

**Amend Section 9.32.010 as follows:**

**9.32.010 General Provisions**

A. Purpose. The purpose of this chapter is to consolidate all applications of land use actions in the City, to provide an outline of the procedures for making these applications and the procedures by which the appropriate hearing body receives the appropriate applications. This chapter also consolidates the procedures that appeals of decisions made by the hearing body are to follow.

B. Interpretation. The Department Director shall have the responsibility and authority to interpret the meaning and applicability of all provisions and requirements of this title. In interpreting and applying the provisions of this title, the development ~~project standards~~ shall be held to be the minimum requirement for the promotion of the public health, safety, comfort, convenience and general welfare. It is not the intent of this title to interfere with or abrogate or annul any easement, covenant or other agreement between parties. When this title imposes a greater restriction upon the use of buildings or land or upon the height of buildings, or requires larger open spaces than are required by other ordinances, rules, regulations, by easements, covenants, or agreements, the provisions of this title shall control.

C. Form of Application Blanks, Type of Required Information.

1. The City Manager or designee may prepare application forms and provide blanks for such purposes and may prescribe the type of information to be provided in the application by the applicant pursuant to direction from the hearing body.

2. No application shall be accepted unless it is completed as prescribed.

D. Fees Required. All ~~applications~~applicants described in Section 9.32.030 shall require fees paid in accordance with a resolution adopted by the City Council.

1. A copy of the resolution and information may be obtained from the office of the City Clerk.

2. The City Council, or any member thereof, may appeal any decision of the Planning Commission or the Zoning Administrator. If an appeal is filed by the council or any member thereof, the appeal fee shall be waived.

3. Planning actions listed in Section 9.32.030 shall not be construed to exclude any other planning action.

E. Limitation of Refiling of Applications. A final action denying an application for a land use action shall prohibit the further filing of the same type application on a property until not less than one year shall have elapsed from the date of denial of any application.

F. Development Agreement. The City shall be empowered to enter into a binding development agreement with a developer in the instance that the developer has a legal and equitable interest in real property for which it has submitted a plan to develop such property. The City shall adopt rules and regulations establishing procedures and requirements for implementing and approving such development agreements and shall require any developer to pay a development impact mitigation payment in accordance with a resolution adopted by the City Council.

G. Environmental Review. All applications for land use actions to be submitted for review and approval by the City Council, the Planning Commission or the Zoning Administrator, shall be reviewed upon their submittal in accordance with the provisions of the California Environmental Quality Act (CEQA) ~~and the City's own environmental review guidelines (Public Resources Code Sections 21000 et seq.; California Code of Regulations, Title 14, Sections 15000 et seq.)~~.

~~1. When the application is not exempt from review as required by the California Environmental Quality Act, as amended, the applicant shall submit an initial study to the public agency (in this case, the City Manager or designee) as required by CEQA.~~

~~2. The public agency shall then conduct its own initial study as required by CEQA, and determine if a full environmental impact report, a focused environmental impact or a negative declaration, as defined by CEQA, is required.~~

~~3. All procedures and notifications shall be done in accordance with the requirements of the California Environmental Quality Act, and all required documentation of these actions shall be provided according to the required schedule to the appropriate agencies.~~

~~4. All environmental reviews shall be conducted by the Planning Coordinating Committee, Environmental Review Board. The Environmental Review Board shall make recommendations to the hearing body on environmental applications. In case of a tie in votes cast for the approval of the use of a negative declaration, a focused environmental study, or an environmental impact report, the more stringent of these requirements shall be considered approved.~~

H. Design Guidelines. The hearing body shall review from time to time development standard guidelines pertaining, but not limited to, the following categories: site planning, architecture, landscape architecture, parking design, signage and other special items. The hearing body shall approve or deny all such design guideline standards by resolution.

***Amend Section 9.32.030 as follows:***

**9.32.030 Land Use Actions**

A. The Planning Commission, ~~and~~ Zoning Administrator, and Department Director / City Manager or designee are empowered to make the final decision on all land use actions, as described in this section, except for the following actions that shall be transmitted to the City Council, along with the hearing body recommendation, for final action:

1. General plan amendments;
2. Specific plans;
3. Planned unit developments;
4. Zone changes;
5. Ordinance amendments;
6. Tract maps (final);
7. Parcel maps (final);
8. Development agreements.

B. The Threshold of Review Table below identifies the full range of land use permit options and applicable final review authority, except that where a land use action also requires approval of an action by the City Council, the City Council shall be the final review authority for such land use action, and the Planning Commission shall transmit a recommendation to the City Council. The following provisions specify the applicability of the land use actions listed on the Threshold of Review Table and list the required findings for each. Notwithstanding the following provisions, the findings required for approval of a site plan, conditional use permit, or other quasi-judicial land use permit for a housing development project, as defined in subsection (h)(2) of Section 65589.5 the Government Code, shall be as specified in chapter 9.60.

**THRESHOLD OF REVIEW**

Type of Application	Hearing Body			
	Director	Zoning Administrator	Planning Commission	City Council
General Plan Amendments			I	X
Ordinance Amendments			I	X
Zone Change			*I	X
Specific Plans			I	X*
Planned Unit Developments			I	X
Site Plan		*	X	
Conditional Use Permits		X	A	
Variances/Waivers		X	A	
Tract Maps			X	
Parcel Maps			X	
Lot Line Adjustments		X	A	
Interpretation of Use		X	A	
Home Occupations Permits		X	A	
Temporary Event Permits	X		A	
Special Events Permits	X		A	
Modifications to Approved Plans		X	X	
Time Extensions		X	X	
Revocations		X	X	
Code Enforcement—Abandoned Vehicles		X	A	
Extensions of Time for Nonconforming Uses			X	
City Manager or Designee Review	X		A	A
<u>Reasonable Accommodation Request</u>	<u>X</u>			<u>A</u>

I = Initial review recommendation

A = Appeal body

X = Final hearing body

\* = Alternate hearing body

\*I = Denial of zone change by Planning Commission is final unless appealed. Approval by Planning Commission is recommendation for final action by City Council.

All decisions of the Planning Commission are appealable to the City Council.

C. The procedures for the following Land Use ~~Commission~~ approval actions are contained in separate sections of the zoning code, as noted:

Land Use Action	See
Specific Plans	Specific Plans—Separate Documents
Planned Unit Development	Chs. 9.08, <del>and</del> 9.12, <u>9.16, and 9.18</u> —Special Uses/ <del>Districts</del>
Tract Maps	<u>Chap. 9.40 Div. II</u> —Subdivisions
Parcel Maps	<u>Chap. 9.40 Div. II</u> —Subdivisions
Lot Line Adjustments	<u>Chap. 9.40 Div. II</u> —Subdivisions
Home Occupation Permit	Chs. 9.08, <del>and</del> 9.12, <u>9.16, and 9.18</u> —Uses
<u>Cottage Food Operation Permit</u>	<u>Chs. 9.08, 9.12, and 9.18—Special Operating Conditions and Development Standards</u>
Temporary Event Permit	Chs. 9.08, 9.12, <del>and</del> 9.16, <u>and 9.18</u> —Temporary Uses
Special Events Permit	Chs. 9.08, 9.12, <del>and</del> 9.16, <u>and 9.18</u> —Temporary Uses
Floodplain Variance	Chs. 9.08, 9.12, <del>and</del> 9.16, <u>and 9.18</u> —Special Uses
<u>Accessory Dwelling Units and Junior Accessory Dwelling Units</u>	<u>Ch. 9.54</u>
<u>SB 9 Two-Unit Residential Developments and Urban Lot Splits</u>	<u>Ch. 9.56</u>
<u>Supportive Housing for the Homeless and Low-Barrier Navigation Centers</u>	<u>Ch. 9.60</u>

#### D. Land Use Action Procedures.

##### 1. General Plan Amendment/Code Amendment.

###### a. Applicability.

i. An amendment to any element of the City’s general plan or zoning code may be initiated by the City Council, the Planning Commission or the City Manager.

ii. If the following findings are met, a citizen may request an amendment to any element of the City’s general plan or zoning code, and shall pay an amount equal to the estimated cost of preparing the amendment.

b. Required Findings. All the following findings must be made in the affirmative by the hearing body in order for this application to be approved:



(C) New multiple-family residential units or additions to existing multiple units.

(D) Exceptions:

(1) An addition to a single-family residence, including the construction of new accessory structures;

(2) An addition to a duplex or triplex, that meets the current setback requirements, is less than 50% of the original living area, and does not create additional units. Any such additions shall be subject to a City Manager or designee review;

(3) The development of three or fewer contiguous, residentially-zoned, unimproved legal lots with single-family dwellings; and

(4) The construction of a duplex or triplex that complies with all the development standards of the municipal code, and does not require approval of any discretionary action, which shall be subject to a director's review;:-

ii. All Other Zones. Any new building or structure, or any addition to an existing structure or building that exceeds 10% of the existing floor area, or 1,000 square feet, whichever is less.

(A) Exception: Unless the following exceed 10% of the floor area of an existing structure or 1,000 square feet, whichever is less, a site plan shall not be required for the addition of mechanical equipment or any accessory structure(s) necessary for the safe operation of a facility, including, but not limited to:

(1) Roof-mounted air conditioning units;

(2) Freezer/cold storage units;

(3) Attached exterior silos;

(4) Exterior elevators;

(5) Paint spray booths;

(6) Utility cabinets; and

(7) Incidental storage sheds.

iii. All Zones. Conversion of a single-family home to any other use.

iv. Specific Plan Zones. See individual specific plan requirements.

b. Required Findings. For any project other than a housing development project, as defined in subsection (h)(2) of Section 65589.5 the Government Code, the hearing body shall approve an application for a site plan when the information submitted by the applicant and/or presented at public hearing substantiates the following findings:

i. That the submitted site plan complies with the spirit and intent of the provisions, conditions and requirements of the general plan and this chapter title, and that other applicable ordinances and policies of the City are complied with;

ii. That the proposed development does not adversely affect essential on-site facilities, such as off-street parking, loading and unloading areas, traffic circulation and points of vehicular and pedestrian access;

iii. That the proposed development does not adversely affect essential public facilities, such as streets and alleys, utilities and drainage channels;

- iv. That the proposed development will not adversely impact the City’s ability to perform its required public works functions;
  - v. That the proposed development ~~shall will~~ be compatible with the physical, functional and visual quality of the neighboring uses and desirable neighborhood characteristics; ~~and~~
  - vi. That through the planning and design of buildings and building placement, the provision of open space, landscaping and other site amenities will attain an attractive environment for the occupants of the property; ~~;~~
- c. Applications. A site plan application may be submitted by:
- ~~i. The owner of a parcel(s) of land within the City, or the owner’s designees, for that (those) parcel(s) in which the owner has a legal or equitable interest; ~~;~~~~
  - ~~ii. The executive director of the Garden Grove agency for community development, or his or her designee, in connection with development and/or redevelopment projects undertaken and/or assisted by the agency for community development; provided, however, any site plan application submitted by the agency executive director, or his or her designee, and approved by the hearing body shall only become effective and shall be contingent upon the agency for community development, or the agency’s designee, obtaining ownership of the property that is the subject of the site plan application.~~
4. Conditional Use Permit.
- a. Applicability. A conditional use permit shall be required:
    - i. Prior to issuance of any permits or certificates for the uses indicated in Chapters 9.08, 9.12, ~~and~~ 9.16 and 9.18, or where a conditional use permit is required pursuant to any applicable overlay zone regulations, specific plan provisions, or planned unit development requirements;
    - ii. If a use, as controlled by the State Alcoholic Beverage Control Board, that allows the wholesale or retail sale of alcoholic beverages is added, or the consumption of alcoholic beverages is allowed, on or off site, or if an existing ABC license type is changed;
    - iii. For any expansion in floor area of a use currently under provisions of an approved conditional use permit;
    - iv. For any new use or intensification of uses at a facility currently being operated under provisions of an approved conditional use permit.
  - b. Required Findings. The hearing body shall approve an application for a conditional use permit when the information submitted by the applicant and/or presented at public hearing substantiates the following findings:
    - i. That the proposed use will be consistent with the City’s adopted general plan ~~and redevelopment plan;~~
    - ii. That the requested use at the location proposed will not:
      - (A) Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, or
      - (B) Unreasonably interfere with the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or



- (C) Jeopardize, endanger or otherwise constitute a menace to public health, safety or general welfare;
  - iii. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required, in order to integrate such use with the uses in the surrounding area;
  - iv. That the proposed site is adequately served:
    - (A) By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such as to be generated, and
    - (B) By other public or private service facilities as required.
  - c. The hearing body shall deny the application when the information submitted by the applicant and/or presented at the public hearing fails to substantiate such findings.
  - d. The conditional use permit and all discretionary land use permits under this title (including site plan, if applicable) shall be issued or denied within the time periods proscribed by the Permit Streamlining Act, the Subdivision Map Act, the California Environmental Quality Act, and other applicable state law, unless a reasonable time, not to exceed 90 days, unless an environmental impact report is required. If an environmental impact report is required, and the project is not subject to the Permit Streamlining Act, the time limit for action shall not exceed six months. Said time periods may only be extended by actions of the applicant or his or her agents.
  - e. Procedures for processing the application and times for processing steps shall be established by the City Manager or designee ~~with approval of the Planning Commission.~~
5. Waiver.
- a. Applicability. A waiver application to the provisions of Title 9 shall be required for waiver procedures as contained in the Subdivision Map Act and in Chapter 9.40 of this code.
  - b. A waiver procedure as contained in the Subdivision Map Act and Chapter 9.40 of this code may be granted if it is possible to find that the waiver:
    - i. Will not create a subdivision or satisfy the requirements applicable to the division of a parcel of land;
    - ii. Will comply with city requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection;
    - iii. Will satisfy any other requirements pertaining to the Subdivision Map Act, this code and any other applicable city ordinance;
    - iv. Will not create any unnecessary conditions or situations that will be incompatible with existing and possible future uses of adjacent properties.
6. Variance.
- a. Applicability. A variance to the provisions of Title 9 shall be required for any deviation from the development standards contained therein.
  - b. Required Findings. A variance may be granted only if all of the following findings are made:

- i. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone;
- ii. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question;
- iii. That the granting of such variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in such vicinity and zone in which the property is located;
- iv. That the granting of such variance will not adversely affect the comprehensive general plan; ~~and~~
- iv. That approval of the variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

7. Interpretation of Use.

a. Applicability.

- i. Any use not specifically listed as a permitted use, incidental use, or conditional use shall be prohibited; provided, however, that whenever a use has not been specifically listed as a permitted use, incidental use, or conditional use in a particular zone district, but similar uses are found to exist in that zone, the hearing body shall be responsible for interpreting whether or not the use is permitted in that zone district, and under what conditions.
- ii. Any use determined to be inconsistent or not similar to other uses shall be required to file an application for an ordinance amendment.

b. Required Finding. That the proposed use is:

- i. Similar in scale and operational characteristics to other uses permitted in that zone;
- ii. Consistent with the intent of the general plan and the zone district;
- iii. Compatible with other permitted uses.

8. Modification to Approved Plans.

a. Applicability. Whenever a change is proposed to an approved land use action.

b. Required Findings. Modifications to approved plans shall be granted when the following findings are made:

- i. That the change would not require the filing of an application for waiver or variance to the zoning code;
- ii. That the change would not adversely affect the quality or design of the original plan;
- iii. That the change would not adversely affect the use or enjoyment of adjacent properties;

9. Time Extensions.

a. Required Findings. A time extension may be granted when the following findings are made:

- i. A request for a time extension, including the reasons therefore, has been submitted prior to the permit expiration date, or the hearing body finds that, due to special circumstances demonstrated by the property owner or the applicant, a late-filed request should be considered;
- ii. That there has been no change in the general plan designation or zoning of the site that would render the development or use nonconforming;
- iii. That there is no land use action or study currently underway that would have the potential to render the development or use nonconforming.

b. **Limits of Extensions.** Unless otherwise provided by a development agreement, a time extension shall be limited to one year or less. A request for a time extension beyond the term provided in a development agreement shall require City Council approval of an amendment to the development agreement.

10. **Revocation.**

- a. **Applicability.** The City Council, hearing body or City Manager may initiate revocation procedures for any land use action designated by this title.
- b. **Required Findings.** The hearing body may revoke or modify a land use action if any one of the following findings is made:
  - i. That the approval was obtained by fraud;
  - ii. That the approved use has ceased to exist or has been suspended for one year, or a lesser time as established by land use ordinance;
  - iii. That the approved use is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, or regulation;
  - iv. That the approved use was so exercised as to be detrimental to the public safety or so as to constitute a public nuisance.

11. **City Manager or Designee Review—Minor Deviations.**

- a. **Applicability.** The City Manager or designee is vested with the following minor deviation land use permit and related authority:
  - i. To allow ground-mounted mechanical equipment including, but not limited to, heating, cooling or ventilating equipment, swimming pool or spa heaters, pumps or filters, to be located in the side or rear setbacks on any property improved with a multiple-family residential project, provided that the equipment is screened from view from public rights-of-way and an unobstructed path at least three feet wide is provided between the equipment and the property line;
  - ii. To allow mechanical equipment including, but not limited to, water heaters, FAUs etc., to encroach into the minimum interior dimensions of existing garages for single-family residential dwellings, provided that adequate space for the number of vehicles required by Title 9 to be parked in the garage is maintained;
  - iii. To allow one-story additions to existing, detached, non-habitable structures that are nonconforming as to required side or rear setbacks in any residential zone. The addition shall be constructed in conformance with all applicable code provisions;

- iv. To issue minor land use deviations for the purpose of allowing minor changes to the strict requirements of any use or distance limitations of the code (excepting adult uses), provided that the changes are generally compatible with the zoning requirements for the parcel, and the use will last for a duration not to exceed 18 months. A single time extension limited to one year or less may be granted;
- v. To allow minor deviations in the height, width and/or placement of freestanding sign structures for any office, commercial and industrial zoned properties improved with existing buildings or structures to achieve a greater flexibility in design and quality that cannot be achieved through the strict application of Title 9, Development Standards, provided that the sign area does not exceed the maximum square footage as required by Title 9;
- vi. To allow deviations in the number of required parking spaces up to a maximum of 10% for any office, commercial or industrial zoned properties improved with existing buildings or structures, where the parking deficiency cannot be corrected by redesigning the parking area or restriping the parking spaces. This shall not include any use subject to a conditional use permit, or any property that was granted a parking variance;
- vii. To allow the installation of garage doors on existing carports for existing residential condominiums;
- viii. To allow minor deviations from landscape requirements in conjunction with the rehabilitation of an existing site where no discretionary action is proposed;
- ix. To allow fences located in the required front setback of residentially zoned properties to be constructed to a maximum height of six feet, provided the upper 36 inches is wrought iron fencing with vertical railings no less than three inches apart;
- x. To allow the construction of one single-family home on a legally created, residentially-zoned vacant parcel, that is nonconforming due to area and/or width, provided no other discretionary actions are proposed;
- xi. An addition to a duplex or triplex that meets the current setback requirements, is less than 50% of the original living area, and does not create additional units shall be subject to a City Manager or designee review;

~~xii. To allow a deviation for the maximum number of bathrooms per number of bedrooms.~~

- b. For purposes of this section, “minor deviation” is defined as a modification or change that does not undermine or significantly revise the intent and purpose of the municipal code. Minor deviations shall be limited to the above actions only.
- c. Required Findings. The City Manager or designee may approve an application for a minor deviation if the following findings are made:
  - i. That the proposed action will not adversely affect the City’s General Plan ~~or Redevelopment Plan~~;
  - ii. That no discretionary actions requiring review by the City Zoning Administrator, Planning Commission or City Council are being proposed;
  - iii. That no adverse effects on the health, peace, comfort or welfare of persons residing or working on adjoining properties is created; and

- iv. That all other applicable Title 9 provisions are complied with.
- d. Notice and Review.
  - i. An application for a minor deviation shall consist of written documentation of the precise nature of the change(s) the applicant is proposing, the duration, a plot plan for the parcel, and any other information required by the City Manager or designee. The City Manager or designee is empowered to impose any conditions of approval as necessary to insure that the proposal satisfies the required findings set forth in this subsection.
  - ii. Upon receipt of an application for a minor deviation, a notice shall be sent to the adjoining property owners describing the nature of the request and advising that any comments should be submitted no later than 10 days from the date the notice was sent out. A public hearing shall not be required. If the request is approved by the City Manager or designee, the planning staff shall transmit the City Manager or designee's notice of the decision, with any appropriate conditions of approval, to the applicant and to each Planning Commissioner. The decision of the City Manager or designee shall be final and binding unless an appeal is filed within seven days from the date of the decision, or unless the application is called up for review by any member of the Planning Commission within seven days from the date of the decision. The planning staff, upon receipt of a timely request for Planning Commission review, shall schedule the matter for Planning Commission review at its next available meeting.
- 12. City Manager or Designee Review—Wireless Telecommunications Facilities.
  - a. Applicability. The City Manager or designee is vested with the authority to review and approve applications for wireless telecommunications facilities pursuant to the provisions of Chapter 9.24 of this code or other applicable state or federal law.
  - b. Required Findings. The City Manager or designee shall approve an application for a wireless telecommunications facility if the City Manager or designee finds ~~the proposed wireless telecommunications facility is consistent with the adopted wireless telecommunications master plan, and~~ that all of the requirements pursuant to Chapter 9.24 that do not conflict with state or federal law have been complied with. In lieu thereof, the City Manager or designee may approve an application for a wireless telecommunications facility if the findings specified in paragraph 11.c of this subsection D are made.
- 13. Director's Review—Duplex and Triplex to read as follows:
  - a. Applicability. The Department Director is vested with the authority to review and approve applications for duplexes and triplexes that comply with all the requirements of Section ~~9.12.040.040 9.16.065~~, Special Requirements—Duplex and Triplex, and that do not require approval of any discretionary action, including, but not limited to, a variance, zoning change, general plan amendment, or other entitlements.
  - b. Any duplex or triplex project that requires approval of a discretionary action shall be processed through a site plan review and the applicant shall pay the appropriate site plan fee and any other appropriate entitlement fee(s).
  - c. Required Findings. The ~~department director~~ Department Director may approve an application for a duplex or triplex if the following findings are made:
    - i. ~~That the proposed action will not adversely affect the City's General Plan or Redevelopment Plan~~ That the proposed development will comply with all applicable,

objective standards, provisions, conditions and requirements of the general plan, Title 9, and other applicable ordinances and policies of the City, except to the extent excused from compliance pursuant to State law; and

ii. That no discretionary actions requiring review by the City Zoning Administrator, City Planning Commission or City Council are being proposed.;

~~iii. That no adverse effects on the health, peace, comfort or welfare of persons residing or working on adjoining properties is created.;~~

~~iv. That all other applicable Title 9 provisions are complied with.~~

d. Submittal Requirements. The applicant shall submit a complete application, plans and documentation, as identified in the duplex and triplex filing instructions, and pay the appropriate fees.

e. Notice and Review.

i. Upon receipt of an application for a duplex or triplex, a notice shall be sent to the adjoining property owners describing the nature of the request and advising that any comments should be submitted no later than 10 days from the date of the notice was sent out. A public hearing shall not be required.

ii. If one or more adjacent property owners object to the proposal, the director may refer the review of the request to the Zoning Administrator or the Planning Commission where new public notices will be mailed per the public hearing noticing requirements, and a public hearing will be held.

iii. The ~~department director~~ Department Director is empowered to impose any conditions of approval, including conditions from other City departments, that are necessary to ensure that the proposal complies with all local, state and federal laws, and satisfies the required findings.

iv. If the request is approved by the ~~department director~~ Department Director, the planning staff shall transmit the director's notice of the decision, with any appropriate conditions of approval, to the applicant ~~and to each Planning Commissioner~~.

v. The decision of the ~~department director~~ Department Director shall be final and binding unless an appeal is filed within 10 days from the date of the decision or unless the application is called up to the Planning Commission for review by any member of the Planning Commission or City Council within 10 days from the date of the decision.

vi. Any decision of the ~~department director~~ Department Director may be appealed to the Planning Commission, and shall comply with Sections 9.32.110 through 9.32.150, except as to the timeframe for appeal/call up.

vii. Any decision of the Planning Commission may be appealed to the City Council, and shall comply with Sections 9.32.110 through 9.32.150, except as to the timeframe for appeal/call up.

#### 14. Main Street Outdoor Dining Permit for Outdoor Dining Areas in the Public Right-of-Way on Historic Main Street.

a. Applicability. Approval of a Main Street outdoor dining permit pursuant to this subdivision shall be required for any eating establishment located along Historic Main Street within the CC-2 zone to establish and maintain an outdoor dining area in the public right-of-way pursuant to the provisions of Section 9.18.090.050 of this title, Additional Regulations Specific to the CC-2

Zone. It shall be a condition of each Main Street outdoor dining permit that the applicant also obtain and maintain an encroachment permit from the City pursuant to Title 11 of the Garden Grove Municipal Code and comply with all conditions of such encroachment permit. Approval of a Main Street outdoor dining permit pursuant to this subdivision shall not constitute approval of said encroachment permit.

b. Review Authority.

i. Director’s Review. The Department Director is vested with the authority to approve, conditionally approve, or deny applications for Main Street outdoor dining permits, provided the applicant is not proposing the sale, service or consumption of alcoholic beverages within the outdoor dining area and approval of a discretionary action by the Zoning Administrator, Planning Commission, or City Council is not otherwise required.

ii. Review by Hearing Body. Where an outdoor dining area in the public right-of-way is proposed in conjunction with another land use action that requires discretionary review pursuant to this chapter, the application for a Main Street outdoor dining permit shall be processed in conjunction with said land use action and reviewed by the applicable hearing body in conjunction with such discretionary review.

iii. Alcohol Sales. The sale, service and/or consumption of alcohol within an outdoor dining area in the public right-of-way shall also require approval of a new or amended conditional use permit pursuant to the provisions of Section 9.18.060, Alcohol Beverage Sales.

c. Required Findings. The Department Director or applicable hearing body may approve an application for a Main Street outdoor dining permit only if all of the following findings are made:

i. The proposed outdoor dining area in the public right-of-way is consistent with the City’s General Plan, all applicable development standards and Building Code requirements, and all other applicable Title 9 provisions;

ii. The proposed outdoor dining area in the public right-of-way will be complimentary to, and not inconsistent with, the underlying dedication for public right-of-way or the City’s title or estate in the underlying public right-of-way;

iii. The applicant has demonstrated a satisfactory ability and willingness to comply with the Garden Grove Municipal Code and pertinent conditions to previously issued permits, licenses, and City land use approvals with respect to operation of the adjacent eating establishment;

iv. The proposed outdoor dining activity will not be materially detrimental to the public health, safety or general welfare and will not injure or unreasonably interfere with the property or improvements of other persons located in the vicinity of the proposed outdoor dining area; and

v. The City Engineer is prepared to issue an encroachment permit to the applicant for the establishment and maintenance of an outdoor dining area in the public right-of-way pursuant to Title 11.

d. Notice and Review.

i. Upon receipt of an application for a Main Street outdoor dining permit that is subject to review by the Department Director, a notice shall be sent to all owners of property with frontage on Historic Main Street between Acacia Parkway and Garden Grove Boulevard

- describing the nature of the request and advising that any comments should be submitted no later than 10 days from the date of the notice. If one or more property owners object to the application, the Director may refer review of the request to the Zoning Administrator or Planning Commission, where a public hearing will be noticed and held in accordance with the public hearing provisions of Chapter 9.32.
- ii. The Planning staff shall transmit the Department Director’s notice of the decision, with any appropriate conditions of approval, to the applicant. The decision of the Department Director shall be final and binding unless an appeal is filed within 10 days from the date of the decision.
  - iii. Any decision of the Department Director or Zoning Administrator may be appealed to the Planning Commission, and the provisions of Sections 9.32.110 through 9.32.150 shall apply, except as to the timeframe for appeal.
  - iv. Any decision of the Planning Commission may be appealed to the City Council, and the provisions of Sections 9.32.110 through 9.32.150 shall apply.
- e. Conditions, Transferability and Scope of Rights.
- i. The Department Director or hearing body is empowered to impose any conditions of approval on a Main Street outdoor dining permit determined to be necessary to ensure that the proposal complies with all local, state and federal laws, and satisfies the required findings.
  - ii. It shall be a condition of each Main Street outdoor dining permit that the applicant also obtain and maintain an encroachment permit from the City pursuant to Title 11 of the Garden Grove Municipal Code and comply with all conditions of such encroachment permit. Approval of a Main Street outdoor dining permit pursuant to this subdivision shall not constitute approval of said encroachment permit.
  - iii. It shall be a condition of each Main Street outdoor dining permit that the scope, nature, and character of use of the adjacent eating establishment remain substantially the same as at the time approved. In the event there are significant changes to the scope, nature, or character of use of the adjacent eating establishment, all rights conferred by a Main Street outdoor dining permit for that eating establishment shall cease, and the owner(s) of the eating establishment shall be required to apply for and obtain a new Main Street outdoor dining permit, if eligible to do so.
  - iv. In the event of a change of ownership of the adjacent outdoor eating establishment, where the scope, nature, and character of use of the adjacent eating establishment does not significantly change, a Main Street outdoor dining permit may be automatically transferred to the new owner(s) of the eating establishment upon written notice to the City, issuance of a new encroachment permit pursuant to Title 11, and execution by each owner of a written acknowledgment and agreement to comply with the conditions of approval of the permit in a form acceptable to the Department Director.
  - v. Approval of a Main Street outdoor dining permit pursuant to this subsection shall not be construed to grant the applicant or adjacent property or business owner any property interest in the public right-of-way or any entitlement to continued use of the public right-of-way.
  - vi. Following investigation, written notice, and an opportunity to respond, a Main Street outdoor dining permit may be revoked or suspended by the Department Director: (a) in the event of suspension, revocation, expiration, or non-renewal of the encroachment permit; (b)



upon failure of the business owner and/or operator to comply with the conditions of approval and/or applicable legal requirements; or (c) if one or more of the required findings for approval of the permit can no longer be made with respect to the outdoor dining area in the public right-of-way. If the Department Director revokes a Main Street outdoor dining permit, the procedures for notice and appeal set forth in paragraph (d)(ii) through (iv), above, shall apply.

#### 15. Requests for Reasonable Accommodation.

a. Applicability. Whenever relief is sought from the strict application of the City’s zoning and land use regulations, policies or procedures in order to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, approval of a reasonable accommodation request shall be required. This section provides a procedure and sets standards for individuals seeking a reasonable accommodation in the provision of housing and is intended to comply with state and federal fair housing laws and other applicable laws relating to such reasonable accommodations.

#### b. Requests for Reasonable Accommodation.

i. Any person with a disability, their authorized written representative, or a developer or provider of housing for individuals with a disability may submit a request for a reasonable accommodation.

ii. Requests for a reasonable accommodation shall be submitted on an application form provided by the City. The application shall include, but shall not necessarily be limited to:

A. documentation that the individual who is applying or upon whose behalf application is being made is an individual with a disability, applying on behalf of one or more individuals with a disability, or a developer or provider of housing for one or more individuals with a disability;

B. a description of the accommodation requested and the specific exception, modification or relief from the Code section, policy or practice that is being requested;

C. plans and detailed information of any physical improvements to the property being proposed, including photos and supporting information necessary for the review authority to evaluate the accommodation being requested;

D. a detailed explanation as to why the accommodation requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the dwelling and how it will achieve this result; and

E. Any other information that the City Manager or designee reasonably concludes is necessary to determine whether the findings of this subsection can be made, so long as any request for information regarding the disability of the individual(s) benefited complies with applicable fair housing law protections and the privacy rights of the individual(s) affected.

iii. When an application is made, the City may engage in an interactive process with the applicant to devise alternative accommodations that provide the applicant with an opportunity to use and enjoy a dwelling, where such alternative accommodations would reduce impacts to neighboring properties and residents of the surrounding area.

c. Review Authority. The City Manager or designee is vested with the authority to approve, conditionally approve, or deny requests for reasonable accommodation. No public hearing is required.

#### d. Required Written Findings.

i. The review authority’s written decision to approve, conditionally approve, modify or deny a request for reasonable accommodation shall be consistent with all applicable Federal and State laws and shall be based on the following findings, all of which are required for approval:

(A) that the requested accommodation is requested by or on behalf of one or more individuals with a disability;

(B) that the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling and will effectuate the accommodation;

(C) that the requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial and administrative burden” is defined in fair housing laws and interpretive case law;

(D) that the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning scheme or other City program, as “fundamental alteration” is defined in fair housing laws and interpretive case law; and

(E) that the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health and safety of other individuals or physical damage to the property of others.

ii. In making these findings, to the extent consistent with Federal and State law, the review authority may consider, without limitation, the following additional factors:

(A) whether the requested accommodation is being provided primarily to benefit individuals who are disabled;

(B) whether financial considerations make the requested accommodation necessary in light of the relevant market and market participants;

(C) whether the requested accommodation would result in a significant increase in traffic or insufficient parking;

(D) whether the requested accommodation would substantially undermine the policies of the general plan or any applicable specific plan;

(E) whether the requested accommodation would create an institutionalized environment due to the number of tenants being proposed and/or the congregation of facilities that are similar in nature or operation; and

(F) whether the requested accommodation would significantly deprive any neighboring property owners of the use and enjoyment of their own properties.

e. Decision.

i. Notice of Decision. The review authority shall set forth the findings and any conditions of the approval in a written decision, which shall be sent to the applicant. The written decision shall inform the applicant of the right to appeal the decision and the time period and procedures for doing so.

ii. Conditions of Approval. In granting a request for reasonable accommodation, the review authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the required findings set forth above. Conditions may also be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation request shall be removed prior to the sale, transfer, lease, or other conveyance of the property, or once those structures or physical design features are no longer necessary to accommodate a person with a disability, or to reduce impacts upon neighboring properties, and the property owner may be required to enter into and record a restrictive covenant benefitting the City, in a form acceptable to the City Attorney, to ensure compliance with such conditions.

iii. The decision of the City Manager or designee shall be final unless appealed by the applicant to the City Council within ten days. The procedures set forth in Section 2.60.060 of this Code shall apply to such appeals.

f. Expiration.

i. Expiration. Any approval or conditional approval of a reasonable accommodation shall expire and become null and void within one year from the effective date of the approval or at an alternative time specified as a condition of approval unless:

A. A building permit has been issued and construction has commenced;

B. A certificate of occupancy has been issued;

C. The use is established; or

D. A time extension has been granted.

ii. Time Extension. The City Manager or designee may approve one or more time extensions for a previously approved reasonable accommodation for good cause. Each time extension shall be limited to one year or less. A request for a time extension shall be made in writing to the City Manager or designee prior to the expiration date of the reasonable accommodation approval.

g. Effect of Approval; Revocation; Discontinuance..

i. Does Not Run with the Land. A reasonable accommodation approved by the City does not run with the land. Upon discontinuance or revocation of a previously approved reasonable accommodation request, the City may require the property owner and/or occupant(s) to bring the property into conformance with this Code to the extent that relief was granted as part of the request for reasonable accommodation.

ii. Revocation. After notice and an opportunity for hearing, the City Manager or designee may revoke any previously granted reasonable accommodation approval due to violations of any conditions of approval or laws in connection with use of the reasonable accommodation. The decision of the City Manager or designee to revoke a reasonable accommodation shall be final unless appealed by the applicant to the City Council within ten days. The procedures set forth in Section 2.60.060 of this Code shall apply to such appeals.

iii. Discontinuance. A previously approved reasonable accommodation shall lapse and be deemed null and void if the exercise of rights granted by the reasonable accommodation is discontinued for one hundred eighty (180) consecutive days and/or if the individual or individuals with a disability on whose behalf an approved reasonable accommodation was requested vacate the premises, unless, following consideration of a new application in accordance with this section, the City Manager or designee determines that (1) the modification is physically integrated into the residential structure such that it would be impractical to require the property to be returned to its previous condition, or (2) the accommodation is necessary to give another disable individual an equal opportunity for use and enjoyment of the dwelling. The City Manager or designee may, at any time, request in writing the applicant or any successor-in-interest to the property subject to a previously approved reasonable accommodation to provide documentation demonstrating that the accommodation remains necessary to ensure the equal use and enjoyment of the property by an individual or individuals with a disability and/or continued compliance with the applicable conditions of approval. Failure to provide such documentation with fifteen days of the date of such request shall constitute evidence of discontinuance of the exercise of rights granted by the reasonable accommodation.