

Chapter 241 Conditional Use Permits and Variances; Temporary Use Permits; Waiver of Development Standards

(3334-6/97, 3410-3/99, 3528B-2/02, 3712-6/05)

Sections:

241.02	Procedures Established
241.04	Authority of Planning Commission and Zoning Administrator
241.06	Initiation
241.08	Notice and Public Hearing
241.10	Required Findings
241.12	Conditions of Approval
241.14	Effective Date; Appeals
241.16	Time Limit; Transferability; Discontinuance; Revocation
241.18	Changed Plans; New Application
241.20	Temporary Use Permits
241.22	Waiver of Development Standards
241.24	Neighborhood Notification

241.02 Procedures Established

This chapter establishes procedures for approval, conditional approval, or disapproval of applications for conditional use permits, and variances, temporary use permits, and waivers of development standards, and neighborhood notification. (3712-6/05)

- A. Conditional use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.
- B. Variances may be granted to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site.

Variances may be granted with respect to fences, walls, landscaping, screening, site area, site dimensions, yards, height of structures, distances between structures, open space, off-street parking and off-street loading, and performance standards.
- C. Temporary use permits may be granted for temporary use classifications and for other uses of temporary nature.
- D. Waivers of certain development standards may be granted to improve project design, subject to limitations.
- E. Neighborhood Notification is a procedure that shall notify property owners and tenants within a 300 foot radius when no entitlement is required. (3712-6/05)

241.04 Authority of Planning Commission and Zoning Administrator

The Planning Commission or the Zoning Administrator, as the case may be, shall approve or conditionally approve applications for conditional use permits or variances upon finding that the proposed conditional use permit or variance is consistent with the General Plan, and all applicable requirements of the Municipal Code, consistent with the requirements of Section 241.10. The Planning Commission shall act on all variances except the Zoning Administrator may act on variances not exceeding twenty percent deviation from site coverage, separation between buildings, height, setback, parking, and landscape requirements. (3334-6/97, 3410-3/99, 3712-6/05)

241.06 Initiation

Applications for conditional use permits and variances shall be initiated by submitting an application and necessary accompanying data as prescribed by the Director and the required fee.

241.08 Notice and Public Hearing

- A. Public Hearing and Notice Required. The Planning Commission or Zoning Administrator shall hold a duly-noticed public hearing on an application for a conditional use permit or variance consistent with the requirements of Chapter 248.
- B. Multiple Applications. When applications for multiple conditional use permits or variances on a single site are filed at the same time, the Director may schedule a combined public hearing.

241.10 Required Findings

An application for a conditional use permit or variance may be approved or conditionally approved if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or Zoning Administrator finds that:

- A. For All Conditional Use Permits.
 - 1. The establishment, maintenance and operation of the use will not be detrimental to the general welfare of persons working or residing in the vicinity nor detrimental to the value of the property and improvements in the neighborhood;
 - 2. The granting of the conditional use permit will not adversely affect the General Plan;
 - 3. The proposed use will comply with the provisions of the base district and other applicable provisions in Titles 20-25 and any specific condition required for the proposed use in the district in which it would be located.

- B. For Variances.
1. The granting of a variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
 2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.
 3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.
 4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.
- C. Mandatory Denial. Failure to make all the required findings under (A) or (B) shall require denial of the application.

241.12 Conditions of Approval

In approving a conditional use permit or variance, conditions may be imposed as necessary to:

- A. To make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; or
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

241.14 Effective Date; Appeals

A conditional use permit or variance shall become effective ten days after action by the Planning Commission or Zoning Administrator, unless appealed in accord with Chapter 248.

241.16 Time Limit; Transferability, Discontinuance; Revocation

- A. Time Limit. A conditional use permit or variance shall become null and void one year after its date of approval or at an alternative time specified as a condition of approval after its date of approval unless:
 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
 2. The use is established; or
 3. The conditional use permit or variance is extended.

- B. Transferability. The validity of a conditional use permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor applies to the Director for a transfer. No notice or public hearing on a transfer shall be required.
- C. Discontinuance. A conditional use permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.
- D. Revocation. A conditional use permit that is exercised in violation of a condition of approval or a provision of this ordinance may be revoked, as provided in Section 249.06.
- E. Extension of Time. A conditional use permit or variance may be extended by the Director for a one year period without notice or public hearing, if the findings required by Section 241.10 remain valid.

241.18 Changed Plans; New Application

- A. Changed Plans. A request for changes in conditions of approval of a conditional use permit or variance, or a change to development plans that would affect a condition of approval shall be treated as a new application. A request for changes to plans which will not affect a condition of approval may be approved by the Director if the change is not substantial, use of property remains the same, the revision results in an improved development, and the density remains the same. Notice of the Director’s approval shall be posted and distributed to the Planning Commission and the City Council within 48 hours of such decision.
- B. New Application. If an application for a conditional use permit or variance is disapproved, no new application for the same, or substantially the same, conditional use permit or variance shall be filed within one year of the date of denial of the initial application, unless the denial is made without prejudice.

241.20 Temporary Use Permits

A temporary use permit authorizing certain temporary use classifications, as defined in Chapter 204 and as listed in the land-use controls for the base districts in which the use will be located, and use of manufactured homes for temporary construction offices, shall be subject to the following provisions:

- A. Application and Fee. A completed application form and the required fee shall be submitted to the Director. The Director may request any other plans and materials necessary to assess the potential impacts of the proposed temporary use.
- B. Director. The Director shall act on temporary uses held for four or fewer consecutive days that do not include live entertainment. The Director shall approve, approve with conditions, or deny a complete application within a reasonable time. No notice or public hearing shall be required for uses which are held for 4 or fewer consecutive days. Such uses shall be approved with a temporary activity permit. (3528B-2/02, 3712-6/05)

- C. Duties of the Zoning Administrator. The Zoning Administrator shall act on temporary uses held for more than four days or that include live entertainment. The Zoning Administrator shall approve, approve with conditions, or deny a complete application within a reasonable time. (3528B-2/02, 3712-6/05)
- D. Required Findings. The application shall be approved as submitted, or in modified form, if the Director or Zoning Administrator finds: (3528B-2/02)
1. That the proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the General Plan, and if located within the coastal zone, consistent with the policies of the Local Coastal Program, and the provisions of this chapter; and (3334-6/97)
 2. That approval of the application will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare.
- E. Conditions of Approval. In approving a temporary use permit, the Director or the Zoning Administrator may impose reasonable conditions necessary to: (3528B-2/02)
1. To be consistent with the General Plan and in the coastal zone to be consistent with the Local Coastal Program; (3334-6/97)
 2. Protect the public health, safety, and general welfare; or
 3. Ensure operation and maintenance of the temporary use in a manner compatible with existing uses on adjoining properties and in the surrounding area.
- F. Bond for Temporary Uses. A \$500 cash bond shall be required to guarantee removal of any structure, clean up of site upon termination of the temporary use, and to guarantee maintenance of the property. A \$1,000 cash bond shall be required for a subdivision sales office and each model home to guarantee compliance with all provisions of Titles 17 and 20 through 25. (3528B-2/02)
- G. Effective Date; Duration; Appeals. An approved temporary (conditional) use permit shall be effective 10 days after the date of its approval, unless appealed in accord with Chapter 248. The permit shall be valid for a specified time period not to exceed 30 days unless a longer period is granted by the Zoning Administrator. A temporary use permit shall lapse if not used within the dates approved and may be revoked by the Zoning Administrator effective immediately upon verbal or written notice for violation of the terms of the permit. Verbal notice shall be confirmed by written notice mailed to the permit holder within 48 hours. The Zoning Administrator may approve changes in a temporary use permit. (3528B-2/02)

241.22 Waiver of Development Standards

- A. Standards Which Can be Waived. The Director may waive development standards for setbacks, open space, separation between buildings, height of buildings or fences, site coverage and landscaping without a conditional use permit or a variance, only if he finds that such a waiver improves project design and does not exceed 10 percent deviation. No other standards shall be subject to this waiver provision. (3528B-2/02)

- B. Time Limit. A waiver shall become null and void six months after date of approval.
- C. Extensions. A waiver shall not be extended for more than one year unless the applicant demonstrates that no circumstances relevant to the approval of the waiver, including other development in the neighborhood, have changed from the time of approval.
- D. Limitations. A waiver may not be granted if the waiver would in any way degrade the environment or result in any changes to classification of land use or density. Also, projects not otherwise subject to discretionary review (i.e., conditional use permit, variance, coastal development permit, or subdivision approval) may not apply for waiver. (3712-6/05)
- E. Decisions and Appeals. The Director's decision may be appealed in accord with Chapter 248. The Director's decision shall be distributed to the City Council, Planning Commission, and Zoning Administrator within 48 hours of such decision.

241.24 Neighborhood Notification

When no entitlement is required and the use requires such notification as stated in the Zoning and Subdivision Ordinance or Downtown Specific Plan, the review and approval process shall include an Administrative Permit and notification to property owners and tenants within a 300 foot radius of the subject property. (3712-6/05)

Notification requirements are as follows: (3712-6/05)

- A. Notification. Ten (10) working days prior to submittal for a building permit or certificate of occupancy or approval for initial establishment of the use, the applicant shall notice property owners and tenants by first class mail. (3712-6/05)
- B. Notice of Application shall include the following: (3712-6/05)
 1. Name of Applicant. (3712-6/05)
 2. Location of planned development or use, including address. (map is optional) (3712-6/05)
 3. Complete description of the proposed development or use such that there is full disclosure in the notice. (3712-6/05)
 4. Planning Department phone number and address of City Hall where plans may be reviewed. (3712-6/05)
 5. The date by which any comments must be received in writing by the Planning Department and City appeal procedures. (3712-6/05)
 6. Planning Department shall receive entire list including name and address of those receiving the mailing. (3712-6/05)
- C. Notice of Action. The Director's decision shall be made in writing with information regarding the appeal process and sent to the applicant and the City Council on the next business day and posted on the City's website. (3712-6/05)
- D. Appeals. The Director's decision may be appealed in accord with Chapter 248. (3712-6/05)