

## **Article 5 – Application and Notification Generally**

---

### **25.05.01 – Applicability**

- a. The provisions of this Article apply to applications for all procedures, approvals, and permits provided for in this Chapter, except as otherwise provided below.
- b. The application and notification procedures contained in this Article do not apply to the actions referenced below:
  1. Properties divided between the City and County as provided in Section 25.02.03;
  2. Zoning of Annexed Land as provided in Section 25.02.04;
  3. Map and Text Amendments as provided in Sections 25.06.01 and 25.06.02, respectively;
  4. Administrative Interpretations as provided in Section 25.06.04;
  5. Sign Permits as provided in Section 25.18.08;
  6. Temporary Use Permits as provided in Section 25.09.04;
  7. Occupancy Permits and Temporary Occupancy Permits as provided in Sections 25.07.11 and 25.07.12;
  8. Certificates of Approval in Historic Districts as provided in Section 25.07.13;
  9. Additional Permits and Approvals as provided in Section 25.07.14;
  10. Waivers for alternative energy generation facilities not utilizing fossil fuels as provided in Section 25.09.06.a;
  11. Waivers for Satellite Earth Station Antennas and Amateur Service Communication as provided in Section 25.09.08.e.1 and 2; and
  12. Applications for Subdivision under Article 21.

### **25.05.02 – Applications**

- a. *Authority to File* – The following persons may file an application under the provisions of this Chapter:
  1. The owner of record of the subject property;
  2. An authorized agent of the owner with written authorization to act on the owner's behalf; and
  3. A person who has a financial or fiduciary interest in the subject property and/or a contract purchaser with written authorization by the owner that said person is authorized to act on the owner's behalf.
- b. *Applications*

10-21-19

1. *Forms* - Applications must be submitted to the Chief of Planning, unless otherwise provided, on forms provided by the City, and contain such information as may be required.
2. *Completeness of Submission* – If the application is incomplete, the Chief of Planning or Chief of Inspection Services, as applicable, must advise the applicant in writing as to the information needed to complete the application. In such case, the application may be returned to the applicant or the application may be retained and a date set by which the missing information must be provided.
3. *Acceptance* – An application is not deemed accepted until all submission requirements are met. Acceptance of an application does not constitute any indication of approval.
4. *Fees* – Each application must be accompanied by a fee as determined by resolution of the Mayor and Council.

### **25.05.03 – Public Notifications**

#### *a. General Notice Requirements*

1. All notices required under this Chapter must comply with the provisions of this Chapter and any greater notice requirements imposed by State law, if applicable; and
2. Unless otherwise specified in this Chapter, all notices must:
  - (a) Include the name of the applicant and the application number;
  - (b) Identify the date, time, and place of any scheduled area meeting and public hearing or meeting of an Approving Authority;
  - (c) If applicable, describe the property involved in the application by street and street number or, if no street name or number is available, by another general location description;
  - (d) Indicate the nature, scope, and purpose of the application;
  - (e) Indicate how interested parties may be heard or otherwise submit their comments on the application; and
  - (f) Indicate where additional information on the matter may be obtained.

b. *Newspaper Notice* – Where required, the City must cause notice to be published in a newspaper of general circulation in accordance with this Chapter or State law, as applicable.

#### *c. Written Notice*

1. Written notification must be provided by mail or other delivery for the following:
  - (a) The filing of a completed application;

- (b) Area meetings required by this Chapter under the provisions of Article 7
  - (c) Public meetings and hearings held by an Approving Authority;
  - (d) A decision of an Approving Authority on an application in accordance with Section 25.05.06; and
  - (e) For any other matter as may be required by this Chapter.
2. In order to accomplish the required written notification, the following must be done:
- (a) The mailing or delivery list for such notice must be compiled from the current tax assessment listing all properties located within at least 500 feet of the boundaries of the subject property, unless another notification area is specified within this Chapter;
  - (b) Deliver notice, by hand delivery or first class mail, to each owner at the mailing address on the current tax assessment list, and also to the resident at the property location address, if addresses are different on the tax roll.
  - (c) Mail notice, by first class mail, to civic associations and homeowners associations within 500 feet of the boundaries of the subject property unless another notification area is specified by this Chapter.
3. Affidavit required. At least one week prior to any meeting for which the applicant is required to provide written notice, the applicant must file an affidavit stating that notice has been mailed or delivered in accordance with the requirements of this Chapter, and must provide the mailing or delivery list in a format acceptable to the Chief of Planning.
- d. *Signs* – Except as otherwise provided, signs must be posted in accordance with the following provisions:
- 1. *Sign to be Furnished by the City* – The required sign(s) will be prepared and furnished to the applicant by the Chief of Planning within five (5) business days of acceptance by the City of the complete application, unless otherwise specified in this Chapter.
  - 2. *Posting* – Within three (3) days after receiving the sign from the City, the applicant must erect and maintain a sign on the property that is the subject of the application. Any sign erected as required herein must be maintained and its content updated, at all times by the applicant until final action by the Approving Authority on the application to which it pertains, and thereafter must be removed within seven (7) days from the final action.
  - 3. *Location of Sign* – The required sign must be erected by the applicant as follows:
    - (a) Within ten feet (10') of each boundary line that abuts a public or private road or street. If the property boundary line is more than 250 feet long, one (1) sign is required every 500 feet.

(b) If no public or private road abuts thereon, the sign must be placed facing in such manner as may be most readily seen by the public.

(c) For any property that abuts a limited access highway, the sign must be placed at the principal entrance to the property.

4. *Unlawful to Remove or Tamper with Sign* – It is unlawful for any person to remove or tamper with any sign erected under this Section during the period it is required to be maintained. Early removal or tampering is subject to the penalties established in Article 19 of this Chapter.

5. *Affidavit Required*

(a) On the day of the final hearing on any application the applicant must file an affidavit stating that the sign required by this subsection d was continuously maintained in accordance with these requirements through the date of the final hearing on such application.

(b) If such sign was not continuously maintained, such affidavit will be sufficient, and Section 25.05.03.d.2, immediately above, is deemed satisfied, if such affidavit states that following the erection of such sign:

- i. The property was inspected at least once per week, and that on each and every occasion through the date of the affidavit such sign was found to be in place; or
- ii. In the event that such sign was damaged, destroyed, or removed, that such sign was repaired or replaced within five (5) days of the inspection which resulted in discovery of the damage to, or destruction or removal of such sign.

e. *Additional Notice* - Additional notice may be provided by the Chief of Planning through other methods of communication suited to increase awareness of the application in the communities, including but not limited to, website postings and listserv e-mails.

f. *Notice not jurisdictional requirement* - The notices required in Section 25.05.03 are expressly not jurisdictional as provided in Section 25.05.10.

#### **25.05.04 – Modification of Pending Application**

a. Modification to a pending application for approval should be made in consultation with the Chief of Planning and in compliance with other requirements of this Chapter. The Chief of Planning will determine whether the magnitude of the proposed modification warrants a change in scheduling, notification, data submission or if a new application is required.

b. Notwithstanding the provisions of subsection a, above, if the application requires action by the Mayor and Council, Planning Commission, Board of Appeals, Historic District Commission, no modification to the application can be offered by the applicant after the staff report has been issued, but in no event later than seven (7) days prior to the meeting at which the application will be considered by the

Approving Authority. Nothing herein prevents the amendment of an application after the meeting of the Approving Authority.

**25.05.05 – Access to Application Files**

- a. All application files required under this Chapter in the custody of the City are open to public inspection during regular office hours.
- b. Application files must not be removed from the office in which they are maintained, except by officials and employees of the City.
- c. Copies of material in the files will be provided upon payment of copying charges in accordance with City policy or may be provided electronically, if available, upon request.

**25.05.06 – Notification of Decision**

- a. Notice of all decisions made pursuant to this Chapter must be provided by the Approving Authority, or the clerk thereto, within ten (10) days after the decision is rendered via written notice by first class mail to the applicant or petitioner and to any other party of record, unless such party requests an e-mail notification in lieu of first class mailing.
- b. A copy of the notification must be made a part of the official record.
- c. The time limitation for appeals will run from the date of the letter providing the notification of the decision or, in the case of a resolution or ordinance adopted by the Mayor and Council, from the date of the adoption of the resolution or ordinance.

**25.05.07 – Amendments to Approved Development**

- a. *Application Required* – Except as otherwise provided, an application to amend any previously approved development must be filed with the Chief of Planning in accordance with the provisions of this Article.
- b. *Minor Amendments to Approved Development*
  - 1. Any application for an amendment which does not significantly deviate from the terms and conditions of the original approval and would effectively carry out the intent of the Approving Authority's original approval may be considered and acted upon by the Chief of Planning under the provisions for a Level 1 site plan as set forth in Sec. 25.07.04.
    - (a) Such application may be approved if it results in a minimal effect on the overall design, layout, quality, or intent of the plan and is limited to minor adjustments to site engineering, parking or loading areas, landscaping, sidewalks, recreational facilities, recreational areas, public use space, or open area in a manner that does not alter basic elements of the site plan. Landscaping maintenance does not require an amendment application under this section. The addition or relocation of minor appurtenances such as, but not limited to, bicycle racks, seating benches, and pergolas does not require an amendment application, but must not alter the basic elements of the site plan nor cause a safety hazard.

- (b) Modifications that result in a reduction of floor area or other development intensity may be approved by the Chief of Planning.
  - 2. A change in the types of uses on the site that is in conformance with the findings of the initial approval and does not increase the parking requirement may also be approved as a minor amendment.
  - 3. Minor changes are not subject to the provisions for pre-application staff meetings, area meetings, and the notice provisions of Section 25.05.03 or Article 7.
  - 4. Where the Chief of Planning determines that the change is not minor, it is a major change and the application is referred to the Approving Authority for review.
  - 5. *Implementation Period* – The approval of a minor amendment is subject to the implementation provisions of Section 25.07.06.
- c. *Major Amendments to Approved Development*
- 1. Where the Chief of Planning determines that a requested change is too significant to be a minor change but is not so substantial as to require an entirely new application for approval, the requested change must be reviewed and approved by the original Approving Authority as an amendment to the original development approval. Major amendments may include:
    - (a) an increase in the height of any building,
    - (b) an increase in the floor area of any non-residential portion of a building,
    - (c) an increase in the number of dwelling units, or
    - (d) any other significant change to the site that results in an increase in the parking requirement and requires the construction of additional parking spaces.
  - 2. An application for a major amendment is subject to the notice and procedural requirements as set forth in Sec. 25.07.03. The application will be processed under the procedures for either a Level 1 or a Level 2 site plan, depending on the initial Approving Authority.
  - 3. Amendments may not modify any aspect of the approved development other than that substance or area encompassed by the amendment application. The Approving Authority may consider the relationship of all aspects or areas of the approved development in determining whether or not the requested amendment is appropriate.
  - 4. *Implementation Period* – The approval of a major amendment is subject to the implementation provisions of Section 25.07.06.
- d. *Substantial Changes Requiring a New Application* – Where, in the opinion of the Chief of Planning, the requested change to an approved development is so extensive as to amount to a comprehensive change to more than 50 percent of the project area or to otherwise change the essential character and impact of the development, such

change may not be made by way of an amendment to the original approval, but rather requires the filing of an entirely new application for approval.

#### **25.05.08 – Extension of Implementation Period**

- a. In order to avoid expiration of the development approval, the implementation period may be extended only when all of the following conditions exist:
  1. The provisions of this Chapter expressly allow the extension;
  2. An extension request is filed prior to the expiration of the approval; and
  3. The extension request is in writing and includes justification.
- b. Unless otherwise provided, authority to grant extensions of time shall rest with the Approving Authority that granted the original approval being extended.
- c. Extensions may be granted only upon good cause. In determining whether good cause has been shown, the Approving Authority must consider:
  1. The actions taken by the applicant to diligently pursue implementation of the approval, including but not limited to execution of required documents and pursuing other required approvals, and
  2. Whether the approved development complies with all the current provisions of this chapter and other applicable laws and with the current Plan recommendations, and
  3. Such other factors deemed to be relevant.
- d. An extension of the implementation period of an approval does not allow any change from the conditions of the approval for which the extension is requested.
- e. The implementation period, including all extensions, of any development approval and/or related permit approval in effect on and after [date of adoption] shall be tolled throughout the pendency of all administrative appeals of the development approval and/or related permit approval that are instituted at any time during the implementation period. The tolling shall start on the date the timely administrative appeal is filed. The tolling period shall end on the date of finality of the decision or final action of the appellate body with final jurisdiction.

For all approvals automatically tolled pursuant to this provision the remaining implementation period and any extensions granted pursuant to Section 25.07.06 or otherwise provided by this Chapter shall resume running after the end of the tolling period. The development approval shall remain in full force and effect throughout the implementation period inclusive of all extensions and the tolling period. During this period, the applicant may implement the development approval and the City shall continue to process all other applications necessary to implement the development approval. Upon request, the Chief of Planning shall issue a confirmation letter to an applicant of any tolling of the implementation period under this section.

### **25.05.09 – Appeals**

Any party of record aggrieved by a decision of any Approving Authority may appeal that decision in accordance with the applicable provisions for that Approving Authority as set forth in this Chapter.

### **25.05.10 – Certain Defects Not Jurisdictional**

Failure to comply with any of the requirements of this Article 5, except for those requirements imposed by State law, is not a jurisdictional defect.