15.030 General Plan and Amendments Available to the Public.

Within 1 working day following the Council action, the City Clerk shall make the amendment available for public inspection. Within 2 working days following receipt of a request accompanied by payment of a reasonable cost for copying, the Clerk shall provide copies of the documents to any person making such a request.

§ 11.5.15.035 Additional Requirements for Development Agreements.

A. Development agreements provide a greater degree of certainty by granting assurance that an applicant may proceed with development in accordance 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. A development agreement constitutes a contract, negotiated and voluntarily executed by the City and applicant that may contain any conditions, terms or provisions agreed upon by the parties.

B. The owner may request that the City treat an application for a development project as a development agreement application.

C. In addition to the processing fees set forth in Section 11.5.10.010: Application Forms and Fees, an owner shall deposit money with the City to pay all fees, costs, expenses and charges for: the filing and processing of the application; the administration of approved development agreements, including

annual reviews; and any consultant fees and legal fees and costs incurred by the City in connection with the processing of applications and annual reviews.

D. The City Council shall not approve a proposed development agreement unless it finds that its provisions are consistent with the General Plan and any applicable specific plan. This requirement may be satisfied by a finding that the provisions of a proposed development agreement are consistent with proposed General Plan or specific plan provisions which are to be adopted concurrently with the approval of the proposed development agreement. A finding of consistency may be made if, considering the General Plan and/or specific plan as a whole and balancing competing provisions as appropriate, the City determines that the proposed development agreement does not conflict with the provisions of the General Plan and/or specific plan.

E. Contents. A development agreement:

1. Shall 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 shall contain provisions concerning its transferability to successors in interest.

2. May include requirements for construction and maintenance of onsite and off-site improvements or payment of fees in lieu of such dedications or improvements.

3. May include conditions, terms, restrictions, and requirements for subsequent discretionary actions.

4. May include, without limitation, conditions and restrictions imposed by the City including any conditions and restrictions in order to eliminate or mitigate adverse environmental impacts of the project.

5. May provide that the project be constructed in specified phases, that construction shall commence within a specified time, and that the project or any phase thereof be completed within a specified time.

6. 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. Shall contain an indemnity clause requiring the applicant to defend, indemnify and hold the City harmless against all claims arising out of or in any way related to the application, the agreement and the project including all legal fees and costs incurred by the City by counsel of the City's choice.

8. May include provisions to guarantee performance of obligations stated in the agreement.

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

G. Within 10 days after the ordinance approving the development agreement takes effect, the City Manager shall execute the development agreement on behalf of the City, and the City Clerk shall record the development agreement with the county recorder.

H. If the parties to the agreement or their successors in interest amend or cancel the development agreement, or if the City terminates or modifies the development agreement for failure of the applicant to fully comply with its provisions, the City Clerk shall record notice of such action with the county recorder.

I. Annual Review, Amendment or Cancellation.

The Director shall review each approved development agreement at least once a year at which time the applicant shall be required to demonstrate compliance with the provisions of the development agreement.

1. Initiation of Annual Review. The applicant shall initiate the required annual review by submitting a written request at least 60 days prior to the review date specified in the development agreement. The applicant shall also provide evidence as determined necessary by the Director to demonstrate compliance with the provisions of the development agreement. The applicant shall bear the burden of proving by substantial evidence that it has complied with the provisions of the development agreement.

2. Finding of Compliance. If the Director, based on substantial evidence, finds the applicant has complied with the provisions of the development agreement, the Director shall issue a finding of compliance, that may be recorded with the county recorder after conclusion of the review.

3. Determination of Non-Compliance. If the Director determines the applicant has not complied with the provisions of the development agreement, the Director may issue a noncompliance report and record it with the county recorder after it becomes final. The report shall specify all matters of non-compliance, required measures and a reasonable deadline for

compliance. Alternatively, the Director may refer the development agreement to the City Council to determine compliance.

4. Appeal of Determination. Within 10 days after issuance of a finding of compliance or a determination of noncompliance, any person may appeal the action pursuant to Title 1: General Provisions, Section 1.20.005: Administrative Review, in which case the City Council shall be the hearing officer as that term is used in Section 1.20.005: Administrative Review. The appellant shall pay fees and charges for the filing and processing of the appeal in amounts established by City Council resolution.

5. Decision is Final. The City's decision is final on the day:

- a. the appeal period expires without appeal;
- b. the City Council takes action on any appeal.

J. **Termination or Modification After Finding of Noncompliance.** If applicant does not comply with any required measures within the deadline, the Director may refer the development agreement to the City Council for termination or modification. The City Council shall conduct a public hearing in compliance with the provisions of Chapter 11.5.10: General Procedures; such hearing may be combined with any hearing or appeal regarding the development agreement. After the public hearing, the City Council may: terminate the development agreement; modify the finding of noncompliance; impose additional compliance measures; or rescind the finding of noncompliance and issue a finding of compliance.

K. **Termination or Modification by Mutual Consent.** The parties may terminate or modify a development agreement by mutual consent. A development agreement may also specify procedures for Director approval of amendments requested by the applicant.

L. **Rights of the Parties After Termination.** In the event that a development agreement is terminated, all rights of the applicant, property owner, or successors in interest under the development agreement shall terminate. If a development agreement is terminated following a finding of noncompliance, the City may, in its sole discretion, keep any benefit, including reservations or dedications of land, and payments of fees, received by the City.

M. **Effect of Development Agreement.**

1. City Rules Apply. Unless otherwise specified in the development agreement, the City's ordinances, resolutions, 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 City ordinances, resolutions, rules, regulations and official policies in force on the effective date of the development agreement. The applicant shall not be exempt from otherwise applicable City ordinances or regulations pertaining to persons contracting with the City.

2. New Rules may be Applied. A development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new ordinances, resolutions, rules, regulations and policies which do not conflict with those ordinances, resolutions, rules, regulations and policies applicable to the property as set forth in the development agreement. A development agreement shall not prevent the City from denying or conditionally approving any subsequent discretionary land use entitlement or authorization for the project on the basis of such existing or new ordinances, resolutions, rules, regulations, and policies. Unless otherwise specified in the development agreement, a development agreement shall not exempt the applicant from obtaining future required discretionary land use entitlements.

3. Rules Affecting Development Agreement. 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 1 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.

§ 11.5.15.040 Additional Requirements for Adopting Specific Plans.

A. **Minimum Area.** The minimum area for an area proposed for a specific plan shall be 2.5 acres.

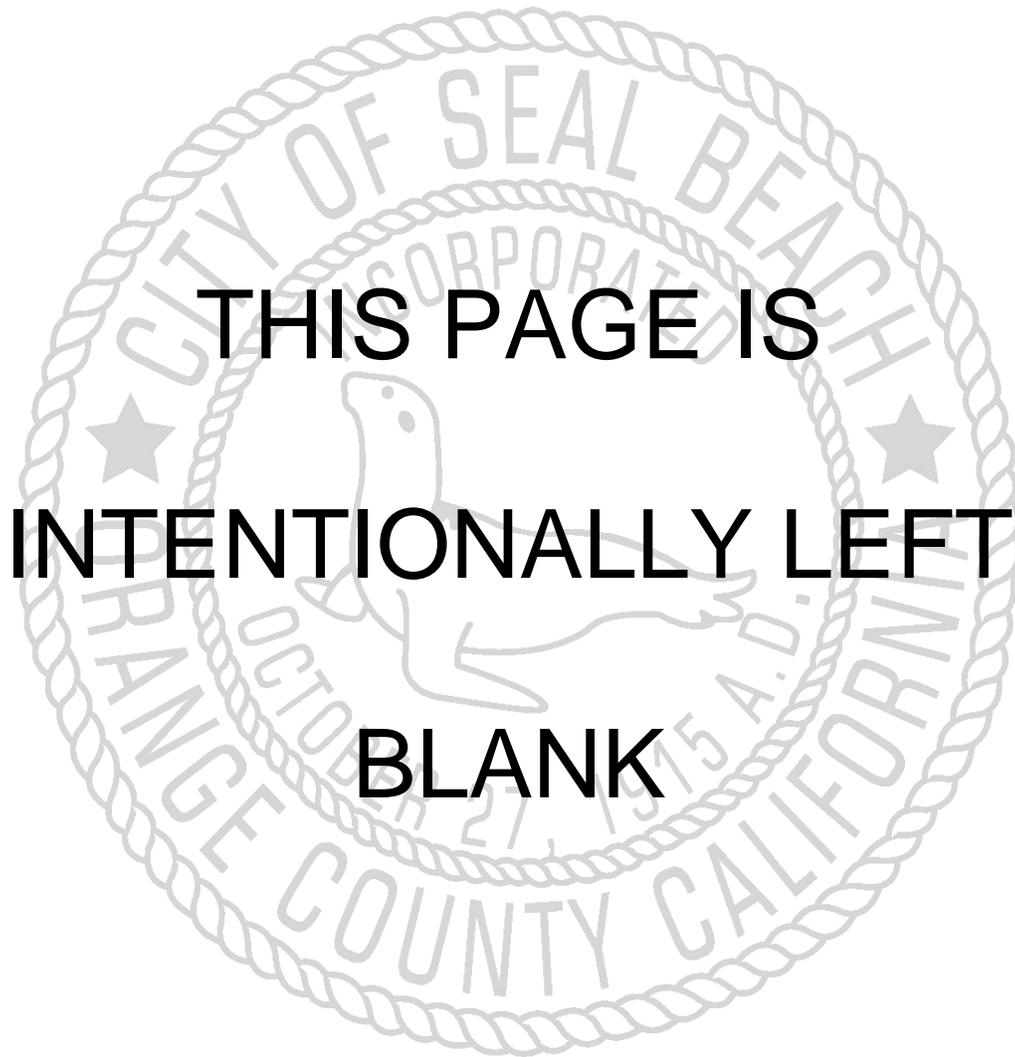
B. **Development Standards and Regulations.** All property, uses and development within a Specific Plan's area shall conform to the development standards and regulations and any provisions of that Specific Plan. Whenever the City adopts a Specific Plan relating to the development of a designated area of the City, as that term is used in Section 65450 et seq. of the Government Code of the State of California, as may be amended, the provisions and specifications of such an adopted Specific Plan shall supersede any conflicting provisions of this Title without regard as to whether the provisions and specifications of such Specific Plan are more or less stringent than the provisions of this Title.

C. **Special Factors in Determining Specific Plan Standards.** Prior to approving a specific plan or amendment for any site, the City Council shall consider the site's base zoning district and existing zoning, the height of existing buildings immediately surrounding the site and the effect of the proposed building height on the areas surrounding the site.

§ 11.5.15.045 Regulations for Planned Development Plans.

Regulations for planned development plans are contained in Chapter 11.3.10: Planned Development Overlay District (-PD).

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Chapter 11.5.20 Development Permits

§ 11.5.20.005 Minor Use Permits, Conditional Use Permits and Variances.

A. **Minor Use Permits.** The Planning Commission may issue Minor Use Permits for certain uses identified in Part II and III: *Base District* and *Overlay District Regulations* and Part IV: *Regulations Applying in Some or All Districts*, that are generally non-controversial but still require special consideration to ensure that they can be designed, located, and operated in a manner that will be compatible with surrounding uses and not interfere with the use and enjoyment of surrounding properties.

B. **Conditional Use Permits.** The Planning Commission may issue Conditional Use Permits for certain uses identified in Part II and III: *Base District* and *Overlay District Regulations* and Part IV: *Regulations Applying in Some or All Districts*, that require special consideration to ensure that they can be designed, located, and operated in a manner that will be compatible with surrounding uses and not interfere with the use and enjoyment of properties in the vicinity.

C. **Variances.** The Planning Commission may issue Variances to adjust dimensional and performance standards, subject to the following:

1. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which such property is situated; and

2. A variance shall not be granted which authorizes a use or activity which is not otherwise expressly authorized by the zone district regulations governing the parcel of property.

§ 11.5.20.010 Review Authority.

The following tables set forth use types that are permitted by right, permitted by right with specified limitations, or require Administrative or Conditional Use Permit approvals:

- Table 11.2.05.010: *Use Regulations – Residential Districts;*
- Table 11.2.10.010: *Use Regulations – Commercial and Mixed-Use Districts;*
- Table 11.2.15.010: *Use Regulations – Light Manufacturing and Oil Extraction Districts;*

- ❑ Table 11.2.20.010: *Use Regulations – Public and Semi-Public Facilities Districts*; and
- ❑ Table 11.2.25.015: *Use Regulations – Open Space and Parks Districts*.

In addition, Table 11.5.20.010: *Review Authority* lists the types of land use entitlements that require either a Minor Use Permit or a Conditional Use Permit. The Planning Commission shall consider variance applications.

TABLE 11.5.20.010 REVIEW AUTHORITY

Chapter 11.2.05 – Residential Districts

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Private School	Table 11.2.05.010, Note L-1		X
Exterior stairway – flood zone areas	Table 11.2.05.015, Note L-2	X	
Surfside – non-habitable architectural features	§ 11.2.05.015.A.6.b	X	
Surfside – zero side yard	§ 11.2.05.015.A.7.c		X
Surfside – nonconforming building expansion	§ 11.2.05.015.A.7.g		X
Maximum height of downslope skirt walls	§ 11.2.05.015.H	X	
Greater porch width	§ 11.2.05.015.K.3	X	
Exception to allowable curb cuts and driveways – RLD-9 District	§ 11.2.05.015.L		X
Garage for more than 3 vehicles	§ 11.2.05.015.N.1		X
Detached garage on front ½ of lot	§ 11.2.05.015.N.1	X	
Exception to maximum garage width	§ 11.2.05.015.N.2	X	
Exception to allowable parking locations – multi-unit residential	§ 11.2.05.015.N.7		X

**TABLE 11.5.20.010 (continued)
REVIEW AUTHORITY**

Chapter 11.2.05 – Residential Districts (Continued)

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
2-story cabana or manufactured home in mobile home park	§ 11.2.05.015.S.2	X	

Chapter 11.2.10 – Commercial and Mixed-Use Districts

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Business Services uses on Main Street – ground floor	Table 11.2.10.010, Note L2		X
Laboratory uses on Main Street – ground floor	Table 11.2.10.010, Note L2		X
Offices, Business and Professional uses on Main Street – ground floor	Table 11.2.10.010, Note L2		X
Offices, Medical and Dental uses on Main Street – ground floor	Table 11.2.10.010, Note L2		X
Personal Improvement Services uses on Main Street – ground floor	Table 11.2.10.010, Note L2		X
Coffee House/Desert Shop – more than 1,000 square feet and 10 seats or more - MSSP	Table 11.2.10.010, Note L6	X	
Public open space location exceptions	§ 11.2.10.015.E.1	X	
Parking location exceptions – LC/RMD, PO, and MSSP zones	§ 11.2.10.015.F.2	X	
Exceptions to locations of truck docks, loading, and service areas	§ 11.2.10.015.H	X	

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.2.10 – Commercial and Mixed-Use Districts (Continued)

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Buildings oriented with primary façade and entrance not to a public street	§ 11.2.10.015.I.1.a	X	
Pedestrian access to buildings	§ 11.2.10.015.N	X	

Chapter 11.2.20 – Public and Semi-Public Facilities Districts

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Public parking facilities – not in conjunction with a public or semi-public facility	Table 11.2.20.010; Note L-1		X
Public parking facilities – not in conjunction with a golf course facility	Table 11.2.20.010; Note L-2		X

Chapter 11.2.25 – Open Space, Parks and Recreation Districts

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Agricultural Nurseries	Table 11.2.25.015; Note L-1		X

Chapter 11.3.05 –Residential Conservation Overlay Zone

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Bed and breakfast facility	§ 11.3.05.010.B		X
Parking on separate parcel	§ 11.3.05.015.B.16.c		X
Roof-mounted mechanical equipment	§ 11.3.05.025		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.3.15 – Commercial/Park Overlay Zone

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Project development plan approval	§ 11.3.15.005		X

Chapter 11.4.05 – Standards for Specific Uses

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Incidental Business Activity	§ 11.4.05.010.D.4	X	X
Alcohol Beverage Establishment	§ 11.4.05.015.A		X
Alcohol Beverage Establishment – non-conforming use	§ 11.4.05.015.E		X
Assisted Living Facilities	§ 11.4.05.025.B		X
Automated Teller Machines	§ 11.4.05.030.A	X	
Automobile Service Station	§ 11.4.05.035.A		X
Tow Service	§ 11.4.05.035.B.23		X
Sale of beer and wine	§ 11.4.05.035.B.24		X
Automobile/Vehicle Sales and Services Tow Services	§ 11.4.05.040.E		X
Child Day Care Facilities Large Family Day Care Homes and Child Day Care Centers	§ 11.4.05.045.A		X
Child Day Care Facilities Large Family Day Care Homes and Child Day Care Centers – Exterior Structural Alteration to existing facility	§ 11.4.05.045.B.2	X	

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.05 – Standards for Specific Uses (Continued)

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Drive-In and Drive-Through Facilities	§ 11.4.05.050.A		X
Extended Hour Business	§ 11.4.05.055.A		X
Home Occupations	§ 11.4.05.060.D	X	
Kiosks	§ 11.4.05.065.A	X	
Liquor Stores	§ 11.4.05.070.A		X
Meeting Facilities, Private Schools and Similar Institutional Uses	§ 11.4.05.080.A		X
News and Flower Stands	§ 11.4.05.085.A	X	
Outdoor Displays and Sales – Temporary	§ 11.4.05.090.A	X	
Outdoor Displays and Sales – Accessory	§ 11.4.05.090.B	X	
Outdoor Displays and Sales – Permanent	§ 11.4.05.090.C.1		X
Outdoor Dining Area – no more than 12 seats	§ 11.4.05.090.D	X	
Outdoor Dining Area – more than 12 seats	§ 11.4.05.090.D.1		X
Outdoor Dining or Seating Area – Sound and Music	§ 11.4.05.090.D.6	X	X
Outdoor Dining Area – Outdoor Cooking	§ 11.4.05.090.D.10		X
Recycling Collection Point	§ 11.4.05.095.B		X
Recycling Processing Facility	§ 11.4.05.095.C		X
Residential Accessory Uses – detached accessory structures between 225 and 350 square feet in total area	§ 11.4.05.100.D.4	X	

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.05 – Standards for Specific Uses (Continued)

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Residential Accessory Uses - Garage larger than 600 square feet	§ 11.4.05.100.H		X
Residential Accessory Uses - more than 1 guest room or pool house	§ 11.4.05.100.I.1		X
Residential Accessory Uses - 2 nd Story guest room or pool house	§ 11.4.05.100.I.3		X
Residential Accessory Uses - Minor accessory structure greater than 6 feet high in required setback	§ 11.4.05.100.K.2	X	
Residential Accessory Uses - Tennis and other recreation courts	§ 11.4.05.100.L.1	X	
Residential Care Facility – delivery hours between 8 PM and 8 AM	§ 11.4.05.105.E		X
Restaurant - Alcohol Sales	§ 11.4.05.120.A		X
Senior Citizen Apartments – Independent Living Facilities	§ 11.4.05.125.A		X
Accessory Non-Residential Facilities	§ 11.4.05.125.H		X
Temporary Structures, Trailers, and Modular Units	§ 11.4.05.130.A.1	X	
Vacation Rentals	§ 11.4.05.135.A.1		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.10 – General Site Standards

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Mechanical Equipment Screening - Exceptions	§ 11.4.10.015.B	X	
Height of Light Standards	§ 11.4.10.020.A.6	X	
Recreational court lighting modifications	§ 11.4.10.020.A.7.i	X	
Modifications to lighting standards	§ 11.4.10.020.A.8.d	X	
Increase in Allowable Outdoor Noise Levels for Residential Areas	§ 11.4.10.020.B.2.a	X	
Swimming Pool Setbacks in Non-Residential Zone	§ 11.4.10.030.B	X	
Public and Semi-Public Swimming Pool	§ 11.4.10.030.E		X
Minor Addition – Improvements required in conjunction with street dedication	§ 11.4.10.040.C		X
Deviation – Improvements required in conjunction with street dedication	§ 11.4.10.040.D		X

Chapter 11.4.15 – Fences, Hedges and Walls

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Modification to fence height standards	§ 11.4.15.010.C	X	
Retaining wall between 30 and 48 inches in height	§ 11.4.15.015.A.2	X	
Retaining wall greater than 48 inches in height	§ 11.4.15.015.A.3		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.15 – Fences, Hedges and Walls (Continued)

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Retaining wall greater than 30 inches in height – RLD-9 District, Ocean Avenue area	§ 11.4.15.015.B.2	X	
Walkway and driveway architectural features	§ 11.4.15.025.B	X	
Sport facility and golf course fencing	§ 11.4.15.025.D	X	
Security fences	§ 11.4.15.030.A	X	
Modification to restrictions on fence materials	§ 11.4.15.035	X	

Chapter 11.4.20 – Off-Street Parking and Loading

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Garage Parking Reduction – 6 bedroom home or larger	Table 11.4.20.015.A.1	X	
Parking Reductions - Shared Parking Program	§ 11.4.20.020.A		X
Parking Reductions – Other Parking Reduction	§ 11.4.20.020.B		X
Off-site parking within 300 feet	§ 11.4.20.025.B.2		X
Modification to direction of vehicle ingress/egress	§ 11.4.20.025.H.1	X	
Exception to location of loading areas	§ 11.4.20.035.C.3	X	
Parking Structure	§ 11.4.20.040.A		X
Conversion of Parking Structure to Fee Structure	§ 11.4.20.040.C		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.25 – Sign Regulations

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Marquee signs above roof line	§ 11.4.25.025.D.5.b	X	
Marquee signs with changing lights	§ 11.4.25.025.D.5.c	X	
Flags larger than 12 square feet	§ 11.4.25.025.D.9.b	X	
Main Street – outlining of buildings	§ 11.4.25.025.D.10.j	X	
Main Street – up to 3 tenant spaces	§ 11.4.25.025.D.10.k.i		X
Main Street – 4 or more tenant spaces – Planned Sign Program	§ 11.4.25.025.D.k.ii		X
Subdivision identification sign	§ 11.4.25.030.A.1	X	
Approved commercial use sign in residential area	§ 11.4.25.030.A.3	X	X
Planned Sign Program	§ 11.4.25.045.E.1		X
Exception to size, dimensions, height and number of signs	§ 11.4.25.045.F		X
Designation of historic sign	§ 11.4.25.070.B.1		X

Chapter 11.4.30 - Landscaping and Buffer Yards

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Exceptions to Buffer Yards	§ 11.4.30.040.B.4		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.40 - Nonconforming Uses, Structures, and Lots

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Specified structural repairs – all structures	§ 11.4.40.010.D	X	
Residential structures – specified minor improvements	§ 11.4.40.015.B	X	
Single-family residences – specified enlargements and expansions	§ 11.4.40.020.A		X
Commercial centers over 20 acres – less than 7 % landscaping	§ 11.4.40.030.B.2		X
Replacement with a more conforming use	§ 11.4.40.035.A		X
Nonconforming use expansion in a conforming structure	§ 11.4.40.035.B		X
Nonconforming use expansion in a nonconforming structure	§ 11.4.40.035.C		X
Expansion within structure that does not conform to California Building Code	§ 11.4.40.035.D		X
Conform a nonconforming use upon ordinance requirement	§ 11.4.40.040		X
Reestablishment of abandoned nonconforming use	§ 11.4.40.045.B		X
Residential reconstruction after damage – more than 50% subject to specified standards	§ 11.4.40.050.B.2	X	

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.40 - Nonconforming Uses, Structures, and Lots (Continued)

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Non-residential reconstruction after damage – more than 50% subject to specified standards	§ 11.4.40.050.C	X	
Exceptions for nonconforming historic buildings	§ 11.4.40.055.A		X

Chapter 11.4.60 - Hazardous Waste Facilities

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Off-site hazardous waste facility	§ 11.4.60.020		X

Chapter 11.4.65 - Tattoo Establishments

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Tattoo establishment	§ 11.4.65.005		X

Chapter 11.4.70 - Wireless Telecommunications Facilities

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Wireless Telecommunications Facilities – New ground mounted tower or monopole - All other property	§ 11.4.70.030.B		X

Chapter 11.4.75 – Common Interest Developments

		Use Permit Required	
Land Use Entitlement or Activity	Requirement is in Section:	Minor Use Permit	Conditional Use Permit
Common Interest Development	§ 11.4.75.005		X

**TABLE 11.5.20.010 (Continued)
REVIEW AUTHORITY**

Chapter 11.4.80 Condominium Conversions

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Condominium Conversion	§ 11.4.80.010		X
Condominium Conversion – Reconstruction after damage	§ 11.4.80.030.A.4.f	X	

Chapter 11.5.25 - Director Determinations; Section 11.5.25.015 - Temporary Uses; Section 11.5.25.020 – Minor Modifications;

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Temporary Uses – Potential Detrimental Impacts	§ 11.5.25.015.A	X	
Minor Modifications from Dimensional Requirements – Not Exceeding 5% of Standard	§ 11.5.25.020.A.1	X	
Modifications to Approved Plans - Not Exceeding 5% of Specified Approved Plan component	§ 11.5.25.020.A.2	X	

Chapter 11.5.30 – Reasonable Accommodations

Land Use Entitlement or Activity	Requirement is in Section:	Use Permit Required	
		Minor Use Permit	Conditional Use Permit
Reasonable Accommodations	§ 11.5.30.020		X

§ 11.5.20.015 Review Procedure.

A. **Application Forms and Fees.** Applicants for Minor Use Permits, Conditional Use Permits, and Variances shall file an application with the Director in accordance with the application procedures in Section 11.5.10.010: *Application Forms and Fees*.

B. **Notice.** The City shall provide notice for Minor Use Permits, Conditional Use Permits, and Variances in accordance with Section 11.5.10.025: *Public Notification*.

C. **Decisions on Minor Use Permits.** The Planning Commission shall conduct a hearing for any application for a Minor Use Permit. After the hearing is closed, the Commission shall adopt a resolution approving, conditionally approving or denying the application.

D. **Decisions on Conditional Use Permits and Variances.** The Planning Commission shall conduct a public hearing for any application for a Conditional Use Permit or Variance. After the hearing is closed, the Commission shall adopt a resolution approving, conditionally approving or denying the application.

§ 11.5.20.020 Required Findings.

A. **Findings for Approval of Use Permit.** A use permit shall only be granted if the reviewing body finds, based upon evidence presented at the hearing, the proposal as submitted, or as modified, conforms to all of the following criteria as well as to any other special findings required for approval of use permits in specific zoning districts:

1. The proposal is consistent with the General Plan and with any other applicable plan adopted by the City Council;

2. The proposed use is allowed within the applicable zoning district with use permit approval and complies with all other applicable provisions of the Municipal Code;

3. The site is physically adequate for the type, density and intensity of use being proposed, including provision of services, and the absence of physical constraints;

4. The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect uses and properties in the surrounding neighborhood; and

5. The establishment, maintenance, or operation of the proposed use at the location proposed will not be detrimental to the health, safety, or welfare of persons residing or working in the vicinity of the proposed use.

B. **Findings for Approval of Variance.** A variance shall only be granted if the Planning Commission finds, based upon evidence presented at the hearing:

1. The variance conforms in all significant respects with the General Plan and with any ordinances adopted by the City Council;

2. Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning district classification;

3. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which such property is situated.

4. Authorization of the variance substantially meets the intent and purpose of the zoning district in which the property is located and will not be detrimental to the health, safety, and welfare of persons living or working in the neighborhood or to the general welfare of the City.

§ 11.5.20.025 Conditions of Approval.

A. **Conditions.** In approving a use permit or variance, the reviewing body may impose any reasonable conditions to:

1. Ensure that the proposal conforms in all significant respects with the Seal Beach General Plan and with any other applicable plans or policies adopted by the City Council;

2. Achieve the general purposes of this Zoning Code or the specific purpose of the zoning district in which the project is located;

3. Achieve the findings required by this Chapter;

4. Mitigate any potentially significant impacts identified as a result of review conducted in compliance with the requirements of the California Environmental Quality Act; and

5. Ensure compliance with all requirements of the National Pollution Discharge Elimination System (NPDES) permit issued by the California Regional Water Quality Control Board. Discharges shall also comply with Chapter 9.20: *Storm Water Management Program*, Chapter 9.25: *Fats, Oil and Grease Management and Discharge Control*, Chapter 9.30: *Sewerage*, Chapter 9.35: *Water*, and Chapter 9.50: *Grading* of the Municipal Code.

B. **Types of Conditions.** The reviewing body may impose reasonable conditions including but not limited to:

1. Requiring special yards, open spaces, buffers, fences, walls;
2. Locating and orienting entrances and roll-up doors, and screening;
3. Specifying building design elements;
4. Requiring installation and maintenance of landscape and erosion control measures;
5. Regulating vehicular ingress and egress and traffic circulation;
6. Requiring street improvements and dedication of right-of-way for street widening or street extensions;
7. Regulating signs;
8. Regulating parking;
9. Preserving trees;
10. Regulating lighting;
11. Regulating hours or other characteristics of operation;
12. Establishing development schedules or time limits for performance or completion;
13. Requiring public utilities and easements;
14. Requiring periodic review by the Director or the Planning Commission;
15. Requiring final plans to ensure compliance with conditions of approval; and
16. Imposing other conditions deemed necessary.

§ 11.5.20.030 Appeals; Expiration and Extensions.

A. Appeals.

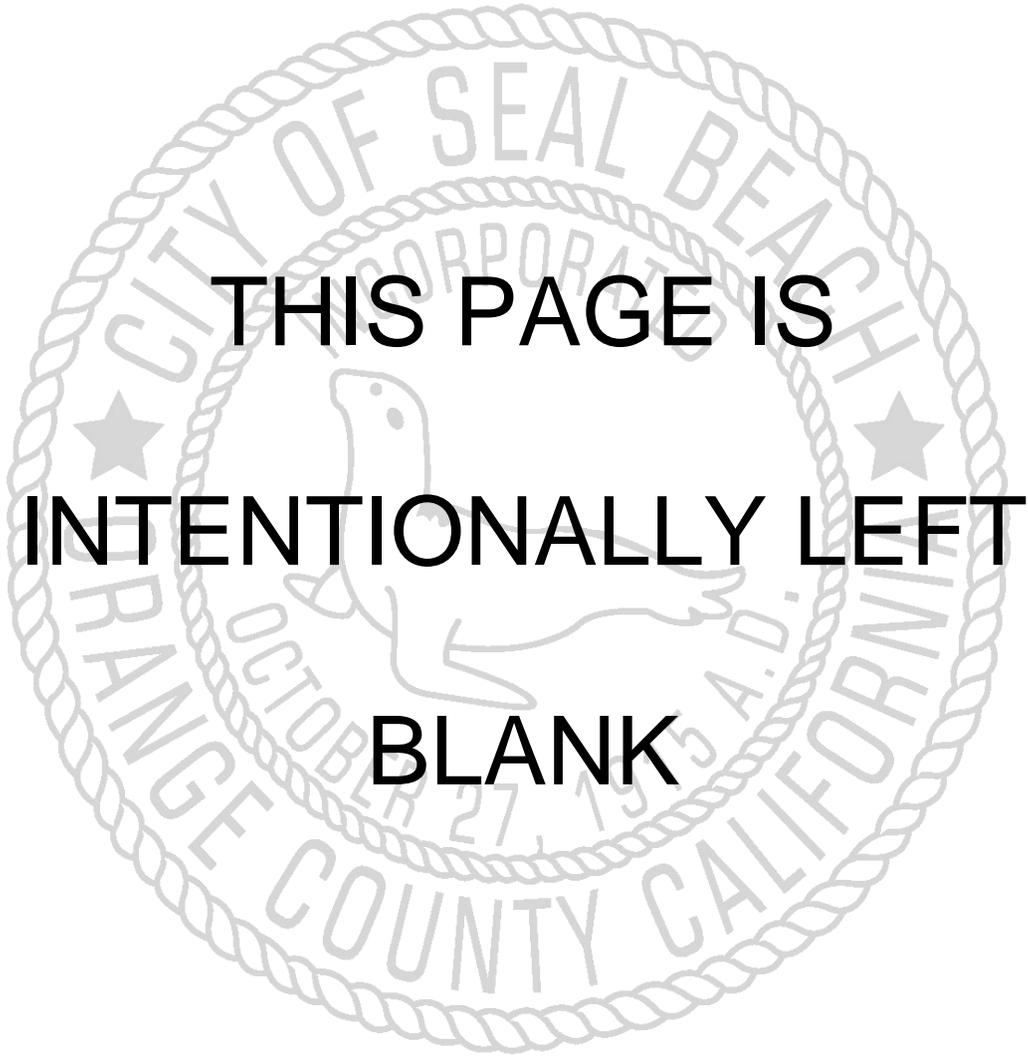
1. Any person may appeal the Director's action pursuant to Title 1: *General Provisions*, Section 1.20.005: *Administrative Review*, in which

case the Planning Commission shall be the hearing officer as that term is used in Section 1.20.005: *Administrative Review*.

2. Any person may appeal the Planning Commission's action pursuant to Title 1: *General Provisions*, Section 1.20.005: *Administrative Review*, in which case the City Council shall be the hearing officer as that term is used in Section 1.20.005: *Administrative Review*.

B. Expiration, Extension, and Modifications. The regulations concerning expiration, extension, and modifications are found in Chapter 11.5.10: *General Procedures*.

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Chapter 11.5.25 Director Determinations

§ 11.5.25.005 **Applicability.**

This Chapter establishes procedures for certain actions that can be approved by the Director.

§ 11.5.25.010 **Zoning Conformance Review Procedures.**

A. **Application.** Prior to obtaining any business license, permit or other approval, the applicant shall request the Director to determine whether the proposed development, use, structure, or change in use complies with all provisions of the Zoning Code, any applicable land use entitlement, and all conditions thereto.

B. **Application Forms and Fees.** The applicant shall submit the application and pay processing fees in accordance with the provisions set forth in Section 11.5.10.010: *Application Forms and Fees*. The Director may request the applicant submit plans and related materials necessary to show that the proposed development, use, structure or change complies with the Zoning Code, findings required by Section 11.5.20.020: *Required Findings*, and the requirements and conditions of any applicable land use entitlement. Required development plans shall be drawn to scale and shall indicate clearly and with dimensioning the following information:

1. Lot dimensions;
2. Location, size, height, proposed use for each structure;
3. Yards and space between structures;
4. location, height and materials of walls and fences;
5. location, number of spaces and/or dimension of off-street parking area, internal circulation pattern;
6. Pedestrian and vehicular access, points of ingress and egress;
7. Location and general nature of lighting;
8. Street dedications and improvements;
9. Availability of utilities; and

10. Such other data as may be required by the Director.

C. **Applicability.** The Director shall determine whether the Zoning Code allows the proposed development, use or structure by right. No zoning conformance approval shall be required for continuations of previously approved or permitted uses and structures, uses and structures which are not subject to any building or zoning code regulations, or other uses or structures subject to other land use entitlement review.

D. **Required Findings by Director.** Prior to such determination, the Director shall find:

1. The proposed use and structure conform with the provisions of this Title;
2. The proposed use and structure are compatible with uses and structures in the immediate neighborhood;
3. The plans provide protection to adjacent structures from noise, vibration and other undesirable environmental factors;
4. Proposed lighting is directed inward and downward to reflect light away from adjoining properties;
5. The following are designed to avoid traffic congestion, protect pedestrian and vehicular safety and welfare and eliminate any adverse effect on surrounding property:
 - a. Structures and improvements;
 - b. Vehicular ingress and egress and eternal circulation;
 - c. Setbacks;
 - d. Height of buildings;
 - e. Walls; and
 - f. Landscaping.

E. **Issuance of Zoning Conformance.** The Director shall serve the applicant with a written determination within 30 days of a complete submittal. The Director shall issue a Zoning Conformance upon determining that the proposed business license, permit or approval is allowed as a matter of right by the Zoning Code, and conforms to all the applicable development and use

standards therein. An approved Zoning Conformance may include attachments of other written or graphic information, including but not limited to, statements, numeric data, site plans, floor plans and building elevations and sections, as a record of the proposal's conformity with the applicable regulations of this Zoning Code. Other forms of approval may be in the form of a stamp, City staff signature, or other official notation on approved plans, a letter to the applicant, or other certification, at the discretion of the Director.

§ 11.5.25.015 Temporary Uses.

A. **Minor Use Permit Required in Certain Circumstances.** Prior to the commencement of any temporary use, the Director may require a Minor Use Permit application if the Director finds that the temporary use may have detrimental impacts, such as noise or traffic impacts, that should be reviewed pursuant to the provisions of Chapter 11.5.20: *Development Permits*.

B. **No Minor Use Permit Required.** Minor Use Permits shall not be required for the following types of temporary uses:

1. Retail uses on the same property as an established commercial use holding a valid City business license where such retail activity is not in conflict with any applicable zoning requirements or permit.

2. Real estate sales from a manufactured or mobile unit office for the temporary marketing, sales, or rental of property.

3. Garage sales of personal property conducted by a resident of the premises where such sales operate for a period of less than 2 per calendar year per site, and a maximum of 2 days each.

4. Seasonal sales of pumpkins and Christmas trees for a period not longer than 45 days in a commercial district on a site where such sales have been permitted previously. Requirements for this type of special event are set forth in Title 7: *Public Peace, Morals, and Welfare*, Chapter 7.50: *Special Events*.

5. Temporary uses otherwise regulated by this Code.

C. **Director Decision.** The Director may approve or conditionally approve an application for temporary uses if the proposed temporary use will not:

1. Adversely affect adjacent properties, their owners and occupants, or the surrounding neighborhood.

2. Constitute a nuisance.

3. Be detrimental to the health, safety, peace, comfort, or welfare of persons residing or working in the area or to the general welfare of the city.

4. Interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed use, or create a demand for additional parking that cannot be safely and efficiently accommodated by existing parking areas.

D. **Application.** An application for a temporary use shall be submitted at least 45 days before the use is intended to begin. The application shall be on a form issued by the Director and shall include the written consent of the owner of the property on which the use is proposed.

E. **Conditions of Approval.** The Director may impose any reasonable conditions, including but not limited to: regulating vehicular ingress and egress and traffic circulation; regulating lighting; regulating hours and/or other characteristics of operation; requiring submission of final plans to ensure compliance with conditions of approval; and other necessary conditions.

F. **Minimum Conditions.** In approving a temporary use, the Director shall at a minimum impose the following conditions if applicable:

1. Any construction or other work shall conform to all applicable Zoning Code and California Building Code provisions.

2. Fire protection and access for fire vehicles shall be provided as specified by the Orange County Fire Authority.

3. Any food service activities shall comply with all applicable requirements of the Orange County Health Department.

4. The applicant shall restore the site to its condition prior to the temporary use and remove all trash, debris, signs, sign supports, and temporary structures and electrical service to the satisfaction of the Director and Building Official within 3 days following the date specified for termination of the temporary use.

§ 11.5.25.020 Minor Modifications.

A. **Minor Modifications May Be Granted.** Minor modifications from the strict application of the dimensional requirements of the Zoning Code and minor changes in the use or structure for which a permit has been issued, may be approved as provided by this section. Only the following types of modifications shall be approved:

1. Dimensional Requirements. Modifications of up to 5 percent of the dimensional requirements of the Zoning Code, including but not limited to:

- a. Front, side, and rear yard setbacks;
- b. The height of any fence or wall permitted in Chapter 11.4.15: *Fences, Hedges and Walls*;
- c. The width of any buffer yard required in Chapter 11.4.30: *Landscaping and Buffer Yards*.

2. Modifications to Approved Plans. Modifications to approved plans to increase by not more than 5 percent, either the floor/lot coverage, or the number of customer seats, may be granted if:

- a. The modified plans substantially conform to the findings made and conditions imposed in connection with any previous City approval; and
- b. There will be no substantial increase in the number of employees, beds, rooms or entrances; and
- c. There will be no substantial change associated with establishing a new product line, service, function or activity so as to change or intensify the use as defined in Chapter 11.4.85: *Use Classifications* or as defined in the City's adopted California Building Code; and
- d. The plans otherwise comply with all other applicable development standards of the Zoning Code.

3. Maximum Building Height. Minor modifications shall not be granted to exceed a maximum building height.

B. Application. An application for a minor modification shall be filed with the Director in accordance with the application procedures set forth in Chapter 11.5.10: *General Procedures*. The application shall state in writing the nature of the minor modification requested and explain why the findings necessary to grant the minor modification are satisfied. The applicant shall also submit plans delineating the requested minor modification. The application shall be accompanied by a fee as established by the Master Fee Schedule.

C. Simultaneous Processing. If a request for a minor modification is being submitted in conjunction with an application for another approval, permit, or entitlement under this Zoning Code, it shall be heard and acted upon at the same time and in the same manner as that other application.

D. **Commission Determinations.** The Planning Commission may approve minor modifications by Minor Use Permit, pursuant to the provisions of Chapter 11.5.20: *Development Permits*.

E. **Referral of Applications to Planning Commission.** The Director may refer any request for a minor modification to the Planning Commission for a determination of whether to grant the application.

F. **Findings.** No minor modification shall be approved unless all of the following findings can be made based on substantial evidence in the record:

1. The minor modification 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.

2. There are no reasonable alternatives to the requested minor modification, including siting at another location, that would provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants or to the general public.

3. The granting of the requested minor modification would not be detrimental to the health or safety of the public or the occupants of the property or result in a change in land use or density that would be inconsistent with the requirements of this Zoning Code.

4. The granting of the minor modification will substantially meet or advance the intent and purpose of the zoning district in which the subject property is located.

5. The granting of the minor modification will not intensify any potentially detrimental effects of the project.

G. **Conditions of Approval.** In approving a minor modification from the requirements of this Zoning Code, the Director or the Planning Commission may impose conditions pursuant to Section 11.5.20.025: *Conditions of Approval*.

H. **Notification of Director Decisions.** The Director shall provide written notification to the City Council and Planning Commission within 3 days of approving, conditionally approving, or disapproving a request for a minor modification.

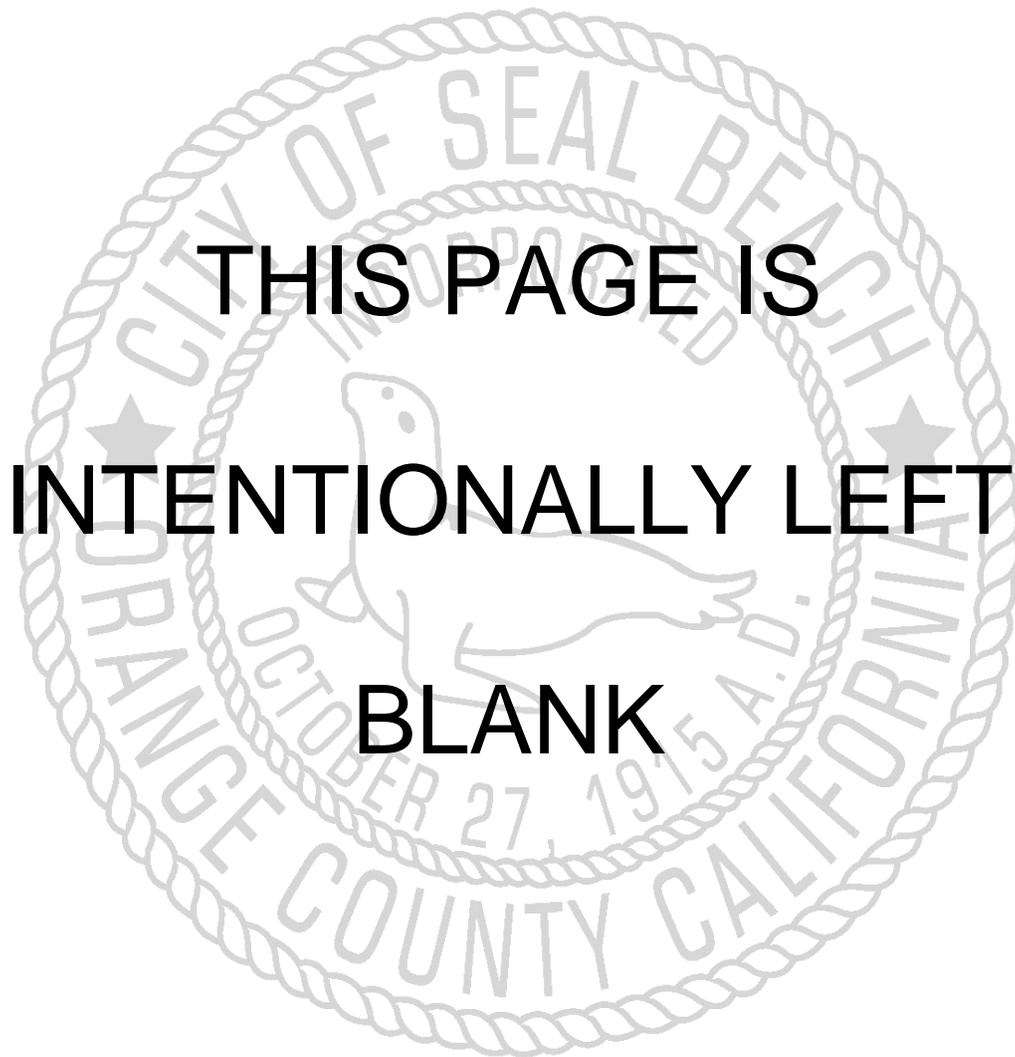
§ 11.5.25.025 Appeals.

A. **Director Actions.** Any person may appeal the Director's action pursuant to Title 1: *General Provisions*, Section 1.20.005: *Administrative Review*,

in which case the Planning Commission shall be the hearing officer as that term is used in Section 1.20.005: *Administrative Review*.

B. Commission Actions. Any person may appeal the Planning Commission's action pursuant to Title 1: *General Provisions*, Section 1.20.005: *Administrative Review*, in which case the City Council shall be the hearing officer as that term is used in Section 1.20.005: *Administrative Review*.

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Chapter 11.5.30 Reasonable Accommodations

§ 11.5.30.005 Purpose.

In accordance with Federal and State fair housing laws, it is the purpose of this chapter to allow for reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

§ 11.5.30.010 Review Authority.

The Planning Commission is designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then an applicant may request that the Planning Commission hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval.

§ 11.5.30.015 Application for a Reasonable Accommodation.

A. **Applicant.** A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.

B. **Application.** An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on a form specified by the Director. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.

C. **Other Discretionary Permits.** If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit.

D. **Required Submittals.** In addition to materials required under other applicable provisions of this Code, an application for reasonable accommodation shall include the following:

1. Documentation that the applicant is: (a) an individual with a disability; (b) applying on behalf of one or more individuals with a disability; or (c) a developer or provider of housing for one or more individuals with a disability;

2. The specific exception or modification to the Zoning Code provision, policy, or practices requested by the applicant;

3. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence;

4. Any other information that the Director reasonably concludes is necessary to determine whether the findings required by Section 11.5.30.020.B: *Required Findings* can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected.

§ 11.5.30.020 Decision.

A. **Planning Commission to Decide.** The Planning Commission shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with subsection B of this section. The reasonable accommodation request shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for a conditional use permit in accordance with the applicable provisions of Chapter 11.5.20: *Development Permits*.

B. **Required Findings.** The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.

2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.

3. The requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in fair housing laws and interpretive case law.

4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in fair housing laws and interpretive case law.

5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

C. Alternative Reasonable Accommodations. In making these findings, the decision maker may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

D. Consideration Factors. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;

2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;

3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants; and

4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

E. Consideration Factors – Fundamental Alteration to Zoning Program. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood;

2. Whether the requested accommodation would result in a substantial increase in traffic or insufficient parking;

3. Whether the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable specific plan; and

4. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

F. Coastal Zone Properties. For housing located in the coastal zone, a request for reasonable accommodation under this section may be approved by the City if it is consistent with the requisite findings set forth in Section 11.5.30.020.B: *Required Findings*, with Chapter 3 of the California Coastal Act of 1976, and with the Interpretative Guidelines for Coastal Planning and Permits as established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments, and the City's adopted Local Coastal Program.

G. Rules While Decision is Pending. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

H. Effective Date. No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make an appeal. In the event an appeal is filed, the reasonable accommodation shall not become effective unless and until a decision is made by the City Council on such appeal, pursuant to the provisions of Section 11.5.20.030: *Appeals; Expiration and Extensions*.

§ 11.5.30.025 Expiration, Time Extension, Violation, Discontinuance, and Revocation.

A. Expiration. Any reasonable accommodation approved in accordance with the terms of this chapter shall expire within 24 months from the effective date of approval or at an alternative time specified as a condition of approval unless:

1. A building permit has been issued and construction has commenced;
2. A certificate of occupancy has been issued;
3. The use is established; or
4. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

B. Time Extension. The Planning Commission may approve a single 1-year time extension for a reasonable accommodation for good cause. An application for a time extension shall be made in writing to the Director no less than 30 days or more than 90 days prior to the expiration date.

C. Time Extension Notice. Notice of the Planning Commissions decision on a time extension shall be provided as specified in Section 11.5.10.025.A: *Mailed Notices, Minor Use Permit Matters*. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in Section 11.5.30.025 of this Chapter.

D. Appeal of Determination. A time extension for a reasonable accommodation shall be final unless appealed within 10 calendar days of the date of the adoption of the written determination of the approving body. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Section 11.5.10.025.A: *Mailed Notices, Minor Use Permit Matters*.

E. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this Code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

F. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for 180 consecutive days. If the persons initially occupying a residence vacate, the reasonable accommodation shall remain in effect only if the Director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code, and (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Director may request the applicant or his or her successor in interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within 10 days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

G. Revocation. Any revocation shall be noticed and heard pursuant to the procedures established in Section 11.5.10.060: *Revocation of Permits*.

§ 11.5.30.030 Amendments.

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as

a new application. The Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

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Chapter 11.5.35 Environmental Review

§ 11.5.35.005 Purpose and Applicability.

A. **Purpose.** This Chapter establishes procedures the City will use for conducting environmental review to meet requirements of the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and other relevant and applicable federal, state, and local environmental laws and regulations for projects subject to the provisions of this Zoning Code. These provisions are intended to insure that responsible decisionmakers and the public are informed about the potentially significant environmental effects of proposed activities and that environmental review is integrated with the discretionary review provisions to promote incorporation of environmental considerations into the design, planning, and review of projects.

B. **Applicability.** The procedures shall apply to all projects sponsored or assisted by the City and all private projects requiring any discretionary approvals from the City including private projects involving funding or any other form of participation by a federal agency, if the federal agency requires the City to conduct environmental review in compliance with NEPA. In the event of a conflict between these environmental review regulations and applicable federal or state regulations or guidelines, the applicable federal or state regulations shall prevail. These provisions are not intended to supersede CEQA Guidelines.

§ 11.5.35.010 Review Procedures.

A. **Preliminary Review.** Within 30 days after receiving an application, the Director shall determine if the application is complete in accordance with Section 11.5.10.020: *Review of Applications*. The Director shall identify potential environmental issues and determine whether a project is subject to environmental review. The Director may require the Applicant to submit additional information. The Director may designate a person to serve as Environmental Review Coordinator for projects undertaken by the City that are not subject to this Zoning Code. An application subject to environmental review pursuant to CEQA shall not be considered complete until all studies that may be required are submitted. If the Director determines that an application is not subject to environmental review under CEQA, the Director shall proceed to process the application in accordance with this Zoning Code.

B. **Review for Exemption.** The Director shall determine if the project is exempt from environmental review pursuant to CEQA and state and City CEQA Guidelines within 30 days after the application is deemed complete.

1. If the Director has determined that a project is exempt, the Director shall post a notice. The notice shall include a citation to the State Guidelines section or statute under which it is found to be exempt.

2. Following approval of a project that is exempt from CEQA review, the Director or the Applicant may file a Notice of Exemption with the county clerk as provided for in CEQA and applicable CEQA guidelines. The Applicant for a private project shall be responsible for any filing fees.

3. A determination of exemption by any decisionmaking authority other than the City Council may be appealed to the City Council in accordance with Title 1: *General Provisions*, Chapter 1.20.005: *Administrative Review*.

C. Environmental Review Application. If the proposed project is not exempt from CEQA review, the Applicant shall submit an application for environmental review accompanied by a fee specified in the Master Fee Schedule. The Director may require the submission of additional information and supporting documentation with the application. After receiving an environmental review application, the Director or Environmental Review Coordinator shall determine whether to require preparation of an Environmental Impact Report (EIR). In order to make this determination, the Director or Environmental Review Coordinator shall prepare, or cause to be prepared, an Initial Study.

D. Initial Study. The Initial Study shall consider all phases of project planning, implementation, and operation and may rely upon expert opinion supported by facts, including documentation submitted by the applicant, technical studies, or other substantial evidence to document its findings regarding the project's potential impacts. An Initial Study is not required to include the same level of detail as an EIR.

1. If the Director determines, after preliminary review, that the project, due to its design, size, nature, or location, will clearly have a significant impact on the environment and requires preparation of an EIR, an Initial Study is not required but may be prepared to assist identification of environmental issues.

2. An Initial Study shall include:

a. A brief description of the project including its specific location;

b. A brief description of the environmental setting;

c. A checklist, matrix, or other listing of the project's environmental effects with discussion and documentation to support the entries;

d. Discussion of ways to mitigate any potential significant effects;

e. Information on the project's consistency with existing zoning, plans, or other applicable regulations; and

f. List of resources cited and consulted.

3. Following completion of the Initial Study, the Director or Environmental Review Coordinator shall notify the applicant in writing of changes to the project that Staff has deemed necessary to reduce or avoid the significant effects identified in the Initial Study. Within 30 days following the date of the letter, the Applicant shall provide written notification to the Director or Environmental Review Coordinator indicating that the proposed modifications are acceptable or shall propose alternative measures that will achieve the same result. If the Applicant does not agree to revise the project a Mitigated Negative Declaration or an Environmental Impact Report shall be prepared, as determined by the Director or Environmental Review Coordinator.

E. Determination of Environmental Significance. Based on the Initial Study, the Director or Environmental Review Coordinator shall make one of the following findings:

1. There is no substantial evidence that the project will have a significant impact on the environment, and a Negative Declaration will be prepared;

2. The project has been modified to avoid potential environmental impacts or to mitigate such impacts to a level of insignificance and a Mitigated Negative Declaration will be prepared; or

3. The proposed project will have, or may have, significant impact(s) on the environment and an Environmental Impact Report will be required.

F. Public Notice of Environmental Determination. If the Director or Environmental Review Coordinator has determined that the proposed project will not have a significant effect on the environment, he or she shall prepare a Negative Declaration for public review in conformance with the requirements of CEQA and applicable state and City environmental review guidelines. If the Applicant has agreed to incorporate mitigation measures in order to reduce environmental impacts to a point of insignificance, the Director or Environmental Review Coordinator shall prepare a Mitigated Negative Declaration for public review. The Director or Environmental Review Coordinator shall provide public notice of the proposed environmental determination at the same time and in the

same manner required for the underlying permit in accordance with Chapter 5.10: *General Procedures*.

The Environmental Quality Control Board shall conduct a public meeting during the public review period to receive public comments and to provide comments on the draft Negative Declaration or Mitigated Negative Declaration and shall forward all comments to the approving authority for consideration as part of any subsequent public hearings on the draft Negative Declaration or Mitigated Negative Declaration and accompanying discretionary land use entitlement applications.

G. Preparation of Negative Declaration. The City or its consultant will prepare the draft Negative Declaration or draft Mitigated Negative Declaration in conformance with the requirements of CEQA and applicable guidelines. The Applicant shall execute a reimbursement agreement requiring that Applicant pay all costs associated with preparing the Negative Declaration or Mitigated Negative Declaration, including administrative costs and the fees and expenses of attorneys and consultants.

H. Public Notice of Environmental Determination. The Director or Environmental Review Coordinator shall provide public notice of the proposed environmental determination for a period of at least 30 days.

I. Preparation of a Draft EIR. If it is determined that an Environmental Impact Report (EIR) is required, the Director or Environmental Review Coordinator shall prepare, distribute, and post a Notice of Intent to Prepare an EIR in the same manner required for the underlying permit unless otherwise specified in applicable state or federal requirements. The notice shall inform interested parties that an EIR is being prepared and seek guidance as to which significant environmental issues and mitigation measures should be explored. Any person who believes that a Negative Declaration, rather than an EIR, should be prepared for the proposed project may appeal to the City Council within 10 days after the notice has been posted. The City Council's decision on the appeal shall be final. The City will prepare the draft EIR with its own staff or by contract with a consultant in conformance with the requirements of CEQA and applicable guidelines. The Applicant shall execute a reimbursement agreement requiring that Applicant pay all costs associated with preparing the EIR, including administrative costs and the fees and expenses of attorneys and consultants.

J. Public Review of Draft EIR. Following completion of a Draft EIR, the Director or Environmental Review Coordinator shall prepare and post a Notice of Completion initiating a minimum 30 day public review period or 45 days if the project is subject to review by a State Agency. The Director or Environmental Review Coordinator shall mail a notice of the availability of a Draft EIR to those requesting such notice in writing, to local and regional agencies, and interested federal agencies. The City shall make copies of the Draft EIR

available for public review at the Department of Development Services and the office of the City Clerk during regular office hours and at each public library within the City. The City may impose a charge for copies of the Draft EIR in accordance with the adopted Master Fee Schedule.

The Environmental Quality Control Board shall conduct a public meeting during the public review period to receive public comments and to provide Board comments on the Draft EIR and shall forward all comments to the approving authority for consideration as part of any subsequent public hearings on the Draft EIR and accompanying discretionary land use entitlement applications.

K. **Final EIR.** After the public review period has expired, the City or its consultant will prepare a Final EIR for certification by the highest decision-making body responsible for action on the project. The Final EIR will consist of the Draft EIR, all of the comments received, a list of persons, organizations and public agencies commenting on the Draft EIR, and a response from the City on significant environmental issues raised in the draft EIR and comments. Prior to any City official or body responsible for taking action on a project for which an Initial Study or EIR has been prepared considers such matter, the matter shall be scheduled for consideration and recommendation by the Environmental Quality Control Board as to the adequacy of the subject environmental review document in accordance with the provisions of CEQA and State CEQA guidelines.

L. **Responsibility for Action on Environmental Document.** Any City official or body responsible for taking action on a project for which an Initial Study or EIR has been prepared shall use the environmental assessment to make its decision on the development proposal. If the project is accepted, the decision-making body shall impose conditions to mitigate any adverse environmental impacts. The highest decision-making entity responsible for action on an application for a development permit shall approve the Negative Declaration or Mitigated Negative Declaration or certify the Final EIR prior to or at the time the project is considered for approval. The decision-making entity may decline to approve or certify the environmental document and request further review or analysis if, in its independent judgment, approval of the Negative Declaration or Mitigated Negative Declaration or certification of the Final EIR would not comply with the requirements of applicable State and local environmental review requirements. Approval of a Negative Declaration or Mitigated Negative Declaration or certification of a Final EIR shall be deemed to be a finding that the document has been prepared in compliance with CEQA and State CEQA guidelines. The decision-making entity shall also certify that the environmental document reflects the independent judgment of the body. Certification of a Final EIR does not imply that the City endorses the proposed project or that the City will approve the necessary permit applications.

M. **Timing of Environmental Review.** When a development project is subject to environmental review, all decisionmaking officials and entities shall

take action on all applications for the project that have been submitted and deemed complete in compliance with the following time limits unless state or federal law mandate a shorter deadline. Notwithstanding these deadlines, the Applicant may request in writing and the City may approve a single extension for a period not to exceed 90 days unless State law authorizes a longer extension. These deadlines do not apply to any action that has been appealed to the City Council in accordance with Title 1: *General Provisions*, Section 1.20.005: *Administrative Review*.

1. Within 60 days of the date the City has determined the project exempt from environmental review;
2. Within 60 days of the date the Negative Declaration or Mitigated Negative Declaration has been completed and adopted for project approval;
3. Within 180 days from the date the decision-making entity certifies the Final EIR.

§ 11.5.35.015 Mitigation Monitoring Program.

A. **Program Contents.** The City shall approve a mitigation monitoring and reporting program for all projects that it approves with a Mitigated Negative Declaration or following certification of a Final EIR. The purpose of the mitigation monitoring program is to ensure that the project applicant complies with all of the provisions or changes identified as mitigation measures during implementation of the project. The Mitigation Monitoring and Reporting Program shall consist of the following:

1. Mitigation Implementation Plan. A plan, prepared by the Director or a contracted consultant, for City approval, which outlines in detail the manner in which mitigation measures will be implemented during preconstruction, construction and post-construction phases of the project;
2. Compliance Schedule. A schedule, prepared by the Director or a contracted consultant, for City approval, indicating the phase of the project (preconstruction, construction or post-construction) in which mitigation measures will be implemented;
3. Compliance Reports. Reports submitted by the applicant or a contracted consultant to the City, specifying how and when each mitigation measure was implemented; and
4. Verification Report(s). Report(s) made by the City or a contracted consultant, pursuant to an inspection of the project to determine if the applicant has properly and timely implemented mitigation measures identified in

the environmental document for the project as set forth in the mitigation implementation plan and compliance schedule.

B. Submittal and Approval. The Director, or a contracted consultant, shall prepare and submit a draft Mitigation Implementation Plan in a format specified by the City, which shall be included in the public review draft environmental review document. The Director shall review the Mitigation Implementation Plan and Compliance Schedule for consistency with the approved environmental document and shall identify the City official or agency that will be responsible for ensuring that the mitigation measure is implemented. The Applicant shall pay fees to the City in an amount not exceeding the reasonable cost for monitoring compliance with the Mitigation Plan.

C. Enforcement. Failure to comply with the conditions and requirements of an approved mitigation monitoring and reporting program shall be considered a violation of the conditions of approval of a project. Such violations shall be subject to enforcement in accordance with the provisions of this Code.

D. Modification of Mitigation Program Not Permitted Following Adoption. Unless specifically authorized or required by the conditions of project approval, neither CEQA nor this Zoning Code authorize the City to modify or add mitigation measures if the monitoring program shows that the mitigation measures have not achieved the desired result.

§ 11.5.35.020 Appeals.

Notwithstanding other provision of this Zoning Code, any person may appeal the following environmental determinations to City Council by filing a written appeal with the City Clerk in accordance with Title 1: *General Provisions*, Section 1.20.005: *Administrative Review* within 10 days of the date of action or notice of determination unless said action or notice of determination was taken by the City Council.

- A. Determination that a project is or is not subject to environmental review.
- B. Determination that a project is exempt from environmental review.
- C. Approval of a Negative Declaration or Mitigated Negative Declaration.
- D. Certification of a Final Environmental Impact Report.



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