

# Division 8:

## Development Code Administration

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## **Section 9108.01 – Administrative Responsibility**

### **Subsections:**

- 9108.01.010 Purpose and Intent
- 9108.01.020 Planning Agency Defined
- 9108.01.030 City Council
- 9108.01.040 Planning Commission
- 9108.01.050 Development Services Department Director

### **9108.01.010 Purpose and Intent**

**Amended by Ord. No. 2363**

The purpose of this Section is to describe the authority and responsibilities of the Council, Commission, Director, Architectural Review Board, Architectural Review Board Chairperson, Department, and Department staff in the administration of this Development Code.

### **9108.01.020 Planning Agency Defined**

As provided by State law, the Commission is designated as the Planning Agency and as the Advisory Agency, when required or authorized. The Director shall perform the functions of an Advisory Agency, as assigned, in compliance with State Law.

### **9108.01.030 City Council**

The City Council, referred to in this Development Code as the Council, in matters related to the City's planning process shall perform the duties and functions prescribed in the Municipal Code and this Development Code, which include the following:

- A. Review Authority on Specified Planning Matters.** Final decisions on development agreements, Development Code amendments, General Plan amendments, specific plans and amendments, Zoning Map amendments, environmental documents related to any of the forgoing, and other applicable policy or regulatory matters related to the City's planning process as specified in the City Charter, the Municipal Code, and this Development Code;
- B. Appeals.** The review of appeals filed from Commission decisions; and
- C. Compliance.** The above listed functions shall be performed in compliance with Table 7-1 (Review Authority), Division 7 (Permit Processing Procedures), and the California Environmental Quality Act (CEQA).

### **9108.01.040 Planning Commission**

- A. Establishment.** The Planning Commission, referred to in this Development Code as the Commission, is hereby established.
- B. Appointment.** The Commission shall consist of five members who shall be appointed by the Council in compliance with Municipal Code Part 5 (Planning Commission) Division 1, and Section 2251 (Membership).
- C. Duties and Authority.** The Commission shall perform the duties and functions prescribed by the Municipal Code and this Development Code, and the Council may, from time to time by resolution, prescribe additional powers and duties not inconsistent with State Law, including the following:
  1. The review of development projects, including referrals from the Director;
  2. The review of appeals from the Director's decisions;

3. The recommendation, to the Council for final decisions, on development agreements, Development Code amendments, General Plan amendments, specific plans and amendments, Zoning Map amendments, environmental documents related to any of the forgoing, and other applicable policy or regulatory matters related to the City's planning process as specified in the City Charter, the Municipal Code, and this Development Code; and
4. The above listed functions shall be performed in compliance with Table 7-1 (Review Authority), Division 7 (Permit Processing Procedures), and the California Environmental Quality Act (CEQA).

**D. Meeting Rules.** The Commission shall conduct public hearings and meetings in compliance with the Municipal Code Part 5 and Section 9108.13 (Public Notice and Hearings).

#### **9108.01.050 Development Services Department Director**

**A. Appointment.** The Development Services Department Director, referred to in this Development Code as the Director, shall be appointed by the City Manager.

**B. Definition of the Term "Director."** When used in this Development Code or any permit or condition approved in compliance with this Development Code, the term "Director" shall be as follows and as defined in Division 9 (Definitions): "The Development Services Department Director, referred to in this Development Code as the 'Director' or designee(s) of the Director."

**C. Duties and Authority.** The Director shall:

1. Have the responsibility to perform all of the functions designated by State law, including, but not limited to the following:
  - a. Annual report related to implementation of the General Plan in compliance with Government Code Section 65400;
  - b. Review of public works projects for conformity to the General Plan in compliance with Government Code Section 65401; and
  - c. Review of acquisition of property for conformity to the General Plan in compliance with Government Code Section 65402.
2. Perform the duties and functions prescribed in this Development Code, including the review of administrative development projects, in compliance with Table 7-1 (Review Authority), Division 7 (Permit Processing Procedures), Government Code Section 65901 et seq., and the California Environmental Quality Act (CEQA);
3. Perform other responsibilities assigned by the Council, Commission, or City Manager;
4. Delegate the responsibilities of the Director to Department staff under the supervision of the Director; and
5. Serve in an advisory capacity for proposed subdivisions, in compliance with Subdivision Map Act Section 66415 et seq. In this capacity, the Director is charged with the responsibility of making investigations and reports on the design and improvement of proposed divisions of real property.

#### **9108.01.060 Homeowners Association Architectural Review Board**

**A. Appointment.** The Homeowners Association Architectural Review Board, referred to in this Development Code as the Architectural Review Board or ARB, shall be selected in accordance with each Homeowners Association's adopted by-laws and any amendments on file with the City Clerk.

**B. Definition of the Term "Homeowners Association Architectural Review Board."** When used in this Development Code or any permit or condition approved in this Development Code, the term "Homeowners Association Architectural Review Board" shall be as follows and as defined in Division 9 (Definitions): "The Homeowners Association Architectural Review Board, referred to in this Development Code as the 'Architectural Review Board' or 'ARB' consists of members appointed in

accordance with the by-laws of each City-designated Homeowners Association. The ARB shall be maintained in accordance with City Council Resolution.”

**C. Duties and Authority.** The ARB shall:

1. Perform the duties and functions prescribed by this Development Code and City Council Resolution.
2. Provide recommendation to the Director for final decisions on Tree Permits, Administrative Modifications, and other applicable permits related to the City's planning process as specified in the City Charter, the Municipal Code, and this Development Code; and
3. Perform the duties and functions prescribed in this Development Code, including the review of administrative development projects, in compliance with Table 7-4 (Review Authority for Homeowner Association Areas), Division 7 (Permit Processing Procedures), City Council Resolution, Government Code Section 65901 et seq., and the California Environmental Quality Act (CEQA); and
4. Perform other responsibilities assigned by the Council, Commission, City Manager, or Director.

**D. Meeting Rules.** The ARB shall conduct public hearings and meetings in compliance with Section 9108.13 (Public Notice and Hearings).

**9108.01.070 Homeowners Association Architectural Review Board Chairperson**

**A. Appointment.** The Homeowners Association Architectural Review Board Chairperson, referred to in this Development Code as the ARB Chairperson, shall be selected in accordance with each Homeowners Association's adopted by-laws and any amendments on file with the City Clerk.

**B. Definition of the Term “Homeowners Association Architectural Review Board Chairperson.”** When used in this Development Code or any permit or condition approved in this Development Code, the term “Homeowners Association Architectural Review Board Chairperson” shall be as follows and as defined in Division 9 (Definitions): “The Homeowners Association Architectural Review Board Chairperson, referred to in this Development Code as the ‘ARB Chairperson’ or designee(s) of the ARB Chairperson” shall be appointed in accordance with the by-laws of each City-designated Homeowners Association.”

**C. Duties and Authority.** The ARB Chairperson shall:

1. Perform the duties and functions prescribed by this Development Code, and City Council Resolution.
2. Perform the duties and functions prescribed in this Development Code, including the review of administrative development projects, in compliance with Table 7-4 (Review Authority for Homeowner Association Areas), Division 7 (Permit Processing Procedures), City Council Resolution, Government Code Section 65901 et seq., and the California Environmental Quality Act (CEQA); and
3. Perform other responsibilities assigned by the Council, Commission, City Manager, or Director.

## Section 9108.03 – Amendments

### Subsections:

- 9108.03.010 Purpose and Intent
- 9108.03.020 Initiation of Amendment
- 9108.03.030 Processing, Notice, and Hearings
- 9108.03.040 Commission's Action on Amendment
- 9108.03.050 Council's Action on Amendment
- 9108.03.060 Findings and Decision
- 9108.03.070 Prezoning – Annexations
- 9108.03.080 Effective Dates

### **9108.03.010 Purpose and Intent**

This Section provides procedures for the amendment of this Development Code, the General Plan, or the Zoning Map whenever the Council determines public necessity and general welfare require an amendment.

### **9108.03.020 Initiation of Amendment**

An amendment may be initiated by motion of the Council or Commission action, proposed by the Director, or as follows.

- A. General Plan or Zoning Map Amendment.** In the case of the General Plan or the Zoning Map, an amendment may also be initiated by the filing of an amendment application with the Department by the owner(s) or authorized agent of property for which the amendment is sought. If the property is under multiple ownerships, all owners or their authorized agents shall join in filing the application.
- B. Development Code Amendment.** In the case of this Development Code, the Council may also adopt an urgency measure as an interim ordinance, in compliance with Government Code Sections 36937 and 65858.

### **9108.03.030 Processing, Notice, and Hearings**

- A. Application Filing and Processing.** If initiated by the filing of an amendment application as specified in Subparagraph 9108.03.020 A. (General Plan or Zoning Map amendment), above, the application shall be processed in compliance with Section 9107.03 (Application Processing Procedures). The application shall include the information and materials specified in the most up-to-date Department handout for amendment applications, together with the required fee in compliance with the Fee Schedule. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection 9108.03.060 (Findings and Decision), below.
- B. Review by Director.** Following receipt of a completed application, the Director shall investigate the facts necessary for action consistent with the purpose of this Section.
  1. If the Director finds that the application is complete, the Director shall accept it for filing in compliance with Subsection 9107.03.060 (Initial Application Completeness Review).
  2. If the Director finds that the application is incomplete, the Director shall promptly notify the applicant and identify the inadequacies of the application in compliance with Subsection 9107.03.060 (Initial Application Completeness Review).
- C. Timing of General Plan Amendments.** As a Charter City, the Council may amend the General Plan as often as it deems necessary.

**D. Development Code/Zoning Map Amendments – Compliance with Government Code Section 65853 Required**

1. A Development Code or Zoning Map amendment, which amendment changes any property from one zone to another or imposes any regulation(s) specified in Government Code Section 65850 not previously imposed or removes or modifies any specified regulation(s) previously imposed shall be adopted in compliance with Government Code Sections 65854 to 65857, inclusive and as specified in this Section.
2. Any other amendment to this Development Code may be adopted as other ordinances are adopted.
3. When the Council has requested the Commission to study and report upon an amendment which is within the scope of this Subsection and the Commission fails to act upon the request within a reasonable time, the Council may, by written notice, require the Commission to render its report within 40 days.
4. Upon receipt of the written notice, the Commission, if it has not done so, shall conduct the public hearing as required by Government Code Section 65854.
5. Failure of the Commission to report to the Council within the time period specified in Subparagraph 3, above, shall be deemed to be approval of the proposed amendment in compliance with Government Code Section 65853.

**E. Public Hearings Required.** The Commission and Council shall each conduct one or more public hearings regarding the amendment.

**F. Notice and Hearing.** Notice of the public hearings shall be provided and the hearings shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings) and as specified in Government Code Sections 65353, 65355, 65854, and 65856.

**9108.03.040 Commission's Action on Amendment**

**A. Commission's Recommendation to Council**

1. **All Amendments.** Following the public hearing, the Commission shall adopt a resolution containing its written recommendation(s), findings, and reasons for the recommendation(s), and forward the resolution to the Council specifying whether to approve, approve in modified form, or deny the proposed amendment, based on the findings identified in Subsection 9108.03.060 (Findings and Decision), below.
2. **Recommendation for Approval of Development Code or Zoning Map Amendments.** A recommendation for approval or approval in modified form of a Development Code or Zoning Map amendment shall require only a majority vote of the Commissioners present.
3. **Recommendation for Approval of General Plan Amendments.** A recommendation for approval or approval in modified form of a General Plan amendment shall require the affirmative vote of not less than a majority of the total membership of the Commission in compliance with Government Code Section 65354.
4. **Recommendation for Denial by Commission.** A recommendation against the proposed Development Code, General Plan, or Zoning Map amendment shall require a majority vote of the total membership of the Commission in compliance with Government Code Section 65354.

**B. Development Code or Zoning Map Amendments.** For a Development Code or Zoning Map amendment, where the Commission has recommended against the adoption of the amendment, the Council shall not be required to take any further action on the amendment unless an interested party files a written appeal in compliance with Government Code Section 65856(a) and Section 9108.03 (Appeals).

**C. Appeal of Commission's Recommendation**

1. The action of the Commission may be appealed within five days following the date of the Commission's recommendation to the Council in compliance with Government Code Section 65354.5.
2. The appeal shall be filed with the City Clerk in compliance with Government Code Section 65354.5 and Division 9108.03 (Appeals).

**9108.03.050 Council's Action on Amendment**

**A. Council's Action**

1. **All Amendments.** Upon receipt of the Commission's recommendation to approve or approve in modified form the proposed amendment, the Council shall conduct a public hearing and either approve, approve in modified form, or deny the proposed amendment based on the findings identified in Subsection 9108.03.060 (Findings and Decision), below.
2. **Development Code or Zoning Map Amendments.** The action by the Council to approve, or approve in modified form, the Commission's recommendation regarding a Development Code or Zoning Map amendment shall be by a majority vote of the Council members present, adopted by ordinance, and shall be final and conclusive.
3. **General Plan Amendments.** The action by the Council to approve, or approve in modified form, the Commission's recommendation regarding a General Plan amendment shall require the affirmative vote of not less than a majority of the total membership of the Council in compliance with Government Code Section 65356, adopted by resolution, and shall be final and conclusive.

**B. Referral to Commission**

1. If the Council proposes to adopt a substantial modification(s) to the amendment not previously considered by the Commission, the proposed modification shall be first referred to the Commission for its recommendation, in compliance with Government Code Sections 65356 (General Plan amendments) and 65857 (Development Code or Zoning Map amendments).
2. Failure of the Commission to report back to the Council within the time limits specified in Government Code Sections 65356 (45 days) and 65857 (40 days) following the referral shall be deemed approval by the Commission of the proposed modification(s).

**9108.03.060 Findings and Decision**

**Amended by Ord. No. 2375**

An amendment to this Development Code, the General Plan, or the Zoning Map may be approved only if all of the following findings are first made, as applicable to the type of amendment.

**A. Findings for General Plan Amendments.**

1. The amendment is internally consistent with all other provisions of the General Plan; and
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

**B. Findings for Development Code Amendments.**

1. The proposed Development Code amendment is consistent with the goals, policies, and objectives of the General Plan and any applicable specific plan(s); and
2. The proposed amendment is internally consistent with other applicable provisions of this Development Code.

**C. Findings for Zone Change and Zoning Map Amendments.**

1. The proposed amendment is in conformance with the goals, policies, and objectives of the General Plan;
2. The site is physically suitable (including absence of physical constraints, access, compatibility with adjoining land uses, and provision of utilities) for the requested/anticipated land uses/developments; and
3. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

**D. Failure to Make Findings.** The Review Authority shall deny the amendment when it fails to make any one or more of the required findings.

**9108.03.070 Prezoning – Annexations**

**A. Prezoning Required.** Before the annexation to the City of any property in compliance with Section 9108.05 (Annexations), the petitioner of the annexation shall file an application for rezoning of the subject property to be annexed and the City shall establish the zone classification(s) which will be in effect on the effective date of the annexation.

**B. Same as Zoning Map Amendments.** The process for rezoning property to be annexed to the City shall be the same as is specified in this Section for Zoning Map amendments.

**C. Compliance with General Plan.** The zoning shall be in compliance with the General Plan and any applicable specific plan.

**D. Prezoning**

1. Any property lying outside the corporate limits of the City, but being adjacent to and within its sphere of influence, may be rezoned with a City zone classification(s) in compliance with Government Code Section 65859 and this Section.
2. If any property has been rezoned in this manner, the assigned zone classification(s) shall become effective at the same time the annexation of the property becomes effective.

**9108.03.080 Effective Dates**

**A. General Plan.** A General Plan amendment shall become effective immediately upon the adoption of a resolution by the Council, unless provided later in the resolution.

**B. Development Code and Zoning Map.** A Development Code or Zoning Map amendment shall become effective on the 31st day following the adoption of an ordinance by the Council, unless provided later in the ordinance.

**C. Notifying County Assessor.** Whenever the zoning covering a property is changed from one zone to another via a Development Code or Zoning Map amendment, the City shall, within 30 days, notify the County Assessor of the action in compliance with Government Code Section 65863.5.

## **Section 9108.05 – Annexations**

### **Subsections:**

- 9108.05.010 Purpose and Intent
- 9108.05.020 Petition Upon Annexation
- 9108.05.030 Report by Commission
- 9108.05.040 Notice of Commission Hearing
- 9108.05.050 Notice of Council Hearing
- 9108.05.060 Adoption of Interim Zoning

### **9108.05.010 Purpose and Intent**

This Section provides procedures for the annexation of property to the City.

### **9108.05.020 Petition Upon Annexation**

In any petition for the annexation of property to the City, the petitioner may request the zone classification(s) desired by the petitioner for the property described in the application in the event the property is annexed to the City.

### **9108.05.030 Report by Commission**

Before the adoption by the Council of the Resolution of Intention to Annex Uninhabited Territory or the Resolution Consenting to the Circulation of a Petition to Annex Inhabited Territory, a copy of the annexation petition shall be referred to the Commission for investigation and report to the Council as to the desirability of the annexation and the zone classification(s) that shall be placed on the subject property.

### **9108.05.040 Notice of Commission Hearing**

- A. The Commission shall give notice of its intention to consider the annexation of the property and the zone classification(s) that shall be placed on the subject property in the event of annexation to the City, by publishing a notice once in a newspaper of general circulation published and circulated within the City in compliance with Section 9108.13 (Public Notice and Hearings).
- B. The public hearing shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings).
- C. Following completion of the hearing, the Commission shall make its recommendation(s) to the Council by resolution.

### **9108.05.050 Notice of Council Hearing**

- A. After receiving the Commission's recommendation(s), the Council shall give notice of a public hearing to consider the zone classification(s) that shall be placed on the subject property, upon annexation to the City, for the property to be annexed.
- B. The notice shall be published at least once in a newspaper of general circulation published and circulated within the City in compliance with Section 9108.13 (Public Notice and Hearings).
- C. The public hearing shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings).
- D. The notice may be included within any other publication of notice concerning the annexation of the subject property, and the hearing on the matter of the zone classification(s) may be held in conjunction with any public hearing required by law to be held by the Council in connection with the annexation proceedings.

**9108.05.060 Adoption of Interim Zoning**

- A. Concurrent with the ordinance of annexation of the property, the Council shall classify the property for zoning purposes, in compliance with its determination, State law, and Subsection 9108.03.070 (Prezoning – Annexations).
- B. All property in the City not otherwise specifically classified, and all property hereafter annexed and not otherwise classified concurrently with its annexation, is hereby classified as and placed in R-1 zone.

## Section 9108.07 – Appeals

### Subsections:

- 9108.07.010 Purpose and Intent
- 9108.07.020 Appeal Subjects and Jurisdiction
- 9108.07.030 Calls for Review
- 9108.07.040 Filing and Processing of Appeals
- 9108.07.050 Judicial Review

### 9108.07.010 Purpose and Intent

This Section establishes procedures for the appeal and calls for review of determinations and decisions of the Director or Commission.

### 9108.07.020 Appeal Subjects and Jurisdiction

- A. Code Administration and Interpretation.** Any determination of the Director and/or Department staff on the meaning or applicability of the regulations contained in this Development Code that cannot be resolved with the Director, may be appealed to the Commission and then to the Council:
- B. Planning Permit Decisions**
  - 1. **ARB or ARB Chairperson Decisions.** Decisions of the ARB or ARB Chairperson on all matters specified in Section 9108.01.060 (Homeowners Association Architectural Review Board) and 9108.01.070 (Homeowners Association Architectural Review Board Chairperson) may be appealed to the Commission.
  - 2. **Director's Decisions.** Decisions of the Director on all matters specified in Section 9108.01.050 (Development Services Department Director) may be appealed to the Commission.
  - 3. **Commission's Decisions.** Any decision of the Commission may be appealed to the Council.

### 9108.07.030 Calls for Review

- A. Commission or Council Review**
  - 1. **Commission.** The Commission may call for a review of any determination or decision rendered by the Director, ARB, or Department staff.
  - 2. **Council.** The Council may call for a review of any determination or decision rendered by the Commission, Director, ARB, or Department staff.
  - 3. **Majority Vote Required.** A call for review may only be commenced by the affirmative vote of the majority of the members present of the applicable Review Authority.
- B. Process for Calling for a Review**
  - 1. **Initiation by Commissioners.** Any Commissioner may initiate a call for review of a Director's determination or decision by filing a written request with the Department before the effective date of the action, which means within 10 days following the date of the determination or decision.
  - 2. **Initiation by Council Members**

- a. Any Council member may initiate a call for review of a Commission's, Director's, or ARB's determination or decision by filing a written request with the City Clerk before the effective date of the action, which means within 10 days following the date of the determination or decision.
- b. The Council may call for the review of a Director's or ARB's determination or decision directly, or may direct the Commission to first consider the matter and provide a written recommendation to the Council.

**3. Consideration of Call for Review.** The Commission or Council, as applicable, shall consider the call for review at its next regularly scheduled meeting.

**4. Majority Vote by Review Authority.** If the Commission or Council, as applicable, votes to review the determination or decision, a subsequent review hearing shall be scheduled to consider the merits of the review. Following a majority vote to proceed, the request shall be treated in compliance with Subsection 9108.07.040 (Filing and Processing of Appeals).

**5. Notice to Applicant.** If the Review Authority is reviewing the decision of a discretionary application, the applicant shall be informed of the aspects of the application and the determination or decision that the Review Authority will consider.

**6. Effect of Call for Review**

- a. A request for a call for review by a member of a Review Authority shall stay the effective date of a determination or decision until the Review Authority can make a decision on the call for review request.
- b. The timely filing of a call for review does not extend the time in which an appeal of a determination or decision shall be filed. The normal appeal period shall continue to run in compliance with Subparagraph 9108.07.040 B. (Form and Timing of an Appeal), below.
- c. If the Review Authority decides to call for review of the subject determination or decision, then the previous determination or decision shall be stayed.
- d. If the Review Authority decides not to call for review the subject determination or decision, then the determination or decision shall become final unless the appeal period has not expired.

**7. Filing of an Appeal Pending a Call for Review**

- a. **Right to File an Appeal.** Any person may file a timely appeal in compliance with this Section even though a call for review has been filed in compliance with this Section.
- b. **Effect of Filing an Appeal.** The filing of the appeal shall serve to protect the rights of the appellant(s) in the event the call for review is subsequently withdrawn or rejected.

**8. Withdrawal or Failure of a Call for Review.** If a request for a call for review is withdrawn after filing, or is rejected, the remaining days of the call for review period shall run until the original 10-day period has expired.

**9. Notice and Public Hearing**

- a. A call for review hearing shall be a public hearing if the original determination or decision required a public hearing.
- b. Notice of the public hearing shall be the same as the original determination or decision, in compliance with Section 9108.13 (Public Notices and Hearings).
- c. The public hearing shall be conducted in compliance with Section 9108.13 (Public Notices and Hearings).

**10. Fees Not Required.** Fees shall not be required in conjunction with the filing of a call for review.

**11. Required Votes.** The final action calling for review of a determination or decision shall require an affirmative majority vote of those members lawfully authorized to vote on the matter.

**C. Concurrent Commission Recommendations.** When the Commission makes a recommendation to the Council on a legislative matter (e.g., development agreement, Development Code amendment, General Plan amendment, specific plan or amendment, or Zoning Map amendment), any concurrent companion decision(s) by the Commission on an approval, permit, or Variance, or other non-legislative land use permit application concerning, in whole or in part, the same parcel(s) shall also be deemed to be timely called up for review by the Council.

**9108.07.040 Filing and Processing of Appeals**

Amended by Ord. No. 2363

**A. Eligibility**

1. **Eligible Appellants.** An appeal in compliance with this Section may be filed by any interested person(s).
2. **Interested Person(s).** For purposes of this Section an interested person(s) is a person who informed the City of his or her concerns about an application for a permit or approval at a public hearing, either in person or through a representative, or by other appropriate means (e.g., in writing), or was unable to do so for good cause and pays the applicable fee in compliance with the Fee Schedule; and
  - a. Objects to the action taken on the permit or approval;
  - b. Completes the required City appeal form completely and accurately. The appeal will not be deemed complete and timely filed until all information on the appeal form is verified by the office receiving the appeal form; and
  - c. Wishes to appeal any appealable action to a higher Review Authority.
3. **Appeals by Councilmember or Commissioner.** Any action or decision by the Commission, Director, ARB, ARB Chairperson, or Department staff rendered in compliance with this Development Code may be appealed by a Councilmember or Commissioner acting as an individual, in compliance with the requirements of the Fair Political Practices Act.
4. **Shall Not Be Authorized to Participate.** Any Councilmember or Commissioner filing an appeal as an individual shall not be authorized to participate in any decision concerning that action or decision.

**B. Form and Timing of Appeal.** An appeal shall be submitted in writing and shall specifically state the pertinent facts and the basis for the appeal.

1. **Pertinent Facts and the Basis for the Appeal.** The pertinent facts and the basis for the appeal shall include, at a minimum, the specific grounds for the appeal, where there was an error or abuse of discretion by the previous Review Authority (e.g., Commission, Director, ARB, ARB Chairperson, or other City official) in the consideration and action on the matter being appealed, and/or where the decision was not supported by the evidence on the record. Appeals filed by a City official, a Commissioner, or a Councilmember shall be exempt from the requirements of this Subparagraph.
2. **Shall be Filed within 10 Days.** The appeal shall be filed with the Department within 10 days following the actual date the decision was rendered.
  - a. Appeals addressed to the Council shall be filed with Planning Services.
3. **Accompanied by Filing Fee.** The appeal shall be accompanied by the filing fee identified in the Fee Schedule.
4. **Suspension of Action.** Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is rendered by the applicable Review Authority.

**C. Scope of Planning Permit Appeals.** An appeal of a decision on any planning permit specified in Division 7 (Permit Processing Procedures) shall be de novo, and shall not be limited to issues raised at the public hearing, or in writing before the hearing, or information that was not known at the time of the decision that is being appealed.

**D. Report and Scheduling of Hearing**

1. When an appeal has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate Review Authority identified in Subsection 9108.07.020 (Appeal Subjects and Jurisdiction), above.
2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Section 9108.13 (Public Notice and Hearings).
3. Any interested party may appear and be heard regarding the appeal.

**E. Decision**

1. During the appeal hearing, the Review Authority may:
  - a. Affirm, affirm in part, modify, or reverse the action, determination, or decision that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or noncompliance of the subject of the appeal with this Development Code;
  - b. Adopt additional or different project aspects or conditions of approval, that may address issues or concerns other than the subject of the appeal;
  - c. Deny the planning permit approved by the previous Review Authority, even where the appellant only requested a modification or elimination of one or more project aspects or conditions of approval; or
  - d. If new or different evidence is presented on appeal, the Review Authority may refer the matter to the Director or Commission, as applicable, for further consideration.
  - e. The decision of the Council shall be final.
2. Within 60 days following the initial public hearing, the Review Authority shall render its decision on the appeal, unless it is continued for good cause.
3. In the event of a tie vote by the Review Authority on an appeal, the decision being appealed shall stand.

**F. Provision of Notice of Decision**

1. Following the final decision on an appeal of a permit or other approval required by this Development Code, the City shall provide notice of its final decision to the appellant, applicant, property owner or owner's representative, and to any person who specifically requested notice of the City's final decision.
2. The notice of the final decision shall contain applicable findings, conditions of approval, and the reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, or general welfare of the City.

**G. Effective Date of Appeal Decision.** No permit or license shall be issued for any use involved in an appeal until the final decision on the application shall have become final in the following manner:

1. **Commission's Decision.** A decision by the Commission is final and effective after the end of the business day on the 10<sup>th</sup> day following following the actual date the final decision is rendered, if no appeal to the decision has been filed with the Council or called up by the Council.

**2. Council's Decision**

- a. **Adopted by Ordinance.** A decision of the Council adopted by ordinance is final and shall become effective on the 31<sup>st</sup> day following the date the ordinance is actually adopted by the Council, unless otherwise provided in the adopting ordinance.
- b. **Adopted by Resolution.** A decision of the Council adopted by resolution is final and shall be effective on the date the decision is rendered.

**9108.07.050 Judicial Review**

No person shall seek judicial review of a City decision on a planning permit or other matter in compliance with this Development Code unless and until all available appeals to the Commission and Council have been first exhausted in compliance with this Section.

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## **Section 9108.09 – Permit Modifications and Revocations**

### **Subsections:**

- 9108.09.010 Purpose and Intent
- 9108.09.020 Modifications
- 9108.09.030 Revocations
- 9108.09.040 Findings to Modify or Revoke
- 9108.09.050 Notice and Hearing Required
- 9108.09.060 Appeals

### **9108.09.010 Purpose and Intent**

This Section provides procedures for securing punitive modification or revocation of previously approved permits or approvals.

### **9108.09.020 Modifications**

The City's action to modify a permit or approval, instead of revocation, may include conditioning any operational aspect of the project, including buffers, duration of the permit or entitlement, hours of operation, landscaping and maintenance, outdoor lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, or any other aspect/condition determined to be reasonable and necessary to ensure that the permit or approval is operated in a manner consistent with the original findings for approval.

### **9108.09.030 Revocations**

The City's action to revoke a permit or approval, instead of modification, shall have the effect of terminating the permit or approval and denying the privileges granted by the original approval.

### **9108.09.040 Findings to Modify or Revoke**

**Amended by Ord. No. 2363**

**A. Permits.** A Conditional Use Permit, Minor Use Permit, or other City planning permit or approval (except a Variance or Administrative Modification, see Subsection B., below) may be modified or revoked by the Review Authority (e.g., ARB Chairperson, ARB, Director, Commission, or Council) that originally approved the permit, if the Review Authority first makes any one of the following findings:

1. Circumstances under which the permit or approval was granted have been changed by the applicant to an extent that one or more of the findings that justified the original approval can no longer be made, and the improvement/use has become detrimental to the public health, safety, or general welfare, or constitutes or is creating a nuisance;
2. The permit or other approval was granted, in whole or in part, on the basis of a fraud, misrepresentation, or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the permit or approval;
3. One or more of the conditions of the original permit or approval have not been substantially fulfilled or have been violated and/or the permit is in violation of any code, law, ordinance, regulation, or statute;
4. The approved use or structure has not been exercised within 12 months of the date of approval in compliance with Subsection 9108.11.080 (Expiration);
5. The approved use or structure has ceased to exist or has been suspended for a period in excess of 12 months; or

7. The improvement/use allowed by the permit or approval has become detrimental to the public health, safety, or general welfare or the manner of operation constitutes or is creating a nuisance.

**B. Variances and Administrative Modifications.** A Variance or Administrative Modification may be modified or revoked by the Review Authority which originally approved the Variance or Administrative Modification, if the Review Authority first makes any one of the following findings, in addition to any one of the findings specified in Subsection A., above:

1. Circumstances under which the original approval was granted have been changed by the applicant to a degree that one or more of the findings contained in the original approval can no longer be made, and the grantee has not substantially exercised the rights granted by the Variance or Administrative Modification; or
2. One or more of the conditions of the Variance or Administrative Modification have not been met, or have been violated, and the grantee has not substantially exercised the rights granted by the Variance or Administrative Modification in compliance with Subsection 9108.11.080 (Expiration).

#### **9108.09.050 Notice and Hearing Required**

**A. Hearing.** The appropriate Review Authority shall hold a public hearing to modify or revoke a permit or approval granted in compliance with the provisions of this Development Code. The hearing shall be noticed and conducted in compliance with Section 9108.13 (Public Notices and Hearings).

**B. Notice.** At least 10 days before the public hearing, notice shall be mailed or delivered to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property, for which the permit or approval was granted. The only exception to the 10-day notice provision shall be for Temporary Use Permits which, because of their short term nature, shall only require a 24-hour notice.

#### **9108.09.060 Appeals**

**Amended by Ord. No. 2363**

- A. The decision of the Director, ARB, or ARB Chairperson may be appealed to the Commission and the decision of the Commission may be appealed to the Council, in compliance with Section 9108.07 (Appeals). The decision of the Council shall be final.
- B. A public hearing shall be required for the appeal of a decision to modify or revoke a permit or approval. Notice of the hearing shall be given and the hearing shall be conducted in compliance with Section 9108.13 (Public Notices and Hearings).
- C. At the conclusion of the hearing, the Review Authority may sustain the previous Review Authority's decision to modify or revoke the permit or approval, or overturn the decision and order reinstatement of the permit or approval.

## Section 9108.11 – Permit Implementation, Time Limits, and Extensions

### Subsections:

- 9108.11.010 Purpose and Intent
- 9108.11.020 Conformation to Approved Plans
- 9108.11.030 Effective Dates of Permits
- 9108.11.040 Acknowledgement and Acceptance of Conditions
- 9108.11.050 Applications Deemed Approved
- 9108.11.060 Permits to Run with the Land
- 9108.11.070 Performance Guarantees
- 9108.11.080 Expiration
- 9108.11.090 Time Extensions
- 9108.11.100 Changes to an Approved Project

### **9108.11.010 Purpose and Intent**

This Section provides requirements for the implementation or "exercising" of the permits or approvals required by this Development Code, including time limits and procedures for approving extensions of time.

### **9108.11.020 Conformation to Approved Plans**

- A. Compliance.** All work performed under a Building Permit, Encroachment Permit, or Grading Permit for which project drawings and plans have received approval by the Director, Department staff, Commission, or Council shall be in compliance with the approved drawings and plans, and any conditions of approval imposed by the Review Authority.
- B. Changes.** Changes to an approved project shall be submitted and processed in compliance with Subsection 9108.11.100 (Changes to an Approved Project), below.
- C. Effect of Development Code Amendments on Projects in Progress.** The enactment of this Development Code, or an amendment to this Development Code, may have the effect of imposing different standards on a new land use than those that applied to existing development. (For example, this Development Code or a future amendment could specify different landscaping requirements than specified by the former regulations.) The following provisions determine how the requirements of this Development Code will apply to a development project that is in progress at the time this Development Code or an amendment goes into effect.
  - 1. Application Deemed Complete.** A planning permit application (Division 7 [Permit Processing Procedures]), which has been deemed complete by the Director before the effective date of this Development Code or any amendment, shall be processed in compliance with the requirements in effect when the application was deemed complete.
  - 2. Project Under Construction.** A project for which a Building Permit has been issued under the provisions of earlier ordinances of the City which are in conflict with this Development Code, and on which substantial construction has been performed by integration of materials on the site before the effective date of this Development Code, may be continued and completed in compliance with the plans and specifications upon which the permit was originally issued.
  - 3. Subdivision Maps.** Subdivision maps shall be processed in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and Division 5 (Subdivisions).

### **9108.11.030 Effective Dates of Permits**

**Amended by Ord. No. 2363**

**A. Approvals, Permits, and Variances.** An Administrative Modification, Certificates of Demolition, Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Planned Development Permit, Reasonable Accommodation, Site Plan and Design Review, Site Plan and Design Review: Homeowners Association Areas, Temporary Use Permit, or Variance shall become effective 10 days following the actual date the decision was rendered by the applicable Review Authority.

#### **B. Plans/Amendments**

1. Council actions to adopt or amend a development agreement, this Development Code, a specific plan, or the Zoning Map shall become effective on the 31<sup>st</sup> day following the date the ordinance is actually adopted by the Council. For example, an ordinance adopted on October 1<sup>st</sup> will actually be effective on November 1st, unless otherwise provided in the adopting ordinance.
2. Council actions to adopt or amend the General Plan shall become effective on the actual date the decision is rendered by the Council, unless otherwise provided in the adopting resolution.

**C. Issued on the Effective Date.** Permits, certificates, and/or other approvals shall not be issued until the effective date, and then only if no appeal of the Review Authority's decision has been filed, in compliance with Section 9108.03 (Appeals).

### **9108.11.040 Acknowledgement and Acceptance of Conditions**

- A. Full Understanding and Acceptance.** The applicant, upon receipt of the approved copy of the permit with attached conditions, shall execute an Acknowledgment and Acceptance of Conditions agreement with the City, certifying full understanding and acceptance of the final conditions of approval.
- B. Signed and Dated.** The applicant shall return the Acknowledgment and Acceptance of Conditions agreement to the Department, properly signed and dated, within 30 days following the date of the Acknowledgement.
- C. Appeal.** If the applicant wishes to appeal any or all of the final conditions of approval, the applicant shall file an appeal within 10 days following the actual date the decision was rendered by the applicable Review Authority in compliance with Section 9108.07 (Appeals).
- D. New Owner's or Tenant's Responsibility.** Any new owner or tenant taking over an existing business's Conditional Use Permit or Minor Use Permit shall be required to sign and submit an Acknowledgment and Acceptance of Conditions stating they have been given a copy of the conditions of approval and accept them, before they are issued a new Business License for the subject business.

### **9108.11.050 Applications Deemed Approved**

- A. Applicable Provisions.** Any application deemed approved by operation of law in compliance with Government Code Section 65956(b) shall be subject to all applicable provisions of this Development Code, which shall be fully satisfied by the applicant before a Building Permit is issued or a land use not requiring a Building Permit is exercised or established.
- B. Public Hearing.** The application shall be deemed approved only if the application received proper notice in compliance with Section 9108.13 (Public Notice and Hearings) and Government Code Section 65956(b).

### **9108.11.060 Permits to Run with the Land**

**Amended by Ord. No. 2363**

- A. Run with the Land.** An Administrative Modification, Conditional Use Permit, Minor Use Permit, Planned Development Permit, Site Plan and Design Review, Site Plan and Design Review: Homeowners Association Areas, Temporary Use Permit, or Variance approval that is approved in compliance with Section 9107.03 (Application Processing Procedures) shall be deemed to run with the land through any change of ownership of the subject site, from the effective date of the permit, except in any case where a permit expires and becomes void in compliance with Subsection 9108.11.080 (Expiration), below.
- B. Conditions Shall Apply.** All applicable conditions of approval shall continue to apply after a change in property ownership.

### **9108.11.070 Performance Guarantees**

**Amended by Ord. No. 2363**

#### **A. Deposit of Security**

- 1. As a condition of approval of an Administrative Modification, Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Planned Development Permit, Site Plan and Design Review, Site Plan and Design Review: Homeowners Association Areas, Temporary Use Permit, or Variance, upon a finding that the City's health, safety, and general welfare warrant, the Review Authority may require the execution of a covenant to deposit security and the deposit of security in a reasonable amount and form approved by the City Attorney to ensure the faithful performance of one or more of the conditions of approval of the permit or Variance in the event that the obligor fails to perform.
- 2. The applicant/owner may offer to provide adequate security for the faithful performance of a condition(s) of approval imposed as part of the approval process if the Director determines that the condition(s) may be implemented at a later specified date (e.g., inability to install required landscaping due to weather conditions).
- 3. The security shall, as required by law or otherwise, be in a form approved by the City Attorney.
- 4. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director in conjunction with the City Engineer.
- 5. Security required in compliance with this Section shall be payable to the City.

#### **B. Release of Security.** Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.

#### **C. Failure to Comply**

- 1. Upon failure to perform any secured condition, the City may perform the condition, or cause it to be done, and may collect from the obligor all costs incurred, including administrative, engineering, legal, and inspection costs.
- 2. Any unused portion of the security shall be refunded to the obligor after deduction of the cost of the work.
- 3. Any cost in excess of the security shall be an obligation of the applicant/owner and a lien on the property benefitted by the provisions of this Subsection.
- 4. To the extent that the Director can demonstrate that the obligor willfully breached an obligation in a manner that the obligor knew, or should have known, would create irreparable harm to the City, the entire amount of the security may be withheld.
- 5. The Director's determination may be appealed to the Council by the obligor by filing an appeal with the City Clerk within 10 days following the decision to withhold the security, in compliance with Section 9108.07 (Appeals).

## **9108.11.080 Expiration**

**Amended by Ord. No. 2363**

**A. Expiration of Permit or Approval.** Unless otherwise specified in the permit or approval, any discretionary permit issued by the City, including, without limitation, any Administrative Modification, Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Planned Development Permit, Site Plan and Design Review, Site Plan and Design Review: Homeowners Association Areas, Temporary Use Permit, or Variance, shall comply with the following expiration provisions. See Division 5 (Subdivisions) for expirations related to subdivision maps.

### **1. Exercised**

- a. To ensure continued compliance with the provisions of this Development Code, the permit or approval shall be exercised by the applicant within 12 months following the date of final approval, unless otherwise specified in the permit or approval, or an extension is approved by the applicable Review Authority, in compliance with Subsection 9108.11.090 (Time Extensions). In the event the permit or approval has not been fully exercised in that time period, the permit or approval shall expire and be deemed void (vs. shall be subject to review by the Review Authority who originally granted the permit or approval to determine whether a good faith intent to exercise the permit or approval has been demonstrated).
- b. Additionally, if after construction has started, commencement work is discontinued for a period of 12 months, or the proposed use is discontinued for a period of 12 months, the permit or approval shall be subject to review by the Review Authority who originally granted the permit or approval to determine whether a good faith intent to commence the contemplated use or development granted by the permit or approval has been demonstrated.

### **2. Phasing**

- a. Where the permit or approval provides for development in two or more phases or units in sequence, the permit or approval shall not be approved until the Review Authority has approved the final phasing plan for the entire project site. The project applicant shall not be allowed to develop one phase in compliance with the preexisting base zone and then develop the remaining phases in compliance with this Subsection, without prior Review Authority approval.
- b. Pre-approved phases
  - (1) If a project is to be built in pre-approved phases, each subsequent phase shall have 12 months following the previous phase's date of construction commencement to the next phase's date of construction commencement to have occurred, unless otherwise specified in the permit or approval, and the permit or approval shall be subject to review by the Review Authority who originally granted the permit or approval to determine whether a good faith intent to commence the contemplated use or development granted by the permit or approval exists.
  - (2) If the application for the permit or approval also involves the approval of a tentative map, the phasing shall be consistent with the tentative map and the permit or approval shall be exercised before the expiration of the associated tentative map.

### **3. Definition of “Exercise” and Evidence of “Good Faith”.** The following shall be a non-exclusive list of factors that the Review Authority may consider when determining whether or not a good faith intent to exercise the permit or approval has been demonstrated:

- a. Whether the applicant has submitted plans in Building Services plan-check.
- b. Whether the applicant has obtained a Building or Grading Permit.
- c. Whether the applicant has diligently continued the approved grading and construction activities in a timely manner in compliance with the subject Building Permit.

- d. Whether the applicant has actually implemented the allowed land use, in its entirety, on the subject property in compliance with the conditions of approval.

**4. Procedure for Determination**

- a. The determination of whether or not a good faith intent to exercise the permit or approval has been demonstrated, as specified in Subparagraph 3., above, shall be made by the original Review Authority if a public hearing is required, noticing shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings).

**Exception:** The determination of whether or not good faith intent to exercise the approval has been demonstrated, as specified in Subparagraph 3., above, for approvals issued in compliance with Subsection 9107.10 (Site Plan and Design Review: Homeowners Association Areas) shall be made by the original Review Authority.

- b. At the public hearing, the original Review Authority shall investigate the facts bearing on each case and render its decision in writing within 30 days following the date of the first hearing, unless continued for further investigation, study, or hearing.
- c. The original Review Authority shall cause to be served on the applicant, and if different, the property owner, its written decision, in compliance with Subparagraph 9107.03.080 F (Notice of the Decision).
- d. The decision of the original Review Authority shall be final following a 10-day appeal period, unless appealed to the applicable Review Authority in compliance with Section 9108.03 (Appeals).

5. **Burden of Proof.** It shall be the applicant's burden to prove to the original Review Authority, by a preponderance of the evidence, that, no later than the date that the City delivered the public notice required by Section 9108.13 (Public Notice and Hearings), a good faith intent to exercise the permit or approval has been demonstrated.

**B. Effect of Expiration.** If the Review Authority who originally granted the permit or approval determines that a good faith intent to exercise the permit or approval has not been demonstrated, the Review Authority shall deem the permit or approval expired and void. Thereafter, the following provisions shall control:

1. No further action is required by the City;
2. No further reliance may be placed on the previously approved permit or approval;
3. The applicant shall have no rights previously granted under the permit or approval;
4. The applicant shall be required to file a new application(s) with all required fees and obtain all required approvals before any further construction can commence or any use may be implemented; and
5. Any security provided by the applicant under the previously approved permit or approval may be utilized by the City to provide suitable protection from any harm that may result from the terminated development or use.

**9108.11.090 Time Extensions**

**Amended by Ord. No. 2363**

Requests for a time extension for a permit or approval shall be filed and processed in the following manner:

**A. Filed Before Expiration.**

1. The applicant's written request for an extension of time shall be on file with the Department before expiration of the permit or approval, together with the filing fee required by the Fee Schedule.
2. **Exception:** For Homeowners Association Area the applicant's written request for an extension of time shall be on file with the ARB Chairperson before expiration of the permit or approval.

**B. Public Hearing Requirements**

1. A public hearing shall not be required for the Director's decision on an extension of time.
2. However, the Director may conduct a public hearing in compliance with Section 9108.13 (Public Notice and Hearings) if deemed appropriate by the Director.
3. A public hearing shall be required for the Commission's decision on an extension of time or the Council's decision if an appeal of the Commission's decision has been filed. The request for extension shall be noticed and the hearing shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings).
4. Exception: For Homeowners Association Area:
  - a. A public hearing shall not be required for the ARB Chairperson's decision on an extension of time.
  - b. The ARB Chairperson may, if deemed appropriate, defer action and refer the application to the Architectural Review Board for review under the Regular Review process and require a public hearing in compliance with Section 9108.13 (Public Notice and Hearings).
  - c. A public hearing shall be required for the ARB's decision on an extension of time. The request for extension shall be noticed and the hearing shall be conducted in compliance with Section 9108.13 (Public Notice and Hearings).

**C. Suspension of Expiration**

1. The filing of a written extension request shall suspend the actual expiration of the permit or approval until the extension request has been acted upon by the ARB, ARB Chairperson, Director, Commission, and/or Council.
2. Building or Grading Permits shall not be issued in compliance with the permit or approval during the period of the suspension.

**D. Director's Action on First Extension**

1. Upon good cause shown, an extension may be approved, approved with modifications, or denied by the ARB, ARB Chairperson, or Director, subject to the findings identified in Subsection F (Required findings), below.
2. The Director may defer action and refer the request to the Commission for consideration and final action.
3. The ARB, ARB Chairperson, and Director's decision may be appealed to the Commission and then the Council, in compliance with Section 9108.03 (Appeals).
4. The permit or approval may be extended for a maximum of 12-months beyond the expiration date of the original approval, unless otherwise allowed by State law.

**E. Commission's Action on Subsequent Extension**

1. Upon good cause shown, an additional extension may be approved, approved with modifications, or denied by the Commission, subject to the findings identified in Subsection F (Required Findings), below.
2. The Commission's decision may be appealed to the Council, in compliance with Section 9108.03 (Appeals).
3. The permit or approval may be extended for one additional 12-month period, unless otherwise allowed by State law, following the expiration of the original 12 (vs. 24) month period of approval, for a grand total of 48 months following the original date of approval (original 24 months, plus 12 months by the Director, and 12 more months by the Commission).

**F. Required Findings.** An extension of the permit or approval may be granted only if the applicable Review Authority first makes all of the following findings:

1. There have been no changes in circumstances or law that would preclude the Review Authority from making the findings upon which the original approval was based; and
2. Appropriate evidence has been provided by the applicant to document that:
  - a. A good faith intent to exercise the permit or approval has been demonstrated; and
  - b. The extension is required due to an unusual hardship that was not the result of personal action(s) undertaken by the applicant.

#### **9108.11.100 Changes to an Approved Project**

**Amended by Ord. No. 2363**

**A. Application**

1. A development or new land use allowed through an Administrative Modification, Conditional Use Permit, Home Occupation Permit, Minor Use Permit, Planned Development Permit, Site Plan and Design Review, Site Plan and Design Review: Homeowners Association Areas, Temporary Use Permit, or Variance shall be implemented in substantial compliance with the approved drawings and plans, and any conditions of approval imposed by the Review Authority, except where changes to the project are approved in compliance with this Subsection.
2. An applicant shall request desired changes in writing to the Director, and shall also furnish appropriate supporting materials and an explanation of the reasons for the request.

Exception: For Site Plan and Design Review: Homeowners Association Areas applications, an applicant shall request desired changes in writing to the ARB Chairperson and shall also furnish appropriate supporting materials and an explanation of the reasons for the request.

3. Requested changes may involve changes to the project (e.g., days or hours of operation) as originally proposed by the applicant or approved by the Review Authority.
4. Requested changes may also involve changes to one or more conditions imposed by the Review Authority, but only when actual changes to the project would justify a change to one or more conditions of approval.
5. Changes shall not be implemented until first approved by the applicable Review Authority in compliance with this Subsection, and may be requested either before or after construction or establishment and operation of the approved use.

**B. Notice and Hearing.** If the project application originally required a noticed public hearing, the Review Authority shall hold a public hearing, except for the minor changes outlined below (See Subsection C, Minor Changes by Director.), and shall give notice, in compliance with Section 9108.13 (Public Notice and Hearings).

**C. Minor Changes by an ARB Chairperson or Director.** The ARB Chairperson or Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use only if the changes:

1. Are consistent with all applicable provisions of this Development Code and are in substantial compliance with the original approval; and
2. Do not involve a feature of the project that was:
  - a. A basis for findings in a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report for the project, or determining that the project was exempt from CEQA review;

- b. A basis for conditions of approval for the project; or
- c. A specific consideration by the Review Authority (e.g., the Director, Commission, or Council) in granting the permit or approval.

**D. Major Changes.** Major changes include changes to the project involving features specifically described in Subparagraph C. 2., above, and shall only be approved by the Review Authority (e.g., original or appeal Review Authority that rendered the final City action on the application) through a new application, processed in compliance with this Development Code.

CITY OF ARCADIA ZONING CODE – ARTICLE IX: DIVISION AND USE OF LAND  
CHAPTER 1: DEVELOPMENT CODE

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## Section 9108.13 – Public Notices and Hearings

### Subsections:

- 9108.13.010 Purpose and Intent
- 9108.13.020 Noticing Requirements
- 9108.13.030 Scheduling of Hearing
- 9108.13.040 Hearing Procedures
- 9108.13.050 Recommendation by Commission
- 9108.13.060 Decision and Notice
- 9108.13.070 Effective Date of Decision

### 9108.13.010 Purpose and Intent

This Section provides procedures for public hearings required by this Development Code. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted, in compliance with this Section.

### 9108.13.020 Noticing Requirements

When this Development Code requires a public hearing before a decision on a permit, or for another matter, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090, 65091, 65094, 65096, and 66451.3, and Public Resources Code 21000 et seq., and as required by this Section.

**A. Content of Notice.** Notice of a public hearing shall include all of the following information, as applicable.

1. **Hearing Information.** The date, time, and place of the hearing and the name of the Review Authority; a brief description of the City's general procedure concerning the conduct of hearings and decisions (e.g., the public's right to appear and be heard); and the phone number and street address of the Department, where an interested person could call or visit to obtain additional information.
2. **Project Information.** The date of filing and the name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; and a general description, in text or by diagram, of the location of the property that is the subject of the hearing.
3. **Statement on Environmental Document.** If a proposed Negative Declaration, Mitigated Negative Declaration, final Environmental Impact Report, or statement of exemption from the requirements of CEQA has been prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines, the hearing notice shall include a statement that the Review Authority will also consider approval (or recommendation of adoption/approval for an application requiring Council action) of the proposed Negative Declaration, Mitigated Negative Declaration, certification of the final Environmental Impact Report, or statement of exemption.
4. **Statement Regarding Challenges of City Actions.** A notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or before, the public hearing" in compliance with Government Code Section 65009(b)(2).
5. **Statement Regarding Commission's Recommendations.** For Council items that involve a recommendation from the Commission (e.g., legislative acts) the notice shall contain the Commission's recommendations.

**B. Method of Notice Distribution.** Notice of a public hearing required by this Section, and any other type of notice specified in Division 7 (Permit Processing Procedures), shall be given as follows, as required by Government Code Sections 65090 and 65091.

1. **Mailing.** Notice shall be mailed or delivered not less than 10 days before the scheduled hearing to the following:
  - a. **Project Site Owners, Agent(s), and Applicant.** The owners of the property being considered in the application, the owners' agent(s), and the applicant, in addition to the owner(s) of the mineral rights for maps in compliance with Government Code Section 65091(a)(2);
  - b. **Local Agencies.** Each local agency expected to provide roads, schools, sewage, streets, water, or other essential facilities or services to the property which is the subject of the application, whose ability to provide those facilities and services may be significantly affected;
  - c. **Affected owners.** All owners of real property as shown on the latest assessment rolls of the City or of the County, located within a radius of 300 feet, or a different radius as specified in the actual permit requirements of Division 7 (Permit Processing Procedures), of the exterior boundaries of the parcel that is the subject of the hearing; and any other person whose property might, in the judgment of the Director, be affected by the proposed project; and
  - d. **Persons Requesting Notice.** Any person who has filed a written request for notice with the Director or City Clerk and has paid the required fee for the notice.
2. **Alternative to Mailing.** If the number of property owners to whom notice would be mailed in compliance with Subparagraph B. 1., above is more than 1,000, the Director may choose to provide the alternative notice allowed by Government Code Section 65091(a)(3).
3. **Additional Notice.** In addition to the types of notice required above, the Director may require any additional notice with content or using a distribution method (e.g., posting on the City's web site) as the Director determines is necessary or desirable.

#### **9108.13.030 Scheduling of Hearing**

Amended by Ord. No. 2363

After the completion of any environmental document required by the California Environmental Quality Act (CEQA), the City's CEQA Guidelines, and a Department staff report, a matter requiring a public hearing shall be scheduled on the next available agenda (ARB, Director, Commission, or Council, as applicable) reserved for public hearings, but no sooner than any minimum time period established by State law.

Exception: A staff report shall not be required prior to scheduling a public hearing for applications requiring a public hearing under Section 9107.10 (Design Review: Homeowners Association Areas).

#### **9108.13.040 Hearing Procedures**

- A. **Time and Place of Hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. **Continued Hearing.** Any hearing may be continued from time to time without further notice; provided that the chair of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- C. **Deferral of Final Decision**
  1. The Review Authority may announce a tentative decision, and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.
  2. The date of the final action shall be as described in the motion, ordinance, or resolution that incorporates the findings and/or conditions.
- D. **Summary Information.** A summary of all pertinent testimony offered at a public hearing, together with the names and addresses of all persons testifying shall be recorded and made a part of the permanent files of the case.

**E. Formal Rules of Evidence or Procedure Not Applicable.** Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding subject to this Development Code, except as otherwise required by the City Charter or the Municipal Code, in compliance with Government Code Section 65010.

### **9108.13.050 Recommendation by Commission**

- A. Recommendation and Findings to the Council.** After a public hearing on a proposed amendment to this Development Code, the General Plan, the Zoning Map, a development agreement, or a specific plan, the recommendation and findings of the Commission shall be forwarded to the Council.
- B. Recommendation and Findings to the Applicant.** The recommendation and findings shall be mailed to the applicant at the address shown on the application.
- C. Recommendation Included in Notice.** The recommendation shall be included in the required notice of the Council's public hearing.

### **9108.13.060 Decision and Notice**

**Amended by Ord. No. 2347**

**Amended by Ord. No. 2363**

#### **A. Decision**

1. The Review Authority may announce and record its decision on the matter being considered at the conclusion of a scheduled hearing, or defer action and continue the matter to a later meeting agenda in compliance with Subsection 9108.13.040 (Hearing Procedure), above.
2. Unless otherwise required by law (i.e., votes by the Commission on a General Plan amendment in compliance with Government Code Section 65354), a majority vote shall be required for any formal action by the applicable Review Authority.
3. Tie votes of the Review Authority for all matters that legally require the adoption of an ordinance, a resolution, or findings shall result in no action by the Review Authority. The motion shall fail to pass and the matter shall terminate any further action by the City until a majority vote of the quorum is achieved.
4. Within 35 days following the conclusion of a public hearing upon any matter, the Commission shall render its decision by formal resolution reciting the findings upon which the decision is based. The failure of the Commission to render a decision within the time specified shall cause the entire matter automatically to be referred to the Council without recommendation for action as it deems warranted under the circumstances. In this event, the Secretary of the Commission shall immediately deliver to the Council all of the records in the matter.
5. At the conclusion of a hearing conducted by the Director, the Director may instead refer the matter to the Commission for review and final decision.
6. All decisions shall be in writing and, if required by law, shall contain the written findings upon which the decision is based.
7. The decision of the Council on any matter shall be final and conclusive.

#### **B. Notice of Decision: Design Review: Homeowners Association Areas**

1. **Provision of Notice.** Within 10 days following the final decision on a Regular Review application by the ARB in compliance with Subsection 9107.10.030 (Authority), for approval required by this Development Code, the ARB shall provide notice of its final action to the applicant, the Development Services Department, and to any person who specifically requested notice of the ARB's final action.

2. **Contents of Notice.** The notice of the final decision shall contain applicable findings, conditions of approval, reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, and general welfare of the City, and the procedure for appeal.
3. **Delivery of Notice.** The notice of the final decision shall be delivered by first class mail.

**C. Notice of Decision**

1. **Provision of Notice.** Within 10 days following the final decision on an application for a permit or other approval required by this Development Code, the City shall provide notice of its final action to the applicant and to any person who specifically requested notice of the City's final action.
2. **Contents of Notice.** The notice of the final decision shall contain applicable findings, conditions of approval, reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, and general welfare of the City, and the procedure for appeal.
3. **Delivery of Notice.** The notice of the final decision shall be delivered by first class mail.

**9108.13.070 Effective Date of Decision**

Amended by Ord. No. 2363

**A. ARB Chairperson, ARB, Director's or Commission's Decision.** The decision of the ARB Chairperson, ARB, Director or Commission is final and effective after the end of the business day on the 10<sup>th</sup> day following the actual date the final decision is rendered if no appeal of that decision has been filed in compliance with Section 9108.03 (Appeals).

**B. Council's Decision**

1. **Adopted by Ordinance.** A decision of the Council adopted by ordinance is final and shall become effective on the 31<sup>st</sup> day following the date the ordinance is actually adopted by the Council, unless otherwise provided in the adopting ordinance. For example, an ordinance adopted on October 1<sup>st</sup> will actually be effective on November 1<sup>st</sup>.
2. **Adopted by Resolution.** A decision of the Council adopted by resolution is final and shall be effective on the date the decision is rendered.
3. **Contingent on Future Date or Event.** The Council may take a final action and make it contingent on a future date or event.

## Section 9108.15 – Enforcement

### Subsections:

- 9108.15.010 Purpose and Intent
- 9108.15.020 Permits and Approvals
- 9108.15.030 Enforcement Responsibility
- 9108.15.040 Inspections
- 9108.15.050 Initial Enforcement Action
- 9108.15.060 Recording Notice of Violation
- 9108.15.070 Violations
- 9108.15.080 Legal Remedies
- 9108.15.090 Remedies Are Cumulative
- 9108.15.100 Recovery of Costs
- 9108.15.110 Additional Permit Processing Fees
- 9108.15.120 Reinspection Fees

### 9108.15.010 Purpose and Intent

This Section establishes provisions that are intended to ensure compliance with the requirements of this Development Code and any conditions of planning permit approval, to promote the City's planning efforts, and for the protection of the public health, safety, and welfare of the City.

### 9108.15.020 Permits and Approvals

All departments, officials, and public employees of the City who are assigned the authority or duty to issue certificates, licenses, or permits shall comply with the provisions of this Development Code.

- A. Permits in Conflict with Development Code.** Certificates, licenses, or permits for uses or structures that would be in conflict with the provisions of this Development Code shall not be issued.
- B. Permits Deemed Void.** Any certificate, license, or permit issued in conflict with the provisions of this Development Code shall be void and of no effect.

### 9108.15.030 Enforcement Responsibility

- A. Use of Land.** The Director, and the Director's designee(s), shall exercise the authority provided in California Penal Code Section 836.5, and issue Notices of Violation, stop work orders, and citations for any violations of this Development Code pertaining to the use of any land.
- B. Use of Structures.** The Director, and the Director's designee(s), shall enforce those provisions of this Development Code pertaining to the addition, alteration, construction, conversion, erection, installation, moving, reconstruction, or use of any structure; and to enforce the requirements of occupancy in any dwelling (multi-family, single-family, or two-family) or other structure not otherwise regulated by this Development Code.

### 9108.15.040 Inspections

- A. By Director and Building Official.** The Director, the Building Official, and their designee(s) shall have the rights and powers of enforcing the provisions of this Development Code.

**B. Authorized to Enter Defined Areas.** For the purpose of necessary investigations and inspections, the Director, the Building Official, and their designee(s) are hereby authorized to enter upon the following defined areas of private property within the City:

1. Any area which is open to the public generally;
2. Any area which is visible and accessible from the public street and which is not fenced or locked or otherwise physically arranged in a manner as to evidence an intent to prohibit entry;
3. Any area which is used as common area by persons residing or staying in structures located upon the property, unless the area is fenced or locked or otherwise physically arranged in a manner as to evidence an intent to prohibit entry; and
4. Any area where the privacy of an individual would not be violated by entry. Any person who interferes or refuses with the right of entry granted by this Section shall be guilty of a misdemeanor.

#### **9108.15.050 Initial Enforcement Action**

This Section describes the procedures for initiating enforcement action in cases where the Director, the Building Official, and/or their designee(s) have determined that real property within the City is being used, maintained, or allowed to exist in violation of the provisions of this Development Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Section may be avoided.

**A. Notice to Responsible Parties.** The City, through the City's Code Services Staff, shall provide the record owner of the subject site and any person in possession or control of the site with a written Notice of Violation, which shall include the following information:

1. A description of each violation and citations of applicable Development Code provisions being violated;
2. A time limit for correcting the violation(s) in compliance with Subsection B., below;
3. A statement that the City intends to charge the property owner for all administrative costs associated with the abatement of the violation(s) in compliance with Subsection 9108.15.100 (Recovery of Costs), and/or initiate legal action as described in Subsection 9108.15.080 (Legal Remedies), below; and
4. A statement that the property owner or any person in possession or control of the site may request and be provided a meeting with the Director to discuss possible methods and time limits for the correction of the violation(s).

#### **B. Time Limit for Correction**

1. The Notice of Violation shall state that the violation(s) shall be corrected within 14 days from the date of the notice to avoid further enforcement action by the City, unless the responsible party contacts the Director within that time to arrange for a longer period for correction.
2. The 14-day time limit may be extended by the Director upon a showing of good cause.
3. The Director may also require through the Notice of Violation that the correction occur within less than 14 days if the Director determines that the violation(s) constitutes a hazard to public health or safety.

**C. Use of Other Enforcement Procedures.** The enforcement procedures of Subsection 9108.15.080 (Legal Remedies) may be employed by the City after or instead of the provisions of this Section where the Director determines that this Section would be ineffective in securing the correction of the violation(s) within a reasonable time.

## 9108.15.060 Recording Notice of Violation

- A. Record Notice with County Recorder's Office.** If property in the City exists in violation of this Development Code and the owner fails or refuses to correct the violation, the City may record a Notice of Violation against the affected property in the County Recorder's Office.
- B. City Actions Before Recordation.** Before recording a Notice of Violation, the City shall do all of the following:
  - 1. Mailing of Notice**
    - a. The City, through the City's Code Services Staff, shall send a written Notice of Violation to the current owner(s) and any mortgage holder(s) that a violation(s) exists and request that the owner(s) correct the violation within a specified, reasonable period of time.
    - b. The City may, in the Building Official's, and/or their designee's(s') discretion, send more than one Notice of Violation.
  - 2. Failure to Correct Violation**
    - a. If the owner fails or refuses to correct the violation(s) within the specified time, the City, through the City's Code Services Staff, shall mail to the current owner(s) by regular first class and by certified mail a Notice of Intention to record a Notice of Violation, describing the real property in detail, naming the owner(s), describing the violation in detail (including relevant Municipal Code sections), and stating that an opportunity will be given to the owner(s) to present evidence.
    - b. The notice shall specify a time, date, and place for a hearing with the Director at which the owner may present evidence to the Director why the Notice of Violation should not be recorded.
    - c. The hearing with the Director shall take place no sooner than 10 days and no later than 20 days following the date of mailing of the Notice of Violation.
  - 3. Director's Actions**
    - a. The Director shall hear the matter on the date scheduled.
    - b. If, after the owner(s) and the City Staff have presented evidence, the Director determines that there is no violation, the Code Services Staff shall mail a clearance letter to the current owner.
    - c. If the owner(s) fails to appear, or the Director determines that there is a violation(s), the Director may direct the Code Services Staff to record the Notice of Violation with the County Recorder. The Director's decision to record the notice shall not be subject to the appeal provisions specified in Section 9108.07 (Appeals).
  - 4. Constructive Notice.** The Notice of Violation, when recorded, shall be deemed to be constructive notice of the violation(s) to all successors-in-interest in the property, under California Civil Code Sections 1213 and 1215.
  - 5. Release or Cancellation of Notice of Violation.** If the owner corrects the violation(s) or the property otherwise becomes conforming after the Notice of Violation has been recorded, and the owner has notified the City in writing and consented to an inspection to confirm the correction, Code Services Staff shall record a release or cancellation of the Notice of Violation.

## 9108.15.070 Violations

### A. Violations of this Development Code

1. Any use of land or structures operated or maintained contrary to the provisions of this Development Code and any structure constructed or maintained contrary to the provisions of this Development Code are hereby declared to be a violation of this Development Code and a public nuisance.
2. The violation of any required condition imposed on a permit or approval shall constitute a violation of this Development Code and may constitute grounds for modification or revocation of the permit or approval in compliance with Section 9108.09 (Permit Modifications and Revocations).

### B. Guilty of a Misdemeanor.

Any person, firm, entity, or corporation, whether as principal, agent, employee, or otherwise, violating or causing the violation of any of the provisions of this Development Code shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable in compliance with Municipal Code Section 1200 (Violations a Misdemeanor or Infraction.).

## 9108.15.080 Legal Remedies

The City may choose to undertake any one or all of the following legal actions to correct and/or abate any nuisances or violation(s) of this Development Code.

### A. Civil Actions

1. **Injunction.** The City Attorney may apply to the Superior Court for injunctive relief to terminate a violation(s) of this Development Code.
2. **Abatement Proceedings.** Where any person fails to abate a violation(s) after being provided a Notice of Violation in compliance with Subsection 9108.15.060 (Recording Notice of Violation), above, and has had the opportunity to correct or end the violation(s), the City Attorney, or designee(s) shall apply to the Superior Court for an order authorizing the City to undertake actions necessary to abate the violation(s) and require the violator to pay for the cost of the actions.
3. **Nuisance Abatement.** The City may pursue any remedies or enforcement action(s), as provided in the City Charter and the Municipal Code for the abatement of a nuisance.

### B. Civil Penalties and Remedies

1. **Civil Penalties.** Any person, who willfully violates the provisions of this Development Code, or any permit or approval issued in compliance with this Development Code, shall be liable for a civil penalty in compliance with the Fee Schedule for each day that a violation(s) continues to exist.
2. **Costs and Damages.** Any person violating any provisions of this Development Code, or any permit or approval issued in compliance with this Development Code, shall be liable to the City for the costs incurred and the damages suffered by the City, its agents, and agencies as a direct result of the violation(s).
3. **Procedure.** In determining the amount of the civil penalty to impose, the Court should consider all relevant circumstances, including the extent of the harm caused by the conduct constituting a violation(s), the nature and persistence of the conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the defendant, whether corporate or individual, and any corrective action taken by the defendant.

### C. Criminal Actions and Penalties.

See Subsection 9108.15.070 (Violations), above.

### **9108.15.090 Remedies Are Cumulative**

- A. Cumulative, not Exclusive.** All remedies contained in this Development Code for the handling of violations or enforcement of the provisions of this Development Code shall be cumulative and not exclusive of any other applicable provisions of City, County, or State law.
- B. Other Remedies.** Should a person be found guilty and convicted of an infraction or misdemeanor for the violation of any provision(s) of this Development Code, or any permit or approval issued in compliance with this Development Code, the conviction shall not prevent the City from pursuing any other available remedy to correct the violation(s).

### **9108.15.100 Recovery of Costs**

This Section establishes procedures for the recovery of administrative costs, including Staff and City Attorney time expended on the enforcement of the provisions of this Development Code in cases where no permit is required in order to correct a violation. The intent of this Section is to recover City administrative costs reasonably related to enforcement in compliance with Code of Civil Procedure Section 1033.5 and this Section.

#### **A. Record of Costs**

- 1. The Department shall maintain records of all administrative costs incurred by responsible City departments associated with the processing of violations and enforcement of this Development Code, and shall recover the costs from the property owner in compliance with this Subsection.
- 2. Staff and City Attorney time shall be calculated at an hourly rate as established and revised from time to time by the Council.

#### **B. Notice.** Upon investigation and a determination that a violation(s) of any of the provisions of this Development Code, or any condition(s) imposed on a permit or approval is found to exist, the City, through the City's Code Services Staff, shall notify the record owner or any person having possession or control of the property by mail, of the existence of the violation(s), the City's intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have. The notice shall be in a form approved by the City Attorney.

#### **C. Summary of Costs and Notice**

- 1. At the conclusion of the case, the City, through the City's Code Services Staff, shall send a summary of costs associated with enforcement to the owner and/or person having possession or control of the property by certified and first class mail.
- 2. The summary shall include a notice in a form approved by the City Attorney, advising the responsible party of their right to request a hearing on the charges for City cost recovery within 10 days of the date of the notice, and that if no request for hearing is filed, the responsible party will be liable for the charges.
- 3. In the event that no request for hearing is timely filed, or after a hearing, the Director affirms the validity of the costs, the property owner or person in control shall be liable to the City in the amount stated in the summary or any lesser amount as determined by the Director.
- 4. The costs shall be recoverable in a civil action in the name of the City, in any court of competent jurisdiction, or by tax assessment or a lien on the property in compliance with Government Code Section 54988, at the City's election.
- 5. The obligation to pay any unpaid costs shall be made a personal obligation of the property owner.
- 6. The obligation may be recovered against the property owner through a civil action initiated by the City or its authorized collection agent, or in any other manner provided for by law.
- 7. The City shall be entitled to recover all costs related to the civil action, including the City Attorney's fees.

**D. Attorney's Fees**

1. In any action or administrative proceeding to abate a nuisance, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney's fees; however, the amount of attorney's fees awarded to a prevailing party shall not exceed the amount of attorney's fees incurred by the City in the action or proceeding.
2. An award of attorney's fees in compliance with this Subsection shall only be allowed where the City elects, at the initiation of the action or proceeding, to seek recovery of its own attorney's fees.

**E. Request for Hearing on Costs.** Any property owner, or other person having possession or control of the subject property, who receives a summary of costs shall have the right to a hearing before the Director on their objections to the proposed costs.

1. A request for hearing shall be filed with the Department within 10 days of the service by mail of the Director's summary of costs, on a form provided by the Department.
2. Within 30 days of the filing of the request, and on 10 days written notice to the owner, the Director shall hold a hearing on the owner's objections, and determine their validity.
3. In determining the validity of the costs, the Director shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include:
  - a. Whether the present owner created the violation(s);
  - b. Whether there is a present ability to correct the violation(s);
  - c. Whether the owner moved promptly to correct the violation(s);
  - d. The degree of cooperation provided by the owner; and
  - e. Whether reasonable minds can differ as to whether a violation(s) exists.
4. The Director's decision shall be appealable in compliance with Section 9108.03 (Appeals).

**9108.15.110 Additional Permit Processing Fees**

Any person who establishes a land use, or alters, constructs, demolishes, enlarges, erects, maintains, or moves any structure without first obtaining any permit or approval required by this Development Code, shall pay the additional permit processing fees established by the Fee Schedule for the correction of the violations, before being granted a permit for a use or structure on the site.

**9108.15.120 Reinspection Fees**

**A. Amount and Applicability of Reinspection Fees**

1. A reinspection fee shall be imposed on each person who receives a Notice of Violation, notice and order, or letter of correction of any provision of this Development Code, any permit or approval issued in compliance with this Development Code, the Municipal Code, adopted Building Code, or State law.
  - a. The fee amount shall be established by the Fee Schedule.
  - b. The fee may be assessed for each inspection or reinspection conducted when the particular violation for which an inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner specified in, the notice or letter.

2. The fee shall not apply to the original inspection to document the violation(s) and shall not apply to the first scheduled compliance inspection made after the issuance of a notice or letter, if the correction(s) has been made.

**B. Continuation of the Original Case**

1. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the provisions of this Development Code or the Municipal Code for less than 90 days, the violation shall be deemed a continuation of the original case, and all inspections or reinspections, including the first inspection for the repeated offense, shall be charged a reinspection fee.
2. This fee is intended to compensate for administrative costs for unnecessary City inspections, and is not a penalty for violating this Development Code or the Municipal Code.
3. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this Development Code in compliance with Municipal Code Chapter 2 (Penalty Provisions), or costs incurred by the City for the abatement of a public nuisance.

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