**SUPPLEMENT NO. 22**

**INSERTION GUIDE**

**PLEASANTON PLANNING AND ZONING CODE**

**July 2018**

**(Covering Ordinances through 2192)**

This supplement consists of reprinted pages replacing existing pages in the Pleasanton Planning and Zoning Code.

Remove pages listed in the column headed "Remove Pages" and in their places insert the pages listed in the column headed "Insert Pages."

This Guide for Insertion should be retained as a permanent record of pages supplemented and should be inserted in the front of the code.

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## PREFACE

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# Title 17

# PLANNING AND RELATED MATTERS

**Chapters:**


**17.04 Condominium Conversions**

**17.08 Flood Damage Prevention**

**17.12 Geologic Hazards**

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### 17.12.080 Report—Consideration.

The geologic report prepared pursuant to this chapter shall be used by the appropriate city board, commission, council or staff person required to pass upon the new real estate development or structure for human occupancy to aid it in making its decision. The approving body may approve, deny or impose necessary conditions required to protect the public health, safety and general welfare from geologic hazards. (Prior code § 2-19.08)

### 17.12.090 Appeal.

The decision of the approving board, commission or staff person may be appealed pursuant to the applicable appellate provisions set forth in this code. (Prior code § 2-19.09)

### 17.12.100 Additional regulations.

In addition to the regulations set forth in this chapter, the department of housing and community development, with the consent of the city council, may adopt such standards or regulations as are necessary to protect the public from seismic hazards. These standards or regulations may be more stringent than, but shall not be in conflict with, the provisions of any policies and criteria adopted by the State Mining and Geology Board pursuant to Section 2623 of the Public Resources Code of the state, except where more stringent standards or regulations have been adopted from time to time by the state Mining and Geology Board, shall apply within the city. (Prior code § 2-19.10)

# Chapter 17.14

# WATER EFFICIENT LANDSCAPING

**Sections:**

**17.14.002 Purpose and intent.**
**17.14.006 Administrative regulations for water efficient landscaping.**

## 17.14.002 Purpose and intent.

Implement and apply the California Model Water Efficient Landscape Ordinance (WELO), as amended, and the Bay Friendly Basics Landscape Guidelines of the Alameda County Waste Management Authority (BFB), as amended, to applicable projects in the city for water conservation purposes. (Ord. 2192 § 2, 2019)

## 17.14.006 Administrative regulations for water efficient landscaping.

The city manager, in consultation with the city landscape architect, shall promulgate and implement administrative regulations for water efficient landscaping based on WELO, BFB and city policies for specified projects and development. (Ord. 2192 § 2, 2019)

# Chapter 17.16

# TREE PRESERVATION*

**Sections:**


**17.16.003 Purpose and intent.**
**17.16.006 Definitions.**
**17.16.009 Exceptions.**
**17.16.010 Permit—Required.**
**17.16.020 Permit—Procedure.**
**17.16.025 Significant impact—Heritage tree board of appeals hearing.**
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**17.16.080 Pruning and maintenance.**
**17.16.090 Public utilities.**
**17.16.100 Insurance requirements.**
**17.16.110 Fines and penalties.**
**17.16.120 Additional provisions.**


* **Prior code history:** Prior Code §§ 2-17.02-2-17.12; Ords. 1152, 1653.

## 17.16.003 Purpose and intent.

The city recognizes that preservation of trees enhances the natural scenic beauty, sustains the long-term potential increase in property values which encourages quality development, maintains the ecology, moderates the effect of extreme temperatures, prevents the erosion of topsoil, helps create an identity and quality, which enhances the attractiveness of the city to visitors and increases the oxygen output of the area which is needed to combat air pollution. For these reasons the city council finds that in order to promote the public health, safety and general welfare of the city while at the same time recognizing individual rights to develop and maintain private property in a manner which will not be prejudicial to the public interest it is necessary to enact regulations controlling the removal and preservation of heritage trees within the city. However, the city council also recognizes that under certain circumstances heritage trees may properly be removed. Those circumstances include where heritage trees are dangerous; are dead or diseased; are so situated on undeveloped land that their preservation would preclude feasible development; are so abundant their removal would not destroy the area's natural beauty or ecology or cause erosion; or have a significant impact on the property. It is the intent of this chapter to preserve as many heritage trees as possible throughout the city through staff review and the development review process. (Ord. 2120 § 1, 2015; Ord. 1737 § 1, 1998)

## 17.16.006 Definitions.

For the purpose of this chapter, certain words and terms used in this chapter are defined as follows:

A. "Heritage tree" means a tree of any species or origin which meets any of the following:

1. Any single-trunked tree with a circumference of 55 inches or more measured four and one-half feet above ground level;
2. Any multi-trunked tree of which the two largest trunks have a circumference of 55 inches or more measured four and one-half feet above ground level;
3. Any tree 35 feet or more in height;

4. Any tree of particular historical significance specifically designated by official action;

5. A stand of trees, the nature of which makes each dependent upon the other for survival or the area's natural beauty.

B. "Director" means the community development director or the director's designated representative.

C. "Topping" means heading back of the crown and/or creating large stubs without regard to form.

D. "Certified consulting arborist" means an arborist who is registered with the International Society of Arboriculture and approved by the director.

E. "Applicant" means the owner of improved property submitting an application to remove a heritage tree(s) located upon said property. Only the property owner may apply to remove a heritage tree(s) or appeal the director's decision.

F. "Significant impact" means an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject tree species, as well as the size of the tree relative to the property, shall be considered. Normal maintenance, including, but not limited to, pruning, and leaf removal and minor damage to paving shall not be considered when making a determination of significant impact. (Ord. 2165 § 1, 2017; Ord. 2120 § 1, 2015; Ord. 2019 § 1, 2011; Ord. 2000 § 1, 2009; Ord. 1737 § 1, 1998)

**17.16.009 Exceptions.**

The provisions of this chapter shall not apply to fruit or nut trees when part of an orchard, the produce of which is used for commercial purposes. (Ord. 1737 § 1, 1998)

**17.16.010 Permit—Required.**

A. No person shall remove, destroy or disfigure, any heritage tree growing within the city without a permit except as provided in this chapter.

B. Normal maintenance pruning of heritage trees shall not require a permit but shall in all cases be in conformance with the guidelines in Section 17.16.080. Pruning which, in the reasonable opinion of the director, varies from these guidelines shall be subject to fines and penalties as provided in Section 17.16.110 of this chapter. (Ord. 2165 § 1, 2017; Ord. 2019 § 1, 2011; Ord. 1737 § 1, 1998)

**17.16.020 Permit—Procedure.**

A. Except as provided in Section 17.16.050 of this chapter, any person desiring to remove any heritage tree in the city shall make application to the director. Said application shall contain the number, species, size and location of heritage trees to be removed and a brief statement of the reason for removal as well as any other pertinent information the director may require. The permit, if granted, shall entitle the applicant to remove only those heritage trees designated by permit.

B. The director may visit and inspect the property, the heritage tree or trees in question, and the surrounding area and shall ascertain the following:

1. The condition of the heritage tree with respect to disease, general health, damage, public nuisance (seasonal leaf drop and release of seed pods is not a public nuisance), danger of falling, proximity to existing or proposed structures, interference with utility service and whether or not the heritage tree acts as host for a plant which is parasitic to another species of tree which is in danger of being exterminated by the parasite;

2. Whether the tree has a significant impact on the property;

3. The necessity to remove any heritage tree in order to construct any proposed improvements to allow for the economic enjoyment of the property;

4. The number of existing trees in the neighborhood or area on improved property and the effect removal would have upon the public health, safety, general welfare of residents and upon the property value and beauty of the area;
5. The topography of the land upon which the heritage tree or trees are situated and the effect of removal thereof upon erosion, soil retention and diversion or flow of surface waters;
6. Good forestry practices, i.e., the number of healthy trees that a given parcel of land will support.

C. The director may grant a permit for removal of heritage tree(s) if director determines the criteria of subsection B.1, 3, 4, 5 or 6, above, are satisfied. The director may refer any application to any city department or commission for review and recommendation. (Ord. 2192 § 2, 2019; Ord. 1737 § 1, 1998)

**17.16.025 Significant impact—Heritage tree board of appeals hearing.**

A. Where the applicant applies to remove a heritage tree on grounds that it has a significant impact on the property as provided in Section 17.16.020.B.3, the heritage tree board of appeals shall conduct a hearing. The hearing shall be set not less than 15 days and not more than 60 days from the date the application is filed.

B. The city clerk shall set a date for hearing and shall notify all interested parties and property owners within 300 feet of the property on which the tree(s) at issue are located. The director shall submit a report to the heritage tree board of appeals, along with any departmental recommendations.

C. The heritage tree board of appeals shall conduct a hearing on the application. Following the hearing of any such application, the heritage tree board of appeals may approve the application, with or without conditions, or may deny the application. The action of the heritage tree board of appeals on any such application shall be final and conclusive. (Ord. 2192 § 2, 2019; Ord. 2019 § 1, 2011; Ord. 1737 § 1, 1998)

**17.16.030 Action by director—Findings.**

A. The director shall issue a permit to remove a heritage tree or trees if it is determined that one of the following conditions exists:
1. The heritage tree is in such a dangerous or hazardous condition as to threaten or endanger the safety of people, structures, other property or other heritage trees;
2. The heritage tree has a significant impact on the property;
3. The heritage tree is dead, dying or diseased and good forestry practices cannot be reasonably undertaken to preserve the tree; or
4. Where the heritage tree in question is not diseased or hazardous, the removal of the tree is consistent with the purpose and intent of this chapter and in keeping with the health, safety and general welfare of the community.

B. The director shall notify the applicant in writing of the determination giving the reason for the application's approval or denial. (Ord. 1737 § 1, 1998)

**17.16.040 Appeals not involving new development.**

A. For decisions not involving new property development, the director's decision may be appealed only by the applicant. Such appeal must be submitted in writing to the city clerk within 20 days of the decision, and shall briefly state facts and the grounds of the appeal and be signed by the applicant filing the appeal.

B. Appeals shall be heard by the heritage tree board of appeals.

C. The city clerk shall set a date for hearing and shall notify all interested parties and property owners within 300 feet of the tree(s) at issue. The director shall submit a report to the heritage tree board of appeals, along with any departmental recommendations.

D. The heritage tree board of appeals shall conduct a hearing on the appeal. Following the hearing of any such appeal, the heritage tree board of appeals may affirm, reverse or modify the action of the director and may take any

action thereon which would have been authorized in the first instance. The action of the heritage tree board of appeals on any such appeal shall be final and conclusive. (Ord. 2165 § 1, 2017; Ord. 2019 § 1, 2011; Ord. 1737 § 1, 1998)

### 17.16.043 Heritage tree board of appeals—Established.

There is created and established a board of appeals consisting of three members, two planning commissioners and one park and recreation commissioner appointed by their respective commissions. The board shall elect a chairperson. The director shall be an ex officio member of said board and shall serve as secretary. The board shall adopt reasonable rules and regulations for conducting its business. (Ord. 1737 § 1, 1998)

### 17.16.046 Heritage tree board of appeals—Duties.

The board of appeals shall:

A. Hold a hearing within 60 days after the city's receipt of appeal, to hear such testimony by any department of the city, the applicant who filed the appeal, or any interested party.

B. Make a decision at the hearing (unless the hearing is continued) upholding, reversing or modifying the director's decision. The decision of the board shall be final. (Ord. 2179 § 2, 2018; Ord. 2019 § 1, 2011; Ord. 1737 § 1, 1998)

### 17.16.050 New property development.

A. Any person desiring to remove one or more trees on any property in the city which is related to the development of such property requiring city approval or where any tree may be affected by a proposed development shall include in the application to the appropriate city reviewing body as part of the regular application, the following:

1. Depending on the scope of the development, the director may require the applicant to provide a tree survey plan, including all trees which will be affected by the new development. The survey, noting all trees six inches in diameter and greater, shall specify the precise location of trunk and dripline, size, health and species of all existing trees on the property with a special notation of those classified as a heritage tree;

2. Depending on the scope of the development, the director may require the applicant to provide a tree report by a certified consulting arborist. The tree report, based on the findings of the tree survey plan and other necessary information, shall be used to determine the health of existing trees, the effects of the proposed development upon the trees, recommendations for any special precautions necessary for their preservation and shall also indicate which trees are proposed for removal;

   a. The director may require that the tree report include an appraisal of the condition and replacement value of all trees affected by the development. The appraisal of each tree shall recognize the location of the tree in the proposed development. The appraisal shall be performed in accordance with the current edition of the "Guide for Plant Appraisal" under the auspices of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraiser shall be subject to the director's approval;

3. The tree survey plan and tree report (if any) shall be forwarded to the director, who shall indicate in writing which trees are recommended for preservation using the same standards set forth in Section 17.16.020 of this chapter. This report shall be made part of the staff report to the city reviewing body upon its consideration of the application for new property development;

4. The city reviewing body through its site and landscaping plan review shall endeavor to preserve all trees recommended for preservation by the director. The city reviewing body may determine that any of the trees recommended for preservation should be removed, if there is evidence submitted to it, that due to special site grading or other unusual characteristics associated with the property, the preservation of the tree(s) would significantly preclude feasible development of the property;

a. If trees are approved for removal, mitigation may include, but is not limited to: (i) replacement planting with particular tree species, sizes and numbers; (ii) payment towards the city's urban forestry fund for the appraised value of all trees removed from the site less the cost of installed trees, as determined by the director;

5. Approval of final site or landscape plans by the appropriate city reviewing body indicating which trees are to be removed shall constitute the approval and permit for the purpose of this chapter.

B. Depending on the scope of the development, the director may require that prior to acceptance of subdivision improvements or final inspection, the developer shall submit to the director a final tree report to be performed by a certified consulting arborist. This report shall consider all trees that were to remain within the development. The report shall note the trees' health in relation to the initially reported condition of the trees and shall note any changes in the trees' numbers or physical conditions. The applicant will then be responsible for the loss of any tree not previously approved for removal. For trees which were not previously approved for removal but were in fact removed during construction, the developer shall pay a fine in the amount equal to the appraised value of the subject tree. The applicant shall remain responsible for the health and survival of all trees within the development for a period of one year following acceptance of the public improvements of the development.

C. Prior to the issuance of any permit allowing construction to begin, the applicant shall post cash, bond or other security satisfactory to the director, in the penal sum of greater of either $5,000.00 or the appraised value for each tree required to be preserved, up to a maximum of $100,000. The cash, bond or other security shall be retained for a period of one year following acceptance of the public improvements for the development or final inspection, as applicable, and shall be forfeited in an amount equal to the greater of either $5,000.00 per tree or the appraised value of the tree as a civil penalty in the event that a tree or trees required to be preserved are removed, destroyed or disfigured. The director may allow for an early release all or a portion of such cash, bond or other security in director's reasonable discretion.

D. An applicant with a proposed development which requires underground utilities shall avoid the installation of said utilities within the dripline of existing trees whenever possible. In the event that this is unavoidable, all trenching shall be done by hand, taking extreme caution to avoid damage to the root structure. Work within the dripline of existing trees shall be supervised at all times by a certified consulting arborist.

E. Any decision by a city reviewing body under this section may be appealed pursuant to Chapter 18.144. (Ord. 2192 § 2, 2019; Ord. 2165 § 1, 2017; Ord. 1737 § 1, 1998)

### 17.16.060 Emergency action.

A person may remove or prune a heritage tree without a permit if there is an emergency caused by a heritage tree being in a hazardous or dangerous condition requiring immediate action for the safety of structures or human life. In such event, the director shall be notified at the earliest opportunity in order to confirm the emergency situation. If the director determines that the situation was not an emergency requiring immediate action, the person removing or damaging the heritage tree shall be subject to fines and penalties set forth in Section 17.16.110 of this chapter. (Ord. 1737 § 1, 1998)

### 17.16.070 Protection of existing trees.

All persons shall comply with the following precautions:

A. Prior to the commencement of construction, install a sturdy fence at the dripline of any tree which will be affected by the construction and prohibit any storage of construction materials or other materials inside the fence. The dripline shall not be altered in any way so as to increase the encroachment of the construction.

B. Prohibit excavation, grading, drainage and leveling within the dripline of the tree unless approved by the director.

C. Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline or in drainage channels, swales or areas that may lead to the dripline.

D. Prohibit the attachment of wires, signs and ropes to any heritage tree.

E. Design utility services and irrigation lines to be located outside of the dripline when feasible.

F. Retain the services of a certified consulting arborist for periodic monitoring of the project site and the health of those trees to be preserved. The certified consulting arborist shall be present whenever activities occur which

**17.38.140 Conflict of interest.**

The following individuals are ineligible to purchase or rent a target unit: (A) city employees and officials who have policy making authority or influence regarding city housing programs, and their immediate family members; (B) the project applicant and its officers and employees and their immediate family members; and (C) the project owner and its officers and employees and their immediate family members. (Ord. 2082 § 2, 2013)

# Chapter 17.40

# AFFORDABLE HOUSING FEES

**Sections:**


**17.40.010 Purpose.**
**17.40.020 Definitions.**
**17.40.030 Affordable housing fee required.**
**17.40.040 Exemptions.**
**17.40.050 Reduction of fee—Commercial, office or industrial project.**
**17.40.060 Commercial, office or industrial projects—Construction of lower-income housing.**
**17.40.070 Annual adjustment of the fee.**
**17.40.080 Establishment of affordable housing fund.**
**17.40.090 Use of affordable housing fund.**
**17.40.100 Time of payment.**


## 17.40.010 Purpose.

An affordable housing fee (previously known as the lower-income housing fee) is established as set forth in this chapter in order to assist in meeting the affordable and moderate-income housing goals as established in the general plan. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

## 17.40.020 Definitions.

As used in this chapter:

"Commercial office or industrial development project" means any construction of a new commercial, office or industrial structure, the addition to any existing commercial, office or industrial structure, or the conversion of an existing commercial, office or industrial structure to a use classification capable of employing additional employees.

"Household of moderate-income" means a household comprised of those individual or families with incomes greater than 80 percent, but less than 120 percent, of the median family income for the Standard Metropolitan Statistical Area, defined as Alameda and Contra Costa Counties for a family of four persons, adjusted up or down for larger or smaller household sizes (PMSA Median).

"House of lower-income" means a household composed of those individuals or families with incomes no greater than 80 percent of the median family income for the Standard Metropolitan Statistical Area, defined as Alameda and Contra Costa Counties for a family of four persons, adjusted up or down for larger or smaller household sizes (PMSA Median).

"Lower-income housing units" means new or rehabilitated units to be used by households of lower-income for at least 25 years and the total housing cost for each unit shall not exceed 30 percent of household income.

"Moderate-income housing units" means new or rehabilitated units to be used by households of moderate-income for at least 25 years and the total housing cost for each unit shall not exceed 30 percent of household income.

"Rehabilitated unit" means any housing unit not meeting Uniform Building Code requirements for occupancy which is improved so as to meet those requirements.

"Residential development project" means the construction of a new housing unit. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

## 17.40.030 Affordable housing fee required.

A. All residential and commercial office or industrial development projects not otherwise exempt shall pay a affordable housing fee as established by separate city council resolution and which fee shall be set forth in the city's fees and charges appendix.

If additional floor area is constructed for, or converted to, commercial, industrial or office use, the fee shall be applicable only to the square footage of the floor area added or to that portion of the square footage of the floor area converted for which the fee has not been paid.

B. The city council may adjust the fee in consideration of on-site programs promoting lower-income housing such as the dedication of land suitable for lower-income housing. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.040 Exemptions.**

A. The following are exempt from the affordable housing fee:

1. All units within a residential development project when the project has a minimum of 15 percent lower-income housing units;
2. Those lower-income housing units in a residential development project with less than 15 percent lower-income housing units;
3. Moderate-income housing units in residential development projects;
4. Second units and accessory dwelling units as those terms are used in Section 65852.2 of the Government Code;
5. Reconstruction or other new development on a site when such reconstruction replaces an equal number of square feet of floor area, as defined in the Uniform Building Code, when the use is similar, and when such reconstruction occurs within two years from the time the previous structure on the site was demolished;
6. Churches.

B. The project developer shall enter into a regulatory agreement with the city in order for a project to qualify for an exemption by the inclusion of lower-income or moderate-income housing units. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.050 Reduction of fee—Commercial, office or industrial project.**

A. The city council may reduce the required fee for a commercial, office or industrial development project when the project developer can demonstrate: (1) that the proposed use will generate substantially fewer workers than the uses which have established the fee; and (2) that the building design is unable to house another use without substantial renovation. Examples of such uses are public utility facilities, exclusive storage buildings, etc.

B. In the event such buildings are renovated to house another use, the fee then applicable shall be due at that time.

**17.40.060 Commercial, office or industrial projects—Construction of lower-income housing.**

Commercial, office or industrial development projects may construct lower-income housing to fulfill the requirements of this chapter in accordance with this section.

A. Lower-income housing proposed to offset the requirements of this chapter must be proposed in conjunction with the commercial, office or industrial development project which would give rise to the fee and must be approved by the city council in offsetting otherwise required affordable housing fees.

B. For lower-income housing constructed on lands designated for other than residential development in the general plan as of the effective date of the ordinance codified in this chapter, the project developer shall be given a credit, for purposes of offsetting the affordable housing fee otherwise required, in an amount established by separate city council resolution and which credit amount shall be set forth in the city's fees and charges appendix.

C. For lower-income housing constructed on lands designated for residential development in the general plan as of the effective date of the ordinance codified in this chapter, for each lower-income housing unit constructed beyond 15 percent of the residential development project, the project developer shall be given a credit for purposes of off-setting the affordable housing fee otherwise required, in an amount established by separate city council resolution and which credit amount shall be set forth in the city's fees and charges appendix.

D. In the event the lower-income housing constructed by the developer of a commercial, office or industrial development project creates an offset of the affordable housing fee greater than the total fee required by the development project, the developer may apply the difference to other sites then owned by the developer. This transfer shall be so noted in the regulatory agreement accompanying the project. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.070 Annual adjustment of the fee.**

The affordable housing fee shall annually be revised effective January 1st of each year, commencing on January 1, 1992, by the percentage increase or decrease in the Consumer Price Index for San Francisco/Oakland region. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.080 Establishment of affordable housing fund.**

A. All fees generated pursuant to this chapter shall be deposited into the affordable housing fund, and any property interest or other value contributed, including interest earned by the fund, shall be segregated and used exclusively for the purposes provided for herein.

B. The city manager shall make a written annual report to the city council regarding the administration of the affordable housing fund, and shall present such annual report at a regular meeting of the city council.

C. Pursuant to Government Code Section 66000, et seq., the city shall make findings once each fiscal year with respect to any portion of the fees remaining unexpended or uncommitted in its account five or more years after the deposit of the fees to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this section need only be made for moneys in the possession of the city and need not be made with respect to letters of credit, bonds or other instruments taken to secure payment of the fee at a future date.

D. Any refunds shall be made pursuant to Government Code Section 66001. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.090 Use of affordable housing fund.**

A. Any moneys generated by this chapter shall be used in accordance with and in support of activities to implement the city's adopted housing element. Activities may include, but are not limited to, land acquisition, construction, rehabilitation, subsidization, and counseling or assistance to other governmental entities, private organizations, or individuals to expand housing opportunities to lower-income households.

B. Moneys in the affordable housing fund may be disbursed, hypothecated, collateralized, or otherwise employed for the purposes set forth herein. These purposes include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, development loan funds, participation leases, loans to develop affordable housing or other public/private partnership arrangements. The affordable housing fund may be used for the benefit of both rental or owner-occupied housing.

C. When the city uses affordable housing fund moneys to construct or assist in the construction of lower-income units, the city may establish the rules which will apply to occupancy of said units. It is the intention of this chapter and the general plan that such units be made available on a priority basis to Pleasanton residents and workers.

D. The city council may use affordable housing fund moneys for moderate-income housing as determined necessary and desirable to meet general plan goals and policies. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

**17.40.100 Time of payment.**

Affordable housing fees shall be paid at the time of issuance of a building permit for the residential unit and/or for the commercial, office or industrial development project giving rise to the fee, unless otherwise determined by the city. (Ord. 2192 § 2, 2019; Ord. 1488 § 1, 1990)

of an affordable housing proposal for projects approved prior to the effective date hereof and/or for projects that have undergone considerable public review during which affordable housing issues were addressed.

The affordable housing proposal shall be reviewed by the city's housing commission at a properly noticed meeting open to the public. The housing commission shall make recommendations to the city council either accepting, rejecting or modifying the developer's proposal and the utilization of any incentives as outlined in this chapter. The housing commission may also make recommendations to the planning commission regarding the project as necessary to assure conformance with this chapter.

Acceptance of the applicant's affordable housing proposal is subject to approval by the city council, which may direct the city manager to execute an affordable housing agreement in a form approved by the city attorney. The city manager or his or her designee shall be responsible for monitoring the sale, occupancy and resale of inclusionary units. (Ord. 2000 § 1, 2009; Ord. 1818 § 1, 2000)

### 17.44.100 Conflict of interest.

The following individuals are ineligible to purchase or rent an inclusionary unit: (a) city employees and officials (and their immediate family members) who have policymaking authority or influence regarding city housing programs; (b) the project applicant and its officers and employees (and their immediate family members); and (c) the project owner and its officers and employees (and their immediate family members). (Ord. 1818 § 1, 2000)

### 17.44.110 Enforcement.

The city manager is designated as the enforcing authority. The city manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. The provisions of this chapter shall apply to all agents, successors and assigns of an applicant. No building permit or final inspection shall be issued, nor any development approval be granted which does not meet the requirements of this chapter. In the event that it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in an inclusionary unit, the city may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the city in the event the tenant cannot be located, any excess rents charged. (Ord. 1818 § 1, 2000)

### 17.44.120 Appeals.

Any person aggrieved by any action or determination of the city manager under this chapter, may appeal such action or determination to the city council in the manner provided in Chapter 18.144 of this code. (Ord. 1818 § 1, 2000)

# Chapter 17.48

# RIGHT TO FARM

**Sections:**

**17.48.010 Findings and policy.**
**17.48.020 Definitions.**
**17.48.030 Nuisance.**
**17.48.040 Resolution of disputes.**
**17.48.050 Role of agricultural advisory committee.**
**17.48.060 Procedures.**

## 17.48.010 Findings and policy.

A. The city council finds that commercially viable agricultural land exists within the city, and that it is in the public interest to enhance and encourage economically viable agricultural operations within the city. The city council also finds that residential and commercial development adjacent to certain agricultural lands often leads to restrictions on agricultural operations to the detriment of the adjacent agricultural uses and the economic viability of the city's agricultural industry as a whole.

B. The purposes of this chapter are to promote public health, safety and welfare and to support and encourage continued agricultural operations. This chapter is not to be construed as in any way modifying or abridging state law as set forth in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provisions of state law relative to nuisances, rather it is only to be utilized in the interpretation and enforcement of the provision of this code and city regulations and provide a forum to discuss and resolve disputes to avoid litigation.

C. This chapter is to promote a good neighbor policy between agricultural and nonagricultural property owners by providing owners of property adjacent to or near agriculture operations a forum to discuss problems resulting from agricultural operations including, but not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through a discussion forum, property owners will understand the impact of living adjacent to or, near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas and agricultural operations. (Ord. 1633 § 1, 1994)

## 17.48.020 Definitions.

A. "Agricultural land" shall mean all that real property within the city of Pleasanton currently zoned in the A (Agricultural) Zoning District or in another zoning district and may be used for "agricultural operations" as defined herein.

B. "Agricultural operation" shall mean and include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, floriculture, nursery products, timber or apiculture, the raising of livestock, poultry and any commercial agricultural practices performed as incidental to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market, consistent with all city regulations. (Ord. 1633 § 1, 1994)

## 17.48.030 Nuisance.

No present or future agricultural operation or any of its appurtenances conducted or maintained for commercial purposes and in a manner consistent with proper and accepted customs and standards of the agricultural industry on agricultural land shall become or be a nuisance, private or public, due to any changed condition of the use of adjacent land in or about the locality thereof, provided that the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation and its appurtenances or if the agri-

vertical height under the projection shall be at least 12 feet, and the clear horizontal distance between the property line and any supporting structure shall be at least seven feet. At least 85 percent of the area and 85 percent of the length of a vertical plane through a line of supporting columns shall be open and free of obstructions. Space over a public right-of-way permitted by this section may be enclosed and may be occupied by a permitted use or a conditional use and shall be included in computing basic floor area if enclosed. Supports located in a public right-of-way shall be subject to the provisions of Chapter 13.04 of this code. (Prior code § 2-5.42)

### 18.84.140 Height limits—Measurement.

Except as otherwise noted in this chapter, the height of a structure shall be measured vertically from the average elevation of the natural grade of the ground covered by the structure to the highest point of the structure or to the coping of a flat roof, to the deck line of a mansard roof, or to the mean height between eaves and ridges for a hip, gable, or gambrel roof. The height of an accessory structure shall be measured from the lowest grade adjacent to the structure to the highest ridge or top of the structure. The height of a fence or a wall used as a fence shall be measured from the higher finished grade adjoining the fence or wall. The average height of a wall of a structure shall be deemed the height of the wall. (Ord. 2038 § 1, 2012; prior code § 2-5.43(1))

### 18.84.150 Height limits—Exceptions.

A. In a C-C, I-G, or Q district, the planning commission may permit structures exceeding the heights prescribed in Table 18.84.010 of this chapter, after finding that the city will be reequipped to provide adequate fire protection and that adjoining properties will not be adversely affected. A decision by the planning commission may be appealed to the city council as prescribed in Section 18.144.020 of this title.

B. Towers, spires, cupolas, chimneys, penthouses, water tanks, fire towers, flagpoles, monuments, scenery lofts, and similar structures; residential radio and television aerials and antennas; receive-only antennas; and necessary mechanical equipment appurtenances covering not more than 10 percent of the ground area covered by the structure may be erected to a height of not more than 65 feet or not more than 25 feet above the height limit prescribed by the regulations for the district in which the site is located, whichever is less, with design review approval specified under Chapter 18.20 of this title.

C. The height and location of commercial radio and television aerials, antennas, and transmission towers shall be subject to design review approval specified under Chapter 18.20 of this title, and shall be based on a visual analysis demonstrating that views of the aerial/antenna/tower are minimized or are substantially screened from residential land uses, the I-580 and/or I-680 rights-of-way, or other sensitive land uses such as parks, schools, or major streets, and shall be based on an engineering analysis justifying the height of the proposed aerial/antenna/tower.

   Any parabolic dish mounted on the aerial/antenna/tower shall be less than two feet in diameter. The base of the aerial/antenna/tower and any switching facility located at the base that is visible to the public shall be architecturally treated and/or screened from view utilizing on- and/or off-site vegetation or other approved screening mechanism.

D. Wire-carrying power distribution poles and transmission towers and communication poles located in any zoning district shall not be subject to the height limits prescribed in the district regulations.

E. In the R-1 district and the RM district, second units located above a garage may exceed the 15-foot height limit for accessory structures. Second units constructed above a detached garage in those districts may not exceed 25 feet in height as measured from the lowest grade adjacent to the structure to the highest ridge or top of the structure. (Ord. 2080 § 2, 2013; Ord. 1821 § 1, 2001; Ord. 1743, 1998; Ord. 1600 § 2, 1993; prior code § 2-5.43(2))

### 18.84.160 Accessory structures—Location and yards.

A. In an R district, Class I and Class II accessory structures may be located in a required rear yard or a required interior side yard within 35 feet of the rear lot line, provided that the distances to lot lines shall not be less than prescribed in Section 18.84.010 of this chapter, except that Class II accessory structures may be constructed to the property line, but not attached to the fence, and provided that in the aggregate no more than 500 square feet or 10 percent of the area of the required rear yard, whichever is greater, shall be covered by structures other than ga-

rages or carports in an RM-2,500, RM-2,000 or RM-1,500 district. Accessory structures located in required side or rear yards shall not be closer to a main structure or any other accessory structure than the distance prescribed in Section 18.84.100 of this chapter. The minimum distance between an accessory structure containing a habitable room and a side or rear lot line shall be the same as the minimum required side yard for a main structure on the same site.

B. An accessory structure located not closer to a property line than the distance required for a main structure on the same site may adjoin or may be separated from a main structure, provided that if directly opposite walls in either structure have a main entrance to a dwelling unit or a window opening into a habitable room, the space between the structures shall be as prescribed in Section 18.84.100 of this chapter.

C. No accessory structure shall be located either within a front yard or, unless adequately screened from view from the street as determined by the zoning administrator within the area between the front yard and the front of a structure in an R district.

D. Swimming pools shall comply with the applicable Class II accessory structure regulations of this title and in addition shall be subject to the requirements of Chapter 20.55 of this code.

E. Accessory dwelling units shall comply with the regulations in Chapter 18.106 of this title.

F. Accessory structures exceeding 10 feet in height shall be subject to design review pursuant to Section 18.20.010 of this title.

G. Location Standards for Pools and Spas.

1. Pool water line shall not encroach into a required front yard or be placed closer than five feet to a rear or interior side property line or 10 feet to a street side property line, except that the pool water line for cord-connected, aboveground (portable) spas shall not encroach into a required front yard or be placed closer than three feet to a rear or interior side property line or 10 feet to a street side property line.

2. Pool walls placed closer than five feet to a structure shall require investigation and written approval by a licensed civil engineer. A copy of this investigation and approval shall be furnished to the administrative authority prior to issuance of a pool permit.

3. Pool equipment may be located within the boundaries of the site in which the pool is located without regard to setback except that equipment shall not be located within required front yards nor within the required side yard of the street side of a corner lot unless said equipment is located on the interior side of a fence as allowed in conformance with Title 18 of this code of the city. Where pool equipment is located within a required side yard adjacent to a main structure, a minimum three-foot clearance shall be maintained between said equipment installation and the corresponding side property line. (Ord. 2192 § 2, 2019; Ord. 2161 § 1, 2017; Ord. 2038 § 1, 2012; Ord. 1812, 2000; Ord. 1656 § 1, 1995; Ord. 1150 § 1, 1984; prior code § 2-5.44)

**18.84.170 Usable open space.**

A. Each dwelling unit in the RM and C-C districts shall have group or private usable open space as prescribed in the zoning schedule codified in Table 18.84.010 of this chapter, provided that in the RM district each dwelling unit shall have private usable open space of at least the minimum area specified by subsection C of this section. Group and private usable open space may be combined to meet the requirements. Each square foot of private usable open space shall be considered equivalent to two square feet of group usable open space and may be so substituted. All required usable open space shall be planted area, or shall have a dust-free surface, or shall be water surface, provided that not less than 10 percent of the required group usable open space at ground level shall be landscaped with trees and other plant materials suitable for ornamentation. No required usable open space shall be located in a parking area, driveway, service area, or required front yard, or shall have a slope greater than 10 percent.

for the district in which the facility is located, whichever is less. Amateur radio facilities on private property are subject to design review as provided in Section 18.20.040(B)(2) of this title.

2. Amateur (including ham and shortwave) radio facilities on public property provided:
   a. The facilities do not exceed 65 feet in height or are not more than 25 feet above the height limit prescribed by the regulations for the district in which the facilities are located, whichever is less;
   b. The facilities provide emergency communication backup services for the city;
   c. The facilities are officially recognized and approved by the city's emergency preparedness officer, fire chief, or community development director and operations services director;
   d. Amateur radio facilities are prohibited on public property in any zoning district unless the facility meets the requirements of this section.
3. Personal wireless service facilities which are not licensed by the Federal Communications Commission and are determined by the zoning administrator to have little or no adverse visual impact.
4. Direct-to-home satellite services.
5. Personal wireless service facilities used only by the city, hospitals, and ambulance services in emergencies or for the protection and promotion of the public health, safety, and general welfare.
6. Any personal wireless service facility located on land owned by one of the public entities listed below and operated for the public entity's public purpose only and not for commercial reasons:
   a. The United States of America or any of its agencies;
   b. The state or any of its agencies or political subdivisions not required by state law to comply with local zoning ordinances;
   c. Any other city (other than the city of Pleasanton), county, or special district;
   d. The Pleasanton unified school district.

B. Special Provisions for Small Wireless Facilities. Notwithstanding any other provision of this chapter as provided herein, all small wireless facilities as defined by the FCC in 47 C.F.R. Section 1.6002(l), as may be amended or superseded, are subject to a permit as specified in city council policy, *Small Wireless Facilities*, which is adopted and may be amended by city council resolution. All small wireless facilities shall comply with the policy on small wireless facilities. In the event that the FCC Order adopting said regulations is invalidated by a court of competent jurisdiction or repealed and not replaced, the provisions in this chapter shall control over the policy on small wireless facilities. (Ord. 2188 § 3, 2019; (Ord. 2086 § 2, 2014; Ord. 2000 § 1, 2009; Ord. 1743 § 1, 1998)

### 18.110.020 Notice and approval process.

A. All personal wireless service facilities shall be subject to design review approval by the zoning administrator as provided in Chapter 18.20 of this title. The zoning administrator, upon making a finding that the proposed personal wireless service facility meets all applicable provisions of this chapter, shall approve or conditionally approve the design review application for the personal wireless service facility. The zoning administrator may refer any personal wireless service application to the planning commission for review and action.

B. All property owners within 300 feet of a property on which a personal wireless service facility is proposed shall be notified of the personal wireless service facility application by mail. Notice is not required where a facility will be concealed as described in Section 18.110.050. Public hearings can be requested as provided in Section 18.20.040(B)(2) of this title. (Ord. 2169 § 1, 2017; Ord. 2086 § 2, 2014; Ord. 1743 § 1, 1998)

### 18.110.030 Revocation of approval.

A. If the zoning administrator finds that a use is not in compliance with this chapter, that conditions of approval have not been fulfilled, or that there is a compelling public necessity, the zoning administrator shall notify the personal wireless service facility provider of the same, in writing, and state the actions necessary to cure. After 30 days from the date of notification, if the use is not brought into compliance with this chapter, the conditions of ap-

proval have not been fulfilled, or there is still a compelling public necessity, the zoning administrator shall refer the use to the planning commission for review. Such reviews shall occur at a noticed public hearing where the personal wireless service provider may present relevant evidence. If, upon such review, the commission finds that any of the above has occurred, the commission may modify or revoke all approvals and/or permits.

B. The terms of this section shall not apply to preexisting legal nonconforming personal wireless service facilities which are subject to Section 18.110.250 of this chapter. (Ord. 2086 § 2, 2014; Ord. 1743 § 1, 1998)

**18.110.040 Submittals.**

A. For all proposed personal wireless service facilities, the personal wireless service provider shall provide the following to the zoning administrator:

1. A completed design review application which includes the signature of the personal wireless service provider and the property owner.
2. All applicable fees including deposit fees for peer review. The zoning administrator is authorized at his or her discretion to employ on behalf of the city an independent technical expert to review any materials submitted by the applicant and to provide an analysis of issues including but not limited to, whether the wireless facility meets the emission standards set forth by the Federal Communications Commission, whether a a significant gap in coverage exists, whether there are alternative sites and the feasibility of those sites, whether there are ways to mitigate aesthetic impacts. The applicant shall pay all costs of the peer review consultant and shall submit a deposit for peer and staff review.
3. Site plan, landscape plan, and elevations drawn to scale. The elevation drawings shall include all buildings on which the personal wireless service facilities are proposed to be located.
4. Cross-sections and floor plans, drawn to scale, if an antenna is proposed to be façade- or roof-mounted.
5. Before and after photo-simulations and elevation drawings showing the height, design, color, and location of the proposed facility as viewed from public places and if requested by the zoning administrator, from private properties.
6. Proposed means of establishing and maintaining maximum visual screening of facilities which includes submitting sample exterior materials and colors of towers, antennas, and accessory structures (such as equipment cabinets and structures), landscaping, and security fences.
7. The number, type, and dimensions of antennas, equipment cabinets, and related facilities proposed for use by the personal wireless service provider. If an applicant is proposing an emergency standby generator, include the unit’s dimensions and specifications including noise emission levels.
8. A report from a structural engineer, licensed by the state, regarding the number and type of antennas that a proposed or existing structure is designed to support.
9. Justification of why the proposed height and visual impact of the personal wireless service facility cannot be reduced on the proposed site.
10. A letter, including service area maps and other information demonstrating that the proposed location is essential for the personal wireless service provider to fulfill a significant gap in coverage needs. A map based on drive tests (or similar engineering data) at the proposed site and its vicinity showing the estimated coverage area for the proposed personal wireless service facility. As used herein, drive tests are field tests to demonstrate the coverage of a proposed antenna in which one person holds a transmitter at the proposed site and another drives away from the site with a receiver to determine the outer perimeter of the radio signals that can be transmitted from the site.
11. A letter explaining the site selection process including information about three other sites which could service the same or similar coverage area and the reasons for their rejection, provided that three such alternatives exist and are reasonably available for the provider’s use in the coverage area.
12. A letter demonstrating whether the facility could be co-located, where that co-located antennas and equipment could be placed, and how that future facility may look.

13. A letter which states the personal wireless service provider's commitment to allow other personal wireless service providers to co-locate antennas on their proposed facilities wherever structurally and technically feasible, and to provide at any time additional information, as requested by the zoning administrator, to aid in determining whether or not another personal wireless service provider could co-locate on/near their facilities if approved.
14. A letter certifying that the proposed facility will at all times comply with all applicable health requirements and standards pertaining to radio frequency (RF) emissions as required by the FCC. The letter must include

### 18.124.040 Application—Hearing.

The planning commission shall hold at least one public hearing on each application for a use permit. The hearing shall be set and notice shall be given as prescribed in Section 18.12.040 of this title. At the public hearing the commission shall review the application and the drawings submitted therewith and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 18.124.070 of this article. (Ord. 1812, 2000; prior code § 2-11.05)

### 18.124.050 Investigation and report.

The zoning administrator shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the city planning commission and made available to the applicant prior to the public hearing. (Prior code § 2-11.06)

### 18.124.060 Action of planning commission.

Within 40 days following the closing of a public hearing on a use permit application, the city planning commission shall act on the application. The commission may grant by resolution an application for a use permit as the use permit was applied for or in modified form, or the application may be denied. A use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe. Conditions may include, but shall not be limited to, requiring special yards, open spaces, buffers, fences, and walls; requiring installation and maintenance of landscaping; requiring street dedications and improvements; regulation of points of vehicular ingress and egress; regulation of traffic circulation; regulation of signs; regulation of hours of operation and methods of operation; control of potential nuisances; prescribing standards for maintenance of buildings and grounds; and prescription of development schedules. A use permit may not grant variances to the regulations prescribed by this chapter for fences, walls, hedges, screening, and landscaping; site area, width, frontage, and depth; front, rear, and side yards; basic floor area; height of structures; distances between structures; courts, usable open space; signs; or off-street parking facilities and off-street loading facilities, for which variance procedures are prescribed by Chapter 18.132 of this title. (Prior code § 2-11.07)

### 18.124.070 Findings.

The city planning commission shall make the following findings before granting a use permit:

A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located;

B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to the properties or improvements in the vicinity;

C. That the proposed conditional use will comply with each of the applicable provisions of this chapter. (Ord. 2165 § 1, 2017; prior code § 2-11.08)

### 18.124.080 Effective date of use permit.

Within 10 days following the date of a decision of the planning commission on a use permit application, the secretary shall transmit written notice of the decision to the city council and to the applicant. A use permit shall become effective 15 days following the date on which the use permit was granted or on the day following the next meeting of the council, whichever is later, unless an appeal has been taken to the council, or unless the council shall elect to review the decision of the commission. A use permit shall become effective immediately after it is granted by the council. (Prior code § 2-11.09)

### 18.124.090 Review or appeal.

The city council may elect to review a decision of the planning commission as prescribed in Section 18.144.010 of this title, or a decision of the commission may be appealed to the city council by the applicant or by any other person

as prescribed in Section 18.144.020 of this title. An appeal shall be heard and acted upon as prescribed in Sections 18.144.030 and 18.144.040 of this title. (Prior code § 2-11.10)

**18.124.100 Lapse of use permit.**

A. A use permit shall lapse and shall become void one year following the date on which the use permit became effective, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit application, or the site is occupied if no building permit or certificate of occupancy is required, or the applicant or his or her successor has filed a request for extension with the zoning administrator pursuant to the provisions of Section 18.12.030.

B. A use permit shall lapse and become void if the use is abandoned or discontinued for a continuous period of one year or more. Abandonment or discontinuance shall include cessation of a use regardless of intent to resume the use. Indicia of abandonment or discontinuance may include, but not be limited to, lack of business license, no utility service, etc.

1. A property owner or tenant (the "applicant") seeking to operate pursuant to a use permit that has lapsed for twenty-four months or less may make a written application to the zoning administrator for relief of this lapse provision by: paying the conditional use permit application fee; and demonstrating that:

   a. The use will be operated in a substantially similar manner as provided in the use permit and historic operations;

   b. There has been no change in circumstances under which the use would operate that would create new or increased impacts to nearby uses and persons;

   c. The property owner or tenant have been taking reasonable efforts to reestablish the use but have been unable to do so due to circumstances beyond their control or other good cause; and

   d. The operation of the use would qualify as a Class 1 Categorical Exemption under the California Environmental Quality Act pursuant to 14 CCR 15301 Existing Facilities, as amended.

2. The zoning administrator may require that the applicant provide supplemental information.

3. After receipt of a complete application, the zoning administrator will issue a written decision within 30 days. A summary of the decision will be mailed to the owners and tenants of property within 300 feet of the site.

4. The decision of the zoning administrator shall not be effective for 15 days following the date of the decision, and during which time the decision is subject to appeal as provided in Chapter 18.144. (Ord. 2192 § 2, 2019; Ord. 2120 § 1, 2015; prior code § 2-11.11)

**18.124.110 Preexisting conditional uses.**

A. A conditional use legally established prior to the effective date of the ordinance codified in this chapter, or subsequent amendments thereto, shall be permitted to continue, provided that it is operated and maintained in accord with the conditions prescribed at the time of its establishment, if any.

B. Alteration or expansion of a preexisting conditional use shall be permitted only upon the granting of a use permit as prescribed in this chapter, provided that alterations not exceeding $1,500.00 in value as determined by the building inspector shall be permitted without the granting of a use permit.

C. A use permit shall be required for the reconstruction of a structure housing a preexisting conditional use if the structure is destroyed by fire or other calamity, by act of God, or by the public enemy to a greater extent than 50 percent. The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by or shall be reviewed and approved by the community development director.

D. Preexisting conditional uses described in this section are subject to the lapse provisions in Section 18.124.100.B. (Ord. 2120 § 1, 2015; Ord. 2000 § 1, 2009; prior code § 2-11.12)

**18.124.120 Modification of conditional use.**

A. Sections 18.124.020 through 18.124.090 of this chapter shall apply to an application for modification, expansion, or other change in a conditional use, provided that minor revisions or modifications may be approved by the zoning administrator if he or she determines that the changes would not affect the findings prescribed in Section 18.124.070 related to findings. If requested by the applicant, the zoning administrator shall modify all existing conditional use permits for bars which are: (1) in the downtown hospitality central core area and downtown hospitality transition area; and (2) which are proposed to be consistent with the downtown hospitality guidelines, as determined by the zoning administrator.

B. For a bar or special downtown accessory entertainment use in the downtown hospitality central core and downtown hospitality transition area, if requested by the applicant, the zoning administrator shall modify all applicable sections of an existing conditional use permit related to subsequent planning commission review to include and be consistent with the following: notification of conditional use permit and noise standard violations verified by city enforcement staff shall be provided to the planning commission by city staff; the planning commission may schedule a public hearing to re-review the conditional use permit; and at the public hearing the planning commission may revoke or may modify a business' conditional use permit to require additional measures such as noise monitoring by the business owner if there was a noise violation.

C. If the zoning administrator approves a modification of a conditional use permit for a bar in the downtown hospitality central core area or downtown hospitality transition area, he or she shall notify the planning commission and city council of the modification within 10 days of the approval. (Ord. 2055 § 2, 2012; prior code § 2-11.13)

**18.124.130 Suspension and revocation.**

Upon violation of any applicable provision of this chapter, or, if granted subject to conditions, upon failure to comply with conditions, a use permit shall be subject to suspension or revocation. The planning commission shall hold a public hearing within a reasonable time to consider such suspension or revocation in accord with the procedure prescribed in Section 18.124.040, and if not satisfied that the regulation, general provision or condition is being complied with, may suspend or revoke the use permit or take such action as may be necessary to ensure compliance with the regulation, general provision or condition. Within 10 days following the date of a decision of the commission suspending or revoking a use permit, the secretary shall transmit to the city council written notice of the decision. The decision shall become final 15 days following the date on which the use permit was suspended or revoked or on the day following the next meeting of the council, whichever is later, unless an appeal has been taken to the council, or unless the council shall elect to review and decline to affirm the decision of the commission, in which cases Section 18.124.090 shall apply. (Ord. 2065 § 1, 2013; prior code § 2-11.14)

**18.124.140 Denial—New application.**

Following the denial of a use permit application or the revocation of a use permit, no application for a use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the use permit. (Prior code § 2-11.15)

**18.124.150 Use permit to run with land.**

A use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application. (Prior code § 2-11.16)

### 18.124.160 Application with zoning reclassification.

Application for a use permit may be made at the same time as application for a change in district boundaries including the same property, in which case the planning commission shall hold the public hearing on the zoning reclassification and the use permit at the same meeting and may combine the two hearings. For the purposes of this section, the date of the commission decision on the use permit application shall be deemed to be the same as the date of enactment by the city council of an ordinance changing the district boundaries, provided that if the council modifies a recommendation of the commission on a zoning reclassification, the use permit application shall be reconsidered by the commission in the same manner as a new application. (Prior code § 2-11.17)

### 18.124.170 Temporary use permit.

Use permits for specified temporary conditional uses may be granted by the zoning administrator provided that the findings required by Section 18.124.070 shall be made. No public hearing shall be held unless the zoning administrator shall request a hearing. A permit for a temporary use shall authorize conduct of the use for a specified term as determined by the zoning administrator, provided that a permit for a subdivision sales office, reverse vending machines or other small recycling collection facilities, or a temporary construction yard or office may be for a period not to exceed one year. A decision of the zoning administrator on a temporary conditional use shall be subject to appeal as prescribed in Section 18.144.050 relating to administrative appeal procedure. (Ord. 2155 § 3, 2017; Ord. 2065 § 1, 2013; prior code § 2-11.18)

### 18.124.175 Temporary use permit for small recycling collection facilities.

A. Reverse vending machines and other small recycling collection facilities may be allowed in the zoning districts shown in Table 9.22.030 (Permits Required for Recycling Facilities by Zoning District) of this code upon the granting of a conditional use permit pursuant to the following requirements:

1. Application to install a reverse vending machine(s) or a small collection facility shall be made with the zoning administrator, including any fee established heretofore, and shall include a site plan, elevations and such other information as established in Section 9.22.060 (Criteria And Design Standards) of this code and determined as necessary by the zoning administrator to enable the application to be reviewed.
2. The zoning administrator will review the application for conformance with Section 9.22.060 of this code and may approve, conditionally approve or deny the application. No application shall be approved, as applied for or conditioned, unless the zoning administrator finds that:
    a. The proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located;
    b. The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to the properties or improvements in the vicinity; and
    c. That the proposed conditional use will comply with each of the applicable provisions of this chapter.
3. Temporary conditional use permits for reverse vending machines or other small recycling collection facilities are valid for a period of 12 months from the date of approval and may be renewed prior to expiration upon the submittal of a new application and fee to the zoning administrator, who will review the application for continuing compliance with the purposes of this chapter and of Chapter 9.22 (Recycling) of this code.
4. Any action of the zoning administrator may be appealed to the planning commission by any affected party pursuant to the requirements of Chapter 18.144 (Appeals) of this title. (Ord. 2155 § 3, 2017; Ord. 1354 § 8, 1988)

### 18.124.180 Design review.

All conditional uses shall be subject to design review as prescribed in Chapter 18.20 of this title. Applicants are advised to confer with the zoning administrator before preparing detailed plans. (Prior code § 2-11.19)

## Article II. Minor Conditional Use Permits

### 18.124.190 Purpose—Authorization.

In order to give each district the flexibility necessary to achieve the objectives of this chapter, in certain districts conditional uses are permitted, subject to the granting of a minor conditional use permit. These uses are less routine than permitted uses, and require special consideration so that they may be located properly with respect to the objectives of this title, and with respect to their effects on surrounding properties, but do not necessarily warrant review by the planning commission. In order to achieve these purposes, the zoning administrator is empowered to grant and to deny applications for minor conditional use permits for such conditional uses in such districts as are prescribed in the district regulations and to impose reasonable conditions upon the granting of minor use permits, subject to the right of appeal to the planning commission and/or city council, or to review by the planning commission and/or council. The zoning administrator may refer a minor conditional use permit to the planning commission for review and action if deemed to be controversial or complex in nature. (Ord. 2155 § 3, 2017)

### 18.124.200 Application—Required data and maps.

Application for a minor conditional use permit shall be filed with the zoning administrator on a form prescribed by the director of community development and shall include the following data and maps:

A. Name and address of the applicant;

B. Statement that the applicant is the owner or the authorized agent of the owner of the property on which the use is proposed to be located;

C. Address or description of the property;

D. Statement indicating the precise manner of compliance with each of the applicable provisions of this chapter, together with any other data pertinent to the performance standards and findings prerequisite to the granting of a use permit, prescribed in Section 18.124.240 of this article;

E. An accurate scale drawing of the site and the surrounding area showing existing streets and property lines for a distance from each boundary of the site determined by the zoning administrator to be necessary to illustrate the relationship to and impact on the surrounding area;

F. An accurate scale drawing of the site showing the contours at intervals of not more than five feet and existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities, landscaped areas, trees, fences, and walls;

G. The zoning administrator may require additional information, plans and drawings if they are necessary to determine whether the proposed use will comply with all of the applicable provisions of this chapter. The zoning administrator may authorize omission of any or all of the plans and drawings required by this section if they are not necessary. (Ord. 2155 § 3, 2017)

### 18.124.210 Application—Fee.

The application shall be accompanied by a fee established by resolution of the city council to cover the cost of handling the application as prescribed in this chapter. (Ord. 2155 § 3, 2017)

### 18.124.220 Notice.

No less than 10 days prior to the date on which the decision will be made on the application, the city shall give notice of the proposed minor conditional use permit to all property owners and occupants shown on the last equalized assessment roll as owning real property within 300 feet of the exterior boundaries of the property on which the minor conditional use permit is proposed. If within 10 days of mailing such notice, the zoning administrator receives a request for a hearing, the zoning administrator shall schedule an administrative hearing when practically feasible. Either administratively, if no hearing is requested, or after conducting the administrative hearing, the zoning administrator shall approve, conditionally approve, or disapprove the application. For a minor conditional use permit that is either appealed

by the applicant or by any other person as prescribed in Section 18.144.020 of this title, or elected for review by planning commission and/or city council as identified in Section 18.124.250 of this chapter, the city shall give notice of the proposed minor conditional use permit to all property owners and occupants shown on the last equalized assessment roll as owning real property within 1,000 feet of the exterior boundaries of the property on which the minor conditional use permit is proposed. (Ord. 2155 § 3, 2017)

**18.124.230 Action of zoning administrator.**

Any action of the zoning administrator is subject to the appeal provisions in Chapter 18.144. (Ord. 2155 § 3, 2017)

**18.124.240 Performance standards and findings.**

A use approved for a minor conditional use permit shall meet the following performance standards:

A. The facility shall adhere to all occupancy, ADA, California Building Code, and exiting requirements;

B. Adequate parking is available for the use, and the proposal has an effective traffic circulation system including pick-up and drop-off for business patrons; and

C. The use meets the requirements of the city's noise ordinance.

The zoning administrator may request a traffic study, noise study, or other professional study in order to determine whether the proposed use meets the above performance standards.

The zoning administrator shall make the following findings before granting a minor conditional use permit:

A. That the proposed location of the minor conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located;

B. That the proposed location of the minor conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to the properties or improvements in the vicinity;

C. That the proposed minor conditional use will comply with each of the applicable provisions of this chapter. (Ord. 2165 § 1, 2017; Ord. 2155 § 3, 2017)

**18.124.250 Effective date of minor conditional use permit.**

Within 10 days following the date of a decision of the zoning administrator on a minor conditional use permit application, the secretary shall transmit written notice of the decision to the planning commission, city council, and to the applicant. A minor conditional use permit shall become effective 15 days following the date on which the use permit was granted or on the day following the next meeting of the council, whichever is later, unless an appeal has been submitted, or unless the planning commission and/or council has elected to review the decision of the zoning administrator. A minor conditional use permit shall become effective immediately after it is granted by the council. (Ord. 2155 § 3, 2017)

**18.124.260 Review or appeal.**

The planning commission or city council may elect to review a decision of the zoning administrator as prescribed in Section 18.144.010 of this title, or a decision of the commission may be appealed to the city council by the applicant or by any other person as prescribed in Section 18.144.020 of this title. An appeal shall be heard and acted upon as prescribed in Sections 18.144.030 and 18.144.040 of this title. (Ord. 2155 § 3, 2017)

**18.124.270 Lapse of use permit.**

A. A minor conditional use permit shall lapse and shall become void one year following the date on which the minor conditional use permit became effective, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the use

permit application, or a certificate of occupancy is issued for the structure which was the subject of the use permit application, or the site is occupied if no building permit or certificate of occupancy is required, or the applicant or his or her successor has filed a request for extension with the zoning administrator pursuant to the provisions of Section 18.12.030.

B. A minor conditional use permit shall lapse and become void if the use is abandoned or discontinued for a continuous period of one year or more. Abandonment or discontinuance shall include cessation of a use regardless of intent to resume the use. Indicia of abandonment or discontinuance may include, but not be limited to, lack of business license, no utility service, etc.

1. A property owner or tenant (the "applicant") seeking to operate pursuant to a minor conditional use permit that has lapsed for twenty-four months or less may make a written application to the zoning administrator for relief of this lapse provision by: paying the minor conditional use permit application fee; and demonstrating that:

   a. The use will be operated in a substantially similar manner as provided in the minor conditional use permit and historic operations;

   b. There has been no change in circumstances under which the use would operate that would create new or increased impacts to nearby uses and persons;

   c. The property owner or tenant have been taking reasonable efforts to reestablish the use but have been unable to do so due to circumstances beyond their control or other good cause; and

   d. The operation of the use would qualify as a Class 1 Categorical Exemption under the California Environmental Quality Act pursuant to 14 CCR 15301 Existing Facilities, as amended.

2. The zoning administrator may require that the applicant provide supplemental information.

3. After receipt of a complete application, the zoning administrator will issue a written decision within 30 days. A summary of the decision will be mailed to the owners and tenants of property within 300 feet of the site.

4. The decision of the zoning administrator shall not be effective for 15 days following the date of the decision, and during which time the decision is subject to appeal as provided in Chapter 18.144. (Ord. 2192 § 2, 2019; Ord. 2165 § 1, 2017; Ord. 2155 § 3, 2017)

**18.124.280 Modification, suspension or revocation.**

Upon violation of any applicable provision of this chapter, or, if granted subject to conditions, upon failure to comply with conditions, a minor conditional use permit shall be subject to modification, suspension, or revocation. The planning commission shall hold a public hearing within a reasonable time to consider such modification, suspension, or revocation in accord with the procedure prescribed in Section 18.124.040, and if not satisfied that the regulation, general provision or condition is being complied with, may modify, suspend, or revoke the use permit or take such action as may be necessary to ensure compliance with the regulation, general provision or condition. Within 10 days following the date of a decision of the commission modifying, suspending, or revoking a use permit, the secretary shall transmit to the city council written notice of the decision. The decision shall become final 15 days following the date on which the minor conditional use permit was suspended or revoked or on the day following the next meeting of the council, whichever is later, unless an appeal has been taken to the council, or unless the council shall elect to review and decline to affirm the decision of the commission, in which cases Section 18.124.090 shall apply. (Ord. 2155 § 3, 2017)