



# **Unified Development Code (UDC)**

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## CHAPTER 1      GENERAL PROVISIONS

### Section 1.1    Purpose and Intent

#### (1) Purpose

The purpose of the Unified Development Code (UDC or Code) is to promote the public health, safety, general welfare, and quality of life of the present and future citizens of the City of Fair Oaks Ranch (City).

#### (2) Words

Words with a special meaning relative to the goals and purposes of this Code are defined in Chapter 12, Definitions. Terms not defined herein will be construed in accordance with their customary usage and meaning and interpreted to give this Code its most reasonable application.

### Section 1.2    Consistencies with the Comprehensive Plan

The City's Comprehensive Plan, as adopted and as amended and periodically updated, is the policy guide for the development of this Code. These policies contained in the City's Comprehensive Plan act as a guideline and should not be construed as development regulations. The following General Land Use Policies from the Comprehensive Plan have been used in the development of this Code in order to ensure that land development within the jurisdictional area is in accordance with the Comprehensive Plan:

#### (1) Growth Management

All new development must:

- a. Be compatible with existing development and community character;
- b. Maintain the character, look and feel of the community; and
- c. Occur in a fiscally responsible manner for the City.

#### (2) Environmental Protection

Developers will cooperate with local governmental entities to ensure all development will:

- a. Preserve and protect waterways and flood plains;
- b. Preserve and protect surface and ground water resources and hydrologically active areas;
- c. Seek public acquisition of open space or develop conservation development options for areas of environmental concern;
- d. Preserve and protect air quality;
- e. Prioritize agricultural and ranch lands areas for open space preservation. The City will work with landowners who are interested in conservation easements;
- f. Promote and encourage water conservation practices; and
- g. Promote awareness and implementation of Best Management Practices (BMPs) for purposes of water quality and land conservation.

#### (3) Housing

Development will provide housing alternatives that will:

- a. Improve existing housing inventory;
- b. Encourage safe housing construction;
- c. Encourage a range of housing types and lot sizes;
- d. Encourage housing that is compatible with existing neighborhoods and land uses; and

- e. Promote conservation cluster development when and where appropriate.

#### **(4) Economic Development**

Developers will promote quality development that is compatible with neighboring areas and is consistent with community character and create sustainable value through form and function.

#### **(5) Parks and Recreation**

Development will make every effort to connect to existing and future parks/trails and will:

- a. Encourage maintenance and safety of parks and recreation resources; and
- b. Provide and preserve open space, trails and parkland in new neighborhoods.

#### **(6) Circulation**

Development will encourage streets and street network designs to be interconnected to provide ample, safe, and appropriately scaled access through and between neighborhoods, mixed-use areas and to commercial nodes.

#### **(7) Design**

Neighborhoods of various types will utilize:

- a. Compatibility standards for adjoining land uses (e.g., building facade, landscape and transition standards);
- b. Context sensitive streetscape design criteria to encourage safe and desirable pedestrian access and community attractiveness;
- c. Height restrictions for commercial and mixed-use development;
- d. Appropriate building form and design standards, for new developments within the community;
- e. Signage that does not detract from the visual integrity of the community; and
- f. Lighting, associated with signage, buildings or area wide development that does not pose a safety or environmental concern, and should be addressed in an aesthetically pleasing manner particularly as it relates to the impact on existing or new residential development and military base lighting regulations.

#### **(8) Civic and Public Spaces**

Civic buildings and civic space should be given prominent sites. School sites should be provided in coordination with the school districts, as new neighborhood developments are approved, so as to be within walking distance of a majority of the dwelling units in adjoining neighborhoods.

### **Section 1.3 Authority**

Chapter 2, Review Authority and Procedures, sets forth the specific responsibilities and authority for each administrative official and review entity as it relates to the implementation of this Code. The Texas Local Government Code (LGC) §211 and 212, together with the general police powers of municipalities, and the City of Fair Oaks Ranch Home-Rule Charter, empower the City to adopt this Unified Development Code (Code).



## Section 1.4 Jurisdiction

### (1) Within City Limits

The City of Fair Oaks Ranch has the statutory authority to exercise a broad range of powers within its city limits. Many of those powers are specifically authorized by LGC §211 and 212. Pursuant to such authority, all chapters and sections of this Code will apply to all areas within the city limits of Fair Oaks Ranch. All structures, land uses, businesses, subdivisions, or property development constructed or commenced after the effective date of this Code and all enlargements of, additions to, changes in or relocations of existing structures, land uses, businesses, subdivisions, or property developments occurring after the effective date of this Code are therefore subject thereto.

### (2) Within Extraterritorial Jurisdiction (ETJ)

The City of Fair Oaks Ranch may extend to its ETJ the regulation of subdivisions and property development adopted under LGC §212. The City also extends to its ETJ its authority to regulate signage as adopted under LGC chapters 216, 245 and 43.

## Section 1.5 Applicability

### (1) Future Development

This Code will apply to all matters pertaining to the use and development of land within the jurisdiction described in Section 1.4 above. The Code applies to all public buildings and private land(s), and use(s) thereon, over which the City has jurisdiction under the constitution(s) and law(s) of the State of Texas and of the United States.

### (2) Existing Development

No building or structure will be erected, demolished, reconstructed, enlarged, or relocated in the City of Fair Oaks Ranch ~~and ETJ~~ except in compliance with the provisions of this Code; and then only after securing all required permits and licenses. Any building, structure, or use lawfully existing at the time of passage of this Code, although not in compliance therewith, may be maintained as provided in Chapter 4, Zoning Districts and Use Regulations, Section 4.14, Nonconforming Uses.

## Section 1.6 Minimum Requirements

- a. The provisions of this Code will be interpreted and applied as the minimum requirements for the promotion of public health, safety and general welfare.
- b. Whenever the requirements of this Code are in conflict with the requirements of any other lawfully adopted rules, regulations, or ordinances, the requirement that is most restrictive or that imposes higher standards as determined by the City Manager or designee will apply.
- c. The issuance of any permit, certificate or approval in accordance with the standards and requirements of this Code will not relieve the recipient of such permit, certificate or approval from the responsibility of complying with all other applicable requirements of any other municipality, special district, state or federal agency having jurisdiction over the structures or land uses for which the permit, certificate or approval was issued.

## Section 1.7 Effective Date

This Code will become effective and be in full force and effect immediately following its passage and approval by the City Council, as duly attested by the Mayor and City Secretary.

## Section 1.8 Developments in Progress

If any section or part of this Code is held by a court of competent jurisdiction to be unconstitutional or invalid, such judgment will not affect, impair or invalidate the remaining provisions of this Code but will be confined in its operation to the specific sections of this Code that are held unconstitutional or invalid. The invalidity of any section of this Code in any one or more instances will not affect or prejudice in any way the validity of this Code.

The purpose of this section is to provide guidance to those development projects that have received some form of municipal approval prior to the date of enactment of this Code. More detailed information regarding Vested Rights and Non-conforming uses can be found in Chapter 4, Zoning Districts and Use Regulations, of the UDC and Chapter 1, Section 1.10, Permits, Projects, and Vested Rights, of the City's Code of Ordinances.

- a. Building Permits. Nothing in this Code will require any change in plans, construction, size or designated use of any building, structure or part thereof that has been granted a building permit prior to the effective date of this Code, or any amendment to this Code, provided construction will begin consistent with the terms and conditions of the building permit and proceed to completion within one year.
- b. Approved Site Plans. Nothing in this Code will require a change in site plan approved prior to the effective date of this Code, provided a building permit is issued prior to expiration of the site plan, and construction begins consistent with the terms and conditions of the building permit and proceeds to completion in a timely manner.
- c. Violations Continue. Any violation of the previous zoning and sign ordinances or subdivision and site development regulations of the City will continue to be a violation under this Code and will be subject to penalties and enforcement under Chapter 12, Compliance and Enforcement, unless the use, development, construction or other activity is consistent with the express terms of this Code, in which case enforcement action will cease, except to the extent of collecting penalties for violations that occurred prior to the effective date of this Code.

### (1) Dormant Plats

Any minor plat, replat, amending plat, preliminary plat, or final plat approved pursuant to Subdivision Regulations in effect prior to the date of enactment of this Code that is dormant according to the provisions of LGC §245.005 will be deemed to have expired. The City Manager (or designee) will review all such cases and send written notice to an Applicant stating when an issued permit will expire as provided in Section 4.2 Permits, Projects, and Vested Rights, in the City's Code of Ordinances.

### (2) Legal Nonconformities Under Prior Ordinances

Any legal nonconformity under the previous Zoning Ordinance or City regulations will be a legal nonconformity under this Code as provided in Section 4.13, as provided for in that section.

## Section 1.9 Updates or Code Amendments

The purpose of this section is to provide for updates to the Code in order to modify procedures and standards for workability and administrative efficiency, eliminate unnecessary development costs, and update the procedures and standards to reflect changes in the law or the state of the art in land use planning and urban design.

Any person may provide a request for amendment to the Code to the City Manager (or designee) in the following manner, and as per the requirements and procedures adopted under LGC §212:

- a. The request for amendment will be labeled “Code Amendment Request” and will include a summary of the proposed changes, the reason for the proposed changes, and suggested text amendments.
- b. The City Manager (or designee) may conduct workshops to informally discuss the Code Amendment Requests with neighborhoods, developers, homebuilders, design professionals, and other stakeholders in the development process.
- c. The City Manager (or designee) will receive the amendment request and will refer the proposed amendments to the Planning and Zoning Commission.
- d. The proposed amendments will be heard at a joint public hearing of the Planning and Zoning Commission and the City Council, after any individual notice requirements in Local Government Code § 211.006 and 21.007, as amended have been complied with.
- e. The Planning and Zoning Commission will consider the request after a public hearing and refer the Code Amendment Request to the City Council with recommendations for amendments to the Code.
- f. The City Council will consider the request after a public hearing and make the final decision.
- g. Code Amendment Requests will serve a legitimate purpose. The City Manager (or designee) will review each request and make a determination on whether the request serves a legitimate purpose of promoting public safety and welfare and is consistent with City’s Comprehensive Plan. The City Manager (or designee) will forward the requests as described above and notify individuals who submitted an Amendment Request of the status of their request. An individual whose request is denied by the City Manager (or designee) and who disagrees with the decision, can petition the City Council to consider his/her request within 60 days. The City Council will make a final determination as to whether the request should be forwarded to the Planning and Zoning Commission per the procedure described above.

## Section 1.10 Violations

See Chapter 12, Compliance and Enforcement.

## Section 1.11 Validity

The issuance or granting of a permit or approval of plans or plats, site or facility designs, prior granted variances, or specifications will not be construed to be a permit for, or an approval of, any violation of any provision of this Code or any other City ordinance. No permit purporting to give authority to violate or cancel the provisions of this Code will be valid, except insofar as the work or use that it authorizes is lawful and conforms to the requirements of this Code or a variance or modification granted pursuant to this Code.

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## CHAPTER 2 REVIEW AUTHORITY AND PROCEDURES

### Section 2.1 General

#### (1) Purpose

The purpose of this Chapter is to establish the responsibilities and structure for administering and enforcing this Unified Development Code (Code), including the reviewing authority and minimum review procedures that will be followed by each reviewing authority. Chapter 3, Application and Permits, provides supplemental information to the review procedures described in Chapter 2.

#### (2) Conformity with Development Regulations

All City of Fair Oaks Ranch (City) officials and employees with the responsibility or authority to issue a permit, certificate or license are prohibited from issuing a permit or license for any use, building, or purpose that conflicts with any provision of this Code. Any permit, certificate or license issued in conflict with the provisions of this Code is null and void.

### Section 2.2 Responsibility of Property Owner and/or Applicant

- a. It is the responsibility of an Applicant to provide accurate and complete information and plans to comply with the requirements of this Code and all applicable laws and regulations. The City of Fair Oaks Ranch is not responsible for the accuracy of information or plans provided to the City for its review or approval.
- b. The City or its representatives may inspect any development activity to enforce the provisions of this Code. By submitting an application to the City, the applicant consents to entry upon the site by the City or its representatives during regular business hours for the purpose of making reasonable inspection to verify information provided by the Applicant and to verify that work is being performed in accordance with the approved plans and permits and the requirements of this Unified Development Code.
- c. Unless otherwise expressly provided by this Unified Development Code, an application or permit, other than a petition for a text amendment or a zoning amendment, may be initiated only by the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

### Section 2.3 Administrative Officials and Review Entities

#### (1) City Manager

The administrative official for the purposes of this Chapter will be the City Manager or designees as they may be charged by the City Manager and the provisions of this chapter with duties and responsibilities referenced in this Chapter and Chapter 3, Applications and Permits. The City Manager or his/her designee will ordinarily administer and enforce the provisions of this Code. The City Manager (or designee) will serve as staff to the Planning and Zoning Commission (Commission) and the City Council except where otherwise provided by this Chapter.

- a. Powers and Duties. The City Manager (or designee) has the following powers and duties:

- i. Administrative Decision. The City Manager (or designee) is responsible for taking administrative action on the procedures described in this Code and according to the specific criteria for each procedure as described in the Code.
- ii. Review and Report. The City Manager (or designee) will review and make either a report or recommendation to the appropriate Board or Commission including the Planning and Zoning Commission, and City Council, as required pursuant to the Code, on the following procedures:
  - 1) General Development Plan
  - 2) Preliminary Plat Review
  - 3) Final Plat Review
  - 4) Special Use Permit
  - 5) Planned Unit Development
  - 6) Comprehensive Plan Amendment
  - 7) Zoning Map Amendment (Rezoning)
  - 8) Unified Development Code Text Amendment
  - 9) Annexation
  - 10) Concept Plan
  - 11) Conservation Development Alternative
  - 12) Other applications as required by this Code
- iii. Additional Duties. The City Manager (or designee) will have the following additional duties, to:
  - 1) Comply with any other duty or responsibility clearly assigned to the City Manager (or designee) elsewhere in this Code;
  - 2) Enforce all provisions of this Code;
  - 3) Meet with potential Applicants in pre-application conferences as described in this Code;
  - 4) Act and serve as staff for each review body designated by this Code; and
  - 5) Render advice and guidance, upon reasonable request of any Property Owner, or its agent, or occupant, on development or new construction or the restoration, alteration or maintenance of any historic resource or other building within the City.
- b. Compliance with Rules and Procedures. The City Manager (or designee) will comply with any specific procedures described in this Code and may develop administrative rules or additional procedures to clarify implementation of this Code, provided that additional procedures do not violate any other provisions of this Code.
  - i. Administrative Procedures Manual. The City Manager (or designee) will develop an Administrative Procedures Manual for application requirements for all procedures described within or developed pursuant to this Code. Such requirements must be:
    - 1) Sufficient to permit the Manager to effectively review the application and for the final approving authority to render an informed decision;
    - 2) Consistent with state law.

The Manager may waive application requirements, and may require additional submission requirements to complete a thorough review and ensure compliance with all applicable

codes and requirements, after an application has been determined to be complete, when appropriate.

- ii. Interpretation of the Code. Whenever there appears to be an uncertainty, vagueness, or conflict in the terms of the Code, the Manager, in consultation with the staff, city engineer, or city attorney, as may be appropriate, will make every effort to interpret the Code in such a way that it fulfills the goals of the Comprehensive Plan and the UDC. The interpretation given by the Manager will be final unless the Applicant makes an appeal to the City Council or the Zoning Board of Adjustments, as applicable, to review and overturn his/her decision. In such a case the burden will be on the Applicant to prove that the Manager's interpretation is unreasonable and in clear conflict with the governing law and the goals of the Comprehensive Plan.

## **(2) City Engineer**

### **a. Designation**

The City Manager will designate a City Engineer to function as described in this Code. The City Engineer is an advisor to the City Manager. As such, the City Manager will delegate the City Engineer's powers, and in the case of conflict, the City Manager's decision will prevail. This does not allow the City Manager to make decisions that require the certification of a registered professional engineer, only that the authority delegated to the City Engineer stems from the City Manager and can be revoked in the case of conflict. The City Engineer must be a registered professional engineer, licensed by the State of Texas and competent in the design and review of land development and public works. The City Manager may also designate another employee to fulfill the City Engineer's duties under this code. In such a case, all references to City Engineer in this code apply to the designee.

### **b. Powers and Duties**

- i. Administrative Decision. The City Engineer is responsible for taking final action on the following procedure described in this Code, subject to the specific criteria for the procedure as described in the Code:
  - 1) Approval of Master Drainage Plans
  - 2) Approval of Street and Drainage Plans
  - 3) Approval of Water Distribution Plans
  - 4) Approval of Wastewater Plans
  - 5) Approval of Electric, Telephone and Telecommunications Plans
  - 6) Approval of Water Quality Controls
  - 7) Approval of Traffic and Thoroughfare Plans
- ii. Review and Report. The City Engineer will review and make either a report or recommendation to the City Manager, Planning and Zoning Commission or City Council on the following procedures, subject to the terms and conditions set forth for such procedures in this Code:
  - 1) General Development Plans and Concept Plans
  - 2) Plat Reviews
  - 3) Site Plan Reviews
  - 4) Development related applications
  - 5) Land use decisions

- c. Compliance with Rules and Procedures
  - i. The City Engineer will comply with any specific procedures or technical criteria described in this Code.
  - ii. The City Engineer may develop and implement additional procedures or technical criteria to clarify implementation of this Code, provided that such procedures or criteria are approved by the City Manager prior to their implementation and enforcement and provided further that the additional procedures do not violate any other provisions of this Code.

### **(3) Planning and Zoning Commission**

- a. Responsibilities. The regulations and restrictions of the Planning and Zoning Commission (Commission) for the City will be pursuant to the provisions of applicable statutory requirements of the State of Texas and the City's Home Rule Charter Section 7.14. The Commission's procedures and actions shall conform to this Code and the Charter. Powers and Duties. The Commission has the powers and duties of a Commission in accordance with LGC §211.007 and §371.042, provided, however, that it serves only in an advisory capacity to City Council. The Commission's authority extends to and includes review and recommendation of the following:
  - i. General Development Plans and Concept Plans
  - ii. Final Plats (including Amending, Development, and Replats)
  - iii. Preliminary Plats
  - iv. Site Development Permits
  - v. Development Agreements
  - vi. Special Use Permits
  - vii. Historic Building Designations
  - viii. Heritage Plans
  - ix. Planned Unit Developments
  - x. Conservation Development Alternatives (CDA)
  - xi. Comprehensive Plan or Future Land Use Map Amendments
  - xii. Zoning Map Amendments (Rezoning)
  - xiii. Unified Development Code (Code) Text Amendments
  - xiv. Any other specific procedure or items that require Commission action as specified in this Code or as required by state or federal law.
- b. Membership and By-Laws. The Commission will be formed and conduct all activities in accordance with this Code, any other applicable City codes, the City Home Rule Charter, the ordinance creating the Commission, and any adopted By-Laws.
- c. Commission Review Process. The Commission review process will be required for any permit or application that requires review and recommendations from the Commission, as described in this Code. The process will include the following:
  - i. Initiation. The Property Owner of the affected property or its authorized agent may initiate a Commission process upon application.
  - ii. Application. An Application must be made in a format consistent with requirements determined by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). The City Manager, in advance of any application, will make information regarding the format requirements and submittal materials required for the application available. Requirements include:



- 1) All applications must have signatures or authorization of all -owners of land within the boundary of the tract of land included in the application;
  - 2) All applications must be submitted in a form acceptable to the City Manager (or designee); and
  - 3) All applications must include an application fee as required by Chapter 3, Applications and Permits, in accordance with the Administrative Procedures Manual.
- d. Commission Final Action. The Commission will serve as an Advisory Body to the City Council and will have no authority for final action.
- e. Criteria for Recommendation. An application or variance will not be recommended for review and approval until:
- i. The application is complete and the information contained within the application is sufficient and correct so as to allow adequate review and a decision on a recommendation by the appropriate review authority.
  - ii. No plat will be recommended without a determination that the plat conforms to the following:
    - 1) The requirements of this Code and any applicable state law.
    - 2) The City's Comprehensive Plan and any other adopted plans as they relate to:
      - I. The City's current and future land use, streets, sidewalks, alleys, parks, playgrounds, and public utility facilities; and
      - II. The extension of the City or the extension, improvement, or widening of its roads, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities.
      - III. Any subdivision design and improvement standards adopted by the City pursuant to LGC §212.002 or §212.044, governing plats and subdivision of land within the City's jurisdiction to promote the health, safety, morals, or general welfare of the City and the safe, orderly, and healthful development of the City.
  - iii. The tract of land subject to the application is adequately served by public improvements and infrastructure, or will be adequately served upon completion of required improvements.
- f. Appeals. Appeals to Planning and Zoning Commission action, as applicable, will be made to City Council.

#### **(4) Zoning Board of Adjustment**

The regulations and restrictions of the Zoning Board of Adjustments (Board) for the City will be pursuant to the provisions of applicable statutory requirements of the State of Texas. The Board's procedures and actions shall conform to this Code.

- a. Powers and Duties.
  - i. The Zoning Board of Adjustment shall hear and decide appeals when error is alleged in any order, requirement, decision or determination made by an administrative official of the City in the enforcement of any zoning related decisions. The Zoning Board of Adjustment may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.

- ii. The Zoning Board of Adjustment may authorize, in specific cases, a variance from zoning regulations, unless specified otherwise, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation ordinance adopted hereunder is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by the City's zoning regulations. In order to make a finding of hardship and grant a variance from the zoning regulations, the Board must meet the findings laid out in Chapter 3.9 (9) of this Code.
- b. Appointment and Removal.
  - i. The Zoning Board of Adjustment is established in accordance with Chapter 211 of the Texas Local Government Code (LGC). The Board members are appointed by the City Council.
  - ii. The Board shall consist of five (5) members who shall be appointed by majority vote of the City Council.
  - iii. A member may only be removed for cause.
  - iv. A vacancy on the Board shall be filled for the unexpired term.
  - v. City Council, by majority vote, shall appoint two individuals as alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.
- c. Zoning Board of Adjustment Review Process and Vote.
  - i. Each case before the Zoning Board of Adjustment must be heard by at least four (4) of the five (5) members.
  - ii. The concurring vote of four (4) of the five (5) members of the Board is necessary to:
    - 1) reverse an order, requirement, decision or determination of an administrative official; or
    - 2) authorize a variation from the terms of a zoning regulation.

## **(5) City Council**

The regulations and restrictions of the City Council (Council) for the City will be pursuant to the provisions of applicable statutory requirements of the State of Texas.

- a. Powers and Duties. The Council has the following powers and duties:
  - i. Appointments. The Council is responsible for appointing and removing any members of the Planning and Zoning Commission or any other boards or commissions that may be formed related to the Code. Appointments will be made on the recommendation of the Mayor and a vote of approval by the City Council.
  - ii. Final Action. The City Council has responsibility for hearing and taking final action on the following procedures described in this Code.
    - 1) General Development Plan
    - 2) Preliminary and Conceptual Plans
    - 3) Legislative Variance Request
    - 4) Final Plat (including Preliminary, Development, and Replats)

- 5) Development Agreement
  - 6) Special Use Permit
  - 7) Dedication of land and community facilities
  - 8) Historic District Designation
  - 9) Heritage Plans
  - 10) Planned Unit Development
  - 11) Comprehensive Plan Amendment
  - 12) Zoning Map Amendment (Rezoning)
  - 13) Unified Development Code Text Amendment
  - 14) Annexation
  - 15) Any other specific procedure or legislative action that requires City Council action as specified in this Code, or required by state or federal law.
- b. City Council Review Process. Procedures for City Council review and action will be developed and adopted by the Council when appropriate.
  - c. City Council Final Action. The City Council will serve as the final action authority for all development- related applications listed above, and as indicated throughout this Code.

## **(6) Counties**

The City will endeavor to create interlocal agreements with Bexar, Comal and Kendall Counties to govern subdivision review authority in the City's Extraterritorial Jurisdiction (ETJ). Where no interlocal agreement exists State law should be followed. Where an interlocal agreement stipulates City control of the review process, it will proceed as follows:

- a. Review and Recommendation. The City will review and comment on Text Amendments to this Code as they relate to the specific counties technical issues, e.g., on-site sewage facilities (OSSFs) and the drilling of water wells.
- b. Final Action. The City recognizes that the respective County has responsibility for hearing and taking final action on the following procedures described in this Code:
  - i. OSSFs. Onsite Wastewater Permit Application Approval, and
  - ii. Procedures. Procedures to be utilized by the City of Fair Oaks Ranch for Bexar, Comal and Kendall Counties are described in the respective City-County Development Agreement.

## **Section 2.4 Summary of Review Authority**

Table 3.1 summarizes the decision-making authority of each review body for the City of Fair Oaks Ranch (outlined above in this Chapter and further described in Chapter 3, Applications and Permits). A review authority with decision-making authority for a procedure is considered the Final Action Authority for that procedure.

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## CHAPTER 3 APPLICATIONS AND PERMITS

### Section 3.1 Purpose and Intent

The purpose of this Chapter is to establish application procedures, internal review procedures, public notice and hearing procedures, and review criteria for the processing of applications and actions in accordance with the Unified Development Code (Code) that affect the development and use of property subject to the jurisdiction of the City of Fair Oaks Ranch (City).

### Section 3.2 Types of Applications and Permits

Application and permit types can be categorized as (a) Policy Related Applications and Permits, (b) Subdivision-Related Applications and Permits, or (c) Development-Related Applications and Permits. Review authorities for applicable development applications and permits are described in Table 3.1, below. The Administrative Procedures Manual (developed by the City Manager) establishes timelines for review and references applicable fees established by City Council. Certain procedures apply inside city limits that do not apply in the ETJ. Table 3.1 also provides guidelines for the procedures that apply in the city limits or ETJ.

#### **(1) Policy Related Applications and Permits**

Approval of applications for development is based on the proposed development's conformance with existing policies (including the Comprehensive Plan, Master Plans for Utilities and Drainage, Transportation and Thoroughfare Map, Zoning Map, design and development standards contained in this Code, other city codes, and other appropriate agreements. If changes to policies are to be considered, they must be approved by the City Council before any subdivision or development not in accordance with existing policies may proceed. Changes requiring City Council approval include Comprehensive Plan Amendments, Code Text Amendments, Special Use Permits, Zoning Map Amendments, i.e., Rezoning, Planned Unit Developments (PUDs), Low Impact Development (LIDs)/Conservation Development Alternative (CDAs), Annexation Petitions, and Development Agreements.

#### **(2) Subdivision and Property Development Related Applications and Permits**

Subdivision-related procedures are necessary to establish how individual lots or projects may be developed. Subdivision and property development related activities and projects must be in compliance with this Code.

- a. Preliminary Plat. A map or drawing of a proposed subdivision plan that, upon approval, establishes the approved layout. This approval includes the location and width of proposed streets, lots, blocks, floodplains, easements (utility, drainage, franchise utility, etc.), amenities, and other features required to ensure compliance with the requirements of this Code. A Preliminary Plat approval is required prior to Final Plat approval, except under certain conditions described herein in Section 3.8(4).
- b. Final Plat. A subdivision map or drawing intended for recordation in the plat records of the county in which the subdivision is located. A Final Plat requires approval of Preliminary Plat, construction plans for streets and infrastructure, and other items from the Preliminary Plat in accordance with this Code.
- c. Amending Plat. A plat that involves minor changes to a recorded plat. An amending plat will be filed in accordance with the procedures and requirements set forth in the Local Government Code (LGC) §212.045. The City Manager or designee may approve and issue an amending plat, which

may be recorded and control over the preceding plat without vacation of that plat and without notice and hearing.

- d. Re-plat. A new plat that changes the restrictions of a previously adopted Final Plat or results in a change in lot sizing that would affect water well or on-site sewage facility regulations, or that would affect compatibility with the City's zoning code or Future Land Use Map.
- e. Minor Plat. A subdivision involving four (4) or fewer lots fronting on an existing street and not requiring the extension of municipal facilities;
- f. Development Plat. Required for any person proposing the development of previously unsubdivided or unplatted land that is not being divided into separate parcels, or land that was exempted from platting by TXLGC; and
- g. Construction Plans. The maps, drawings, and specifications indicating the proposed location and design of improvements to be installed in a subdivision/Site Plan.

### **(3) Site Development Related Applications and Permits**

Development in the City must occur in compliance with all regulations of this Code, and development in the extraterritorial jurisdiction must occur in compliance with certain elements of this Code (See Section 1.4 and Table 3.1 for applicability of requirements to the ETJ). Any necessary modification to those standards must occur before a development project may be permitted that deviates from existing plans, standards or requirements. In addition, land must be appropriately subdivided and platted before any development project may occur. Development- related applications and permits include Letters of Regulatory Compliance (Zoning Verification Letter and Legal Lot Verification Letter), Written Interpretation of this Code, Master or Common Sign Plans, Temporary Use Permits, Special Exceptions, Site Plan Reviews and Site Development Permits, Stormwater Permits, Certificate of Design Compliances, Appeal of Administrative Decisions, Variances, Sign Permits and On-Site Wastewater (OSSF) Permits. Before any new well may be drilled or completed it must be registered with the appropriate underground water district and receive specific authorization before drilling is commenced.

**Table 3.1: Summary of Review Authority**

Permit or Application	Within City Limits	Within ETJ		Pre-application Conference	Administrative Review	Planning and Zoning Commission	Zoning Board of Adjustment	City Council	Appropriate County
<b>POLICY RELATED APPLICATION PERMITS</b>									
Comprehensive Plan Amendment	+	+		O	O	O		X	
UDC Text Amendment	+			O	O	O		X	
Special Use Permit	+			O	O	O		X	
Zoning Map Amendment (Zoning or Rezoning)	+			O	O	O		X	
Planned Unit Development	+			O	O	O		X	
Conservation Development Alternative (CDA)	+			O	O	O		X	
Annexation		+		O	O			X	
Concept Plan (if required)	+			O	O	O		X	
Development Agreement	+	+		O	O	O		X	
<b>PROPERTY DEVELOPMENT RELATED APPLICATIONS AND PERMITS</b>									
Zoning Verification Letter	+				X				
Letter of Regulatory Compliance	+	+			X				
Appeal of Administrative Decision (Zoning)	+	+					X		
Appeal of Administrative Decision (All others)	+	+						X	
Special Exception	+	+			O		X		
Policy Variance (Standards that are not required in the UDC and are city wide policies.)	+	+		O	O	O		X	
Judicial Variance (zoning-related development standards of this Code required by the UDC, ex. Setbacks, Building Frontage, Landscaping, Parking, etc. that are not related to or required for platting or subdivision approvals)	+			O	O		X		
Plat waivers/Subdivision Variance (Waivers of the standards required for plat approval and are contained in the Subdivision regulations during the plat process)	+	+			O	O		X	
Floodplain Development Permit	+	+			X				
Master/Common Sign Plan	+	+			X				
Sign Permit	+	+			X				
Relief from Signage (Variance)	+	+			O		X		
Master Signage Plan	+	+			X				
Appeal of Denial of Sign Permit	+	+			O		O		
Temporary Use Permit	+	+			X				
On-site Wastewater (OSSF) Permit	+	+							X
Building Permit	+			O	X				
Certificate of Occupancy	+				X				
Group Living Operating License	+			O	X				
<b>SUBDIVISION RELATED APPLICATIONS</b>									
Minor Plat	+	+		O	X				
Amending Plat	+	+			X				
Replat	+	+		O	O	O		X	
Development Plat	+	+		O	O	O		X	
Preliminary Plat	+	+			O	O		X	
Final Plat	+	+			O	O		X	
Construction Plan	+	+			X				
+ - Applicable; X - Final Action; O - Review/Recommendation									

### Section 3.3 Related Applications and Permits

Related applications and permits will be submitted, reviewed, and approved / denied based on the procedures listed below. Some of these procedures may be followed concurrently, while some procedures require pre-approval of other procedures. Refer to the Administrative Procedures Manual for clarification on the timing of these procedures.

#### **(1) Development Requiring Multiple Approvals**

The following restrictions apply to development applications requiring multiple approvals:

- a. Policy Related Applications:  
Policy related applications for permits required for a particular project will be sequenced so that when final actions occur, each approval provides any requisite requirement for a subsequent related approval.
- b. Subdivision Applications:
  - i. The Comprehensive Plan and Zoning Compliance Review should occur before any Subdivision Application.
  - ii. No application for Final Plat review will be considered complete and accepted for submittal until final action on the Preliminary Plat has occurred and a written approval of associated construction plans and plans for dedication of land and community facilities has been given by the City Manager or designee.
- c. Development Applications:
  - i. No Development or permit application may be considered if there is pending subdivision activity for the same tract of land, except for administrative determinations.
  - ii. Appeals of administrative decisions may only occur after a final decision by the City Manager.
  - iii. Consideration of development or permit applications will be sequenced so that when an approval occurs, it will provide any requisite requirement for a subsequent related approval.

#### **(2) Simultaneous Submission of Related Applications**

- a. Applications will be accepted, reviewed and processed in the sequence required pursuant to this Code and in the Administrative Procedures Manual. After each application receives final action, the next consecutive application in the Code process will be reviewed for completeness pursuant to the appropriate process.
- b. Acceptance of any application submitted simultaneously with other applications is subject to approval of all other related applications that are prerequisite(s) to consideration of another application in the development process. Denial or disapproval of any concurrently submitted application will prevent acceptance and consideration of any related applications unless and until the denied or disapproved application is resolved or approved. Any application that is subject to a prerequisite will not be accepted for processing until all prerequisites are met.
- c. An applicant may withdraw any individual application from a group of simultaneously submitted applications. If an application that is considered a pre-requisite to another application is withdrawn, then all consecutive applications may be considered withdrawn.



## Section 3.4 Common Review Elements

### (1) Pre-application Conference

A Pre-application Conference is a meeting between a potential applicant under this Code and the City Manager (or designee). Prior to submission of an application, a Pre-application Conference between the applicant and the City Manager and the appropriate City staff is recommended or required, as noted below. The Conference is an opportunity for the applicant to describe the development that will be submitted and for the City Manager (or designee) to explain the development process (i.e., which application is appropriate, which review body is responsible for final action, what the potential timelines for review may be, and what criteria will be used to determine whether the application may be approved). Completion of a Pre-application Conference does not imply or indicate subsequent City approval of the permit or application. The Pre-application Conference will proceed as follows:

- a. A Pre-application Conference is recommended for the following applications.
  - i. Sign Plan
  - ii. Site Plan
  - iii. Variance
  - iv. Preliminary Plat
  - v. Final Plat
  - vi. Development Plat
  - vii. Site Development Permit
- b. A Pre-application Conference is required for the following applications.
  - i. Annexation
  - ii. Concept Plan
  - iii. Special Use Permit
  - iv. Planned Unit Development
  - v. Comprehensive Plan Amendment
  - vi. Zoning Map Amendment (Rezoning)
  - vii. Code Text Amendment
  - viii. Conservation Development Alternative (CDA)
  - ix. Policy Variance
  - x. Judicial Variance
  - xi. Development Plat
  - xii. Building Permits (for larger projects that may need multiple approvals, or as recommended by staff)
  - xiii. Group Living Operating License
- c. Pre-application Conferences may be combined when an applicant will be making simultaneous applications for the same project. Completion of a Pre-application Conference or Combined Pre-application Conference does not imply or indicate City approval of any application. A Pre-application Conference is highly recommended for all other types of development, especially those that require phasing, multiple types of plats, and extension of public infrastructure.

## **(2) Application Forms and Fees**

The following regulations will apply to all applications:

- a. Forms. Applications required under this Code will be submitted on forms, with any requested information and attachments, and in such numbers as required by the City and / or as indicated in the Administrative Procedures Manual. The City Manager (or designee) will have the authority to request any additional pertinent information required to ensure compliance with this Code. The City Manager (or designee) must make any submission requirements and applicable fee requirements available to the applicant as a part of the Administrative Procedures Manual.
- b. Submission Requirements. Development applications (which include, among other types, those listed in Section 3.4(1) above) will be prepared and submitted in formats acceptable to the City Manager (or designee).
- c. Fees:
  - i. Development and permit application fees will be established from time to time by ordinance of the City Council.
  - ii. All required fees will be made payable to "The City of Fair Oaks Ranch," by local check, money order, cashier's check, or credit card.
  - iii. An applicant who has paid the appropriate fee pursuant to submission of an application, but who chooses to withdraw such application prior to the formal written notification of completeness or incompleteness, will be entitled to a refund upon written request to the City and upon City's discretion.

## **(3) Application Deadline**

All applications will be completed and submitted to the City Manager (or designee) in accordance with the Administrative Procedures Manual. An application will not be considered as officially submitted or filed until it is determined to be complete as specified below.

## **(4) Determination of Application Completeness**

Every application for a Development Permit will be subject to a determination of completeness by the City Manager (or designee).

- a. Documents. No application will be deemed complete and accepted for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of the UDC. For a determination of completeness to be issued, an application must include the following:
  - i. Payment of the appropriate fee;
  - ii. An accurate metes and bounds description of the subject property (or other suitable legal description);
  - iii. All documents, forms, exhibits, or other materials required by this ordinance, Administrative Procedures Manual, and as deemed necessary by the City Manager (or designee) for processing of a specific application
- b. Additional Requirements. The City Manager (or designee) may from time to time identify additional requirements for a complete application that are not contained within but are consistent with the application contents and standards set forth in this Code.
- c. Compliance. A determination of completeness will not constitute a determination of compliance with the substantive requirements of this Code.

- d. Written Determination. Not later than the tenth (10<sup>th</sup>) business day after the date an application is submitted, the City Manager (or designee) will make a written determination whether the application constitutes a complete application. This will include a determination that all information and documents required by this Code for the type of permit being submitted or other requirements have been submitted. A determination that the application is incomplete will be notified to the applicant within such time period. The determination will specify the documents or other information needed to complete the application. Incomplete applications will not constitute an official acceptance of the application for filing.
- e. An application filed on or after the effective date of this ordinance will be deemed complete on the 11th business day after the application has been received, if the applicant has not otherwise been notified that the application is incomplete. For purposes of this Section, the applicant will be deemed to have been notified if the City has notified the applicant of the determination as provided in subsection d.
- f. The processing of an application by any City employee prior to the time the application is determined to be complete will not be binding on the City as the official acceptance of the application for filing. The incompleteness of an application will be grounds for denial of the application regardless of whether a determination of incompleteness was mailed to the applicant.
- g. Vested rights do not accrue until the filing of an original permit application or plan that gives the City fair notice of the project and the nature of the permit sought.

#### **(5) Expiration of Inactive Permits and Approvals**

Approvals and permits issued pursuant to this Code will expire in the time period indicated in Table 3.2 unless the proposed development, project or use for which the approval was given is pursued as described below. Expiration of a project will be measured from the date the project was approved.

- a. A Letter of Regulatory Compliance or Written Interpretation stays in effect indefinitely where no related development is proposed. Upon submission of a proposed development application related to the Letter of Regulatory Compliance or Written Interpretation, the Letter of Regulatory Compliance or Written Interpretation will expire according to Table 3.2 unless the proposed development is not pursued.
- b. A development for which an approval or permit has been issued pursuant to this Code will be considered to be in process as set forth below:
  - i. A complete Building Permit application has been submitted or, if none is required, a Certificate of Occupancy has been issued.
  - ii. In case of projects where more than one building or phase is to be built, the applicant may submit a series of Building Permit applications. The first application must be submitted within twelve (12) months from the date Site Plan approval is granted. Each subsequent application must be submitted within twelve (12) months from the date of issuance of a Certificate of Occupancy for the previous building or phase.
- c. A lapse of a period equal to or greater than the period set forth in Table 3.2 will cause the related approvals or permits to expire and be of no further force and effect.
- d. The City Manager (or designee) or the body with the final approval authority may extend the expiration date of any permit or approval one time for a period not to exceed one (1) year in length. Such extension may be granted upon written request of the applicant, at any time prior

to or within the twelve (12) months preceding the expiration date, but the extension period may not begin later than the original expiration date.

- e. Reinstatement of a lapsed approval will require the applicant to pursue the same submittal and to obtain approval as an original application.
- f. Any Plat (approved pursuant to previous Subdivision Regulations) that is dormant in accordance with the provisions of LGC §245.005 will be deemed to have expired on November 19, 2002 (date of adoption of the subdivision ordinance).
- g. Extension may be approved for permits or approvals listed below in Table 3.2 for a period not to exceed one (1) year by the authority responsible for final approval.

**Table 3.2: Expiration of Inactive Permits or Approvals**

Comprehensive Plan Amendment	No Expiration
UDC Text Amendment	No Expiration
Special Use Permit	No Expiration
Zoning Map Amendment (Rezoning)	No Expiration
Conservation Development Alternative or Planned Unit Development	12 months if a plat or a permit has not been approved
Annexation	No Expiration
Variance	No Expiration
Certificate of Design Compliance	12 months
Storm Water Permit	12 months
Administrative Plat	12 months for a plat that has not been recorded
Preliminary Plat	12 months if construction drawings have not been approved.
Final Plat or Development Plat	No Expiration on a Recorded Final Subdivision Plat; 12 months for a plat approved by City Council that has not posted surety, begun construction of public infrastructure, or failed to provide required recording information. 24 months for an approved plat that has posted surety and begun construction of public infrastructure
Construction Plans	12 months
Development Agreement	As specified in the Agreement
Site Plan Permit Approval	12 months, if a permit has not been issued
Master Sign Plan	12 months, if a permit has not been issued
Sign Permit	12 months, if a permit has not been issued
Temporary Use Permit	As specified in Agreement or in other relevant sections of the UDC
Appeal to an Administrative Decision	No Expiration
Building Permit	12 months

## **(6) Written Decision after Final Action**

- a. Within ten (10) days after the authority authorized to make the final determination under the requirements of this Code makes a final decision, a copy of the decision will be sent to the applicant. A copy of the notice will be filed at the Office of the City Manager, where it will be available for public inspection during regular office hours.
- b. The decision will also state the final action authority's findings, conclusions, and supporting reasons or facts whenever this Code requires such findings as a prerequisite to the final action.

### **(7) Limitation on Reapplication**

If any Development Permit application or other application for approval, any petition for a plan amendment or any petition for an amendment to this Code is disapproved by the final action authority, another application or petition for the same permit, approval, or amendment for the same property or any portion thereof may not be filed within a period of ninety (90) days or within a period of twelve (12) months for zoning change applications from the date of final disapproval, except by vote of the City Council. Such reapplication must demonstrate:

- a. There is a substantial change in circumstances relevant to the issues and / or facts considered during the original review of the application that might reasonably affect the decision-making body's review of the relevant standards to the development described in the application; or
- b. New or additional information is available that was not available at the time of the original application that might reasonably affect the decision-making body's review of the relevant standards to the proposed development; or
- c. A new application is proposed to be submitted that is materially different (e.g., proposes new uses, or a substantial decrease in proposed densities and intensities) from the prior application; or
- d. The final decision on the application was based on a material mistake of fact.

## **Section 3.5 Standard Review Period**

### **(1) Establishment of Review Period**

The City Manager is required to establish a standard time period for review and final action on all applications. This information will be published in the Administrative Procedures Manual. This review period will be used to determine the number of days for all time limits within this Code. If the City Manager fails to establish review periods for each procedure, the default review period will be as per state law.

### **(2) Restrictions on Review Period Serving as Time Limit**

All review time requirements shall follow the state law.

### **(3) Exception to Standard Review Period**

The standard review period of an application for a plat or subdivision plan may be extended one time for a period not to exceed thirty (30) days upon the submission of a written request for extension. The request for extension will be placed on the first available city council meeting agenda for approval.

## **Section 3.6 Public Hearing and Notice**

### **(1) Required Public Hearing**

Table 3.3 identifies the types of procedures requiring a public hearing. The decision-making body may modify the application at the public hearing and refer such modifications to the recommending body.

**Table 3.3 Summary of Required Public Hearing**

Type of Application	Planning & Zoning Commission	Zoning Board of Adjustment	City Council
Comprehensive Plan Amendment	X		X
UDC Text Amendment	X		X
Special Use Permit	X		X
Zoning Map Amendment (Zoning or Rezoning)	X		X
Planned Unit Development/ Conservation Development Alternative	X		X
Annexation			X
Appeal of Administrative Decision (Zoning)		X	
Appeal of Administrative Decision (All others)			X
Policy Variance	X		X
Judicial Variance		X	
Development Agreement			X
Appeal of Denial of Sign Permit		X	
Replat (if required)	X		X

*X - Public Hearing Required*

*Development Agreements containing any of the above provisions must meet the public hearing requirements of such.*

## (2) Summary of Notice Required

Notice will be required for review of an application as shown in Table 3.4.

**Table 3.4: Summary of Notice Requirements**

Procedure	Published	Mailed	Sign Posted on Site
Comprehensive Plan Amendment	X		
UDC Text Amendment <sup>1</sup>	X		
Special Use Permit	X	X	X
Zoning Map Amendment (Zoning or Rezoning)	X	X	X
Planned Unit Development /Conservation Development Alternative	X	X	X
Annexation	X		X
Certificate of Design Compliance			X
Appeal of Administrative Decision	X		
Policy Variance	X	X	X
Judicial Variance	X	X	X
Development Agreement	X	X	
Appeal of Denial of Sign Permit	X		
Replat (if required)	X	X	

*x- Notice Required*

*1. Refer to Zoning Map Amendment if applicable*

## (3) Published Notice

At least 16 days before the date of the hearing before the governing body, the City Manager (or designee) will cause to be published public notice in an official newspaper or a newspaper of general circulation in the municipality. The notice will contain notice of the time and place of the hearing and a description of the item to be considered or reviewed. If notification of a public hearing before the Planning and Zoning Commission is required to be published, publication of the hearing before the Planning and Zoning Commission and the City Council may be done concurrently.

#### **(4) Mailed Notice**

At least 11 days before the hearing date, written notice of each public hearing on a proposed change in zoning classification will be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

#### **(5) Posted Notice**

The applicant will be responsible for posting notice along rights-of-way frontage of the subject property in a format approved by the City Manager (or designee) not less than fifteen (15) days prior to the scheduled public hearing.

#### **(6) Conduct of Public Hearings**

All public hearings will follow the procedures set forth by the City and as required by the TXLGC.

### **Section 3.7 Policy Related Applications and Permits**

This section provides specific approval criteria for the following policy-related applications:

- Comprehensive Plan Amendments
- Unified Development Code Text Amendments
- Special Use Permits
- Zoning Map Amendments- Rezoning, Planned Unit Developments (PUD)
- Conservation Development Alternative Concept Plan
- Annexation Petition
- Development Agreement

#### **(1) Comprehensive Plan Amendment**

- a. Applicability. The Comprehensive Plan reflects the City's long-term plan for growth and development. The City Council may, from time to time, on its own motion or on petition, amend, supplement, change, modify, or repeal the regulations, restrictions and boundaries herein established, or contained in the Comprehensive Plan.
- b. Review Process. The following sections set forth the specific requirements for amendment of the Comprehensive Plan:
  - i. Initiation. Initiation of a City Council Review of a Comprehensive Plan Amendment may be made upon recommendation of the:
    - 1) City Council;
    - 2) Planning and Zoning Commission; or
    - 3) City Manager (or designee).
    - 4) Request of other affected property owners or developers. If initiated by other affected property owners or developers, a Pre-Application Conference will be required.
  - ii. Staff Review. Once a procedure has been initiated, after receiving a complete application if initiated by a property owners or developers, the City Manager (or designee) will review the application, considering any applicable criteria for approval and prepare a report to the Planning and Zoning Commission and City Council. The City Manager (or designee) may:
    - 1) Establish procedures for administrative review necessary to ensure compliance with this Code and state statutes;

- 2) Assign staff to review the application and make a report to the City Manager; and
- 3) Include in his / her report a recommendation for final action.
- iii. Planning and Zoning Commission Review. The Commission will hold a public hearing, in accordance with its rules and state law, and make a recommendation to the City Council.
- iv. City Council Final Action. The City Council will hold a public hearing, in accordance with its rules and state law, and may take final action on the proposed amendment.
- c. Criteria for Approval—Generally. In determining whether to approve, approve with modifications, or disapprove a proposed amendment, the City Council will consider the following matters regarding the proposed amendment:
  - i. Whether the proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City.
  - ii. Whether the proposed amendment is consistent with the Future Land Use element of the most recent version of Comprehensive Plan.
  - iii. Whether the proposed amendment is consistent with other goals and objectives of the Comprehensive Plan.
  - iv. Unified Development Code Compliance. No requirement of the procedure for Comprehensive Plan or Code amendments may govern if in conflict with specific provisions of this Code or Comprehensive Plan. Any potential conflict between the proposed amendment(s) and the UDC or other parts of the Comprehensive Plan should be dealt with prior to (or as part of) the adoption of any amendment.
  - v. Other criteria deemed relevant and important by the City Council in relationship to the proposed amendment in taking final action on the proposed amendment.
- d. Responsibility for Final Action. Recommendations regarding Comprehensive Plan amendments will be made by the Planning and Zoning Commission. The Planning and Zoning Commission will forward their recommendation to the City Council. The City Council is responsible for final action on Comprehensive Plan Amendments.

## **(2) Unified Development Code Text Amendment**

- a. Applicability. Amendments to this Code may be made from time to time in order to establish and maintain sound, stable, and desirable development within the jurisdiction of the City, or to correct errors in the text, or to address changing conditions in a particular area or in the City. All text amendments will be in accordance with the Comprehensive Plan. If the Comprehensive Plan is amended, the Code should also be amended if deemed necessary or advisable by the Planning and Zoning Commission.
- b. Review Process. The following sections set forth the specific requirements for amendment of this Code; Section 1.9 of this Code. Updates or Amendments, describes the amendment and update process.
  - i. Initiation. Initiation of a City Council Review of a Code Amendment may be made upon recommendation of the:
    - 1) City Council;
    - 2) Planning and Zoning Commission; or
    - 3) City Manager;
    - 4) Request of other affected property owners or developers.



- ii. **Staff Review.** Once a procedure has been initiated, after receiving a complete application if initiated by a property owners or developers, the City Manager will review the application, considering any applicable criteria for approval and prepare a report to the Planning and Zoning Commission and City Council. The City Manager may:
  - 1) Establish procedures for administrative review necessary to ensure compliance with this Code and state statutes;
  - 2) Assign staff to review the application and make a report to the City Manager; and
  - 3) Include in his / her report a recommendation for final action.
- iii. **Planning and Zoning Commission Review.** The Planning and Zoning Commission will hold a public hearing, in accordance with its rules and state law, and make a recommendation to the City Council.
- iv. **City Council Final Action.** The City Council will hold a public hearing, in accordance with its rules and state law, and may take final action on the proposed amendment.
- c. **Criteria for Approval—Generally.** In determining whether to approve, approve with modifications, or disapprove a proposed amendment, the City Council will consider the following matters regarding the proposed amendment:
  - i. Whether the proposed amendment promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City.
  - ii. Whether the proposed amendment is consistent with the Future Land Use element of the most recent version of the Comprehensive Plan.
  - iii. Whether the proposed amendment is consistent with other goals and objectives of the Comprehensive Plan.
  - iv. **Unified Development Code Compliance.** No requirement of the procedure for Comprehensive Plan or Code amendments may govern if in conflict with specific provisions of this Code or Comprehensive Plan. Any potential conflicts of proposed amendments with the UDC or Comprehensive Plan will be considered and dealt with prior to the review and adoption of any amendment.
- d. **Responsibility for Final Action.** The Planning and Zoning Commission will make recommendations regarding the Code Text Amendments. The Planning and Zoning Commission will forward its recommendation to the City Council. The City Council is responsible for final action.

### **(3) Special Use Permit**

- a. **Applicability.** Special Use Permits allow for discretionary City Council approval of uses with unique or widely varying operating characteristics or unusual site development features, subject to the terms and conditions set forth in this Code. These uses may locate in districts as indicated under special conditions described in a Special Use Permit recommended by the Planning and Zoning Commission and approved by the City Council. No such use will commence without prior approval of a Special Use Permit.
- b. **Review Process.** The following sections set forth the specific requirements for approval of Special Use Permits.
  - i. **Initiation.** Initiation of a Special Use Permit request may be made by:
    - 1) An affected property owner or his / her authorized agent through the zoning application process; or
    - 2) Recommendation of the Planning and Zoning Commission; or

- 3) City Council.
- ii. Pre-Application Conference. Prior to submitting an application for approval, the Applicant may be required to participate in a Pre-Application Conference with the City Manager (or designee), City Engineer and designated City Staff, as noted in section 3.4 (1) and is optional for other applications. The Pre-Application Conference may include, but is not limited to, the City Manager and City Staff offering initial comments on the merits of the application, suggestions for refinement, and other information and advice to aid the applicant.
- iii. Application:
  - 1) Application on behalf of a property owner must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). Information regarding the format requirements and materials required for the application will be made available by the city staff in advance of any application.
  - 2) The City Manager (or designee) is responsible for ensuring that a complete application is prepared for changes initiated by the City Council or Planning and Zoning Commission such that all material necessary for the City Council to render an informed decision is provided.
- iv. Completeness Determination:
  - 1) Upon submission of an application for any type of zoning change, the City Manager (or designee) will determine whether the application is complete, as described in Section 3.4.
  - 2) Applications prepared by the City Manager (or designee) on behalf of the City Council or Planning and Zoning Commission will be considered complete.
- v. Staff Review. Once a procedure has been initiated, after receiving a complete application, the City Manager (or designee) will review the application, considering any applicable criteria for approval and prepare a report to the Planning and Zoning Commission and City Council. The City Manager (or designee) may:
  - 1) Establish procedures for administrative review necessary to ensure compliance with this Code and state statutes;
  - 2) Assign staff to review the application and make a report to the City Manager; and
  - 3) Include in his / her report a recommendation for final action.
- vi. Planning and Zoning Commission Review. The Planning and Zoning Commission will hold a public hearing, in accordance with its rules and state law, and make a recommendation to the City Council.
- vii. City Council Final Action. The City Council will hold a public hearing, in accordance with its rules and state law, and may take final action on the proposed request.
- c. Approval Criteria:
  - i. A binding Site Plan for the Special Use Permit must be approved by the City Council in order to approve issuance of a Special Use Permit. The Site Plan must be reviewed by the City Manager (or designee) for compliance with this Code.
  - ii. In addition to the criteria for zoning changes found in this Section, the City Council may approve an application for a Special Use Permit where it reasonably determines that there will be no significant negative impact upon residents of surrounding property or upon the general public. The City Council will review the Special Use Permit application based on the potential use's impact on the health, safety and welfare of the surrounding neighborhood; its

- impact on public infrastructure such as roads, parking facilities and water and sewer systems; and its impact on public services such as police and fire protection and solid waste collection, and the ability of existing infrastructure and services to adequately provide services. From time to time, the City Council may, at its sole discretion, promulgate a list of concerns or minimum public safety and design elements that should be addressed by an applicant for certain Special Use Permit land uses. When such a list of discussion guidelines is promulgated, it is to be considered only an outline of prospective issues that have come to the City's attention regarding these land uses, organized and recorded for the convenience of potential applicants, and is not in any way intended to be a comprehensive list of issues the City may consider in approving or denying the application, since each case subject to a Special Use Permit will be judged upon its unique circumstances and siting, decided at the discretion of the City based on the criteria described earlier in this paragraph. The City Manager (or designee) will maintain such lists, and they will be available to prospective applicants upon request.
- iii. No building, premise, or land used under a Special Use Permit (SUP) may be enlarged, modified, structurally altered, or otherwise significantly changed, unless an amendment to the approved SUP is granted for such enlargement, modifications, structural alteration, or change.
  - iv. Special Use Permits must be resubmitted to the City Manager (or designee) and the City Council for consideration using the modified Site Plan. The modified Special Use Permit and modified Site Plan will follow the regular review process for a regularly submitted Special Use Permit.
- d. Responsibility for Final Action. The City Council is responsible for final action on applications for Special Use Permits. The City Council, in considering final action, may impose conditions on the proposed use and attach such conditions to the Special Use Permit as deemed necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this section. Conditions and modifications may include but are not limited to limitation of building size or height, increased open space, limitations on impervious surfaces, enhanced loading and parking requirements, additional landscaping, curbing, sidewalk, vehicular access and parking improvements, placement or orientation of buildings and entryways, buffer yards, landscaping and screening, signage restrictions and design, maintenance of buildings and outdoor areas, duration of the permit and hours of operation.
- Where appeals are made to the City Council, the City Council 's action is considered final, subject only to judicial review.

#### **(4) Zoning Map Amendment – Rezoning**

- a. Applicability. For the purpose of establishing and maintaining sound, stable, and desirable development within the corporate limits of the City, the Official Zoning Map may be amended based upon changed or changing conditions in a particular area or in the City generally, or to rezone an area, or to extend the boundary of an existing Zoning District. If the Zoning Map is amended, the Comprehensive Plan and Code should also be amended if the Commission finds it necessary or advisable.
- b. Review Process:
  - i. Initiation. Initiation of a Zoning Change may be initiated by:

- 1) An affected property owner or his / her authorized agent through the zoning application process; or
  - 2) City Staff and City Manager;
  - 3) Recommendation of the Planning and Zoning Commission; or
  - 4) City Council.
- ii. Pre-Application Conference. Prior to submitting an application for approval, the Applicant must participate in a Pre-Application Conference with the City Manager (or designee), City Engineer and designated City Staff. The Pre-Application Conference may include, but is not limited to, the City Manager and City Staff offering initial comments on the merits of the application, suggestions for refinement, and other information and advice to aid the applicant.
- iii. Application:
- 1) Application on behalf of a property owner must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). Information regarding the format requirements and materials required for the application will be made available by the City staff in advance of any application.
  - 2) The City Manager (or designee) is responsible for ensuring that a complete application is prepared for changes initiated by the City Council or Planning and Zoning Commission such that all material necessary for the City Council to render an informed decision is provided.
- iv. Completeness Determination:
- 1) Upon submission of an application for any type of zoning change, the City Manager (or designee) will determine whether the application is complete, as described in Section 3.4.
  - 2) Applications prepared by the City Manager on behalf of the City Council or Planning and Zoning Commission will be considered complete.
- v. Staff Review. Once a procedure has been initiated and the application deemed complete, the City Manager (or designee) will review the application, considering any applicable criteria for approval and prepare a report to the Planning and Zoning Commission and the City Council. The City Manager (or designee) may:
- 1) Establish procedures for administrative review necessary to ensure compliance with this Code and state law;
  - 2) Assign staff to review the application and make a preliminary report; and
  - 3) Include a recommendation for final action in his / her report to the Planning and Zoning Commission and City Council.
- vi. Planning and Zoning Commission Review. The Planning and Zoning Commission will hold a public hearing, in accordance with its rules and state law, and make a recommendation to the City Council.
- vii. City Council Final Action. The City Council will hold a public hearing, in accordance with its rules and state law, and take final action on the application.
- 1) The rezoning, planned unit development, planned low density development, or initial zoning of annexed territory will become effective by a simple majority vote of the City Council.

- 2) If a proposed rezoning of a tract of land has been protested in writing by the owners of property covered by proposed change, or owners of at least 20 percent of the area within 200 feet of the tract, the rezoning may not become effective except by three-fourths vote of the City Council. Computation of area covered by proposed change shall include the streets and alleys.
  - 3) At least three-fourths vote of the City Council is required to overrule a recommendation by the Planning and Zoning Commission that a regulation or boundary be denied.
- c. Criteria for Approval—Generally:
- i. The application is complete, and the information contained within the application is sufficient and correct enough to allow adequate review and final action.
  - ii. Zoning changes may be approved when the following standards are met:
    - 1) The zoning change is consistent with the Comprehensive Plan;
    - 2) The zoning change promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City;
    - 3) The zoning change is compatible with and conforms with uses of nearby property and the character of the neighborhood;
    - 4) The property affected by the zoning change is suitable for uses permitted by the proposed amendment to the zoning map;
    - 5) Infrastructure, including roadway adequacy, sewer, water and storm water facilities, is or is committed to be available that is generally suitable and adequate for the proposed use; and
  - iii. Zoning variances are considered and granted by the Zoning Board of Adjustments. Zoning changes must be made by Zoning Map Amendment. All amendments must be in accordance with the Comprehensive Plan, which may be amended according to the procedure in this Section. Newly annexed areas will be zoned during the annexation process.
- d. Responsibility for Final Action. The Planning and Zoning Commission will review conditions and proposed decisions regarding rezoning. The Planning and Zoning Commission will forward its recommendation to the City Council, which is responsible for final action on Zoning Map Amendments.

## **(5) Zoning Map Amendment – Planned Unit Development**

- a. Applicability. A Planned Unit Development (PUD) is a zoning overlay district that may be used to permit new or innovative concepts in land utilization, master-planned communities, mixed use development that other Zoning Districts do not accommodate, and to provide site-specific compatibility standards. While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, procedures are established to insure against misuse of increased flexibility. PUDs are appropriate in areas where the Comprehensive Plan reflects the specific uses proposed in the PUD or where the Comprehensive Plan reflects mixed use as a land use category. However, any PUD applicant must demonstrate that the lot sizing, street frontages, and general design characteristics of the PUD are in keeping with the spirit of the Fair Oaks Ranch Comprehensive Plan, and complimentary to the existing character of Fair Oaks Ranch.
- b. Submission Requirements.

- i. Pre-Application Conference. Prior to submitting a PUD Plan for approval, the Applicant must request a Pre-Application Conference with the City Manager (or designee), City Engineer and designated City Staff. The Pre-Application Conference will include, but is not limited to, the following:
  - 1) The City Manager and City Staff offering initial comments on the merits of the PUD Concept Plan, suggestions for refinement, and other information and advice to aid the Subdivider in the preparation of a Formal PUD Plan.
  - 2) If the PUD subdivision is located wholly or partly within the city limits, approval of the Final PUD Plan must be preceded or accompanied by approval of PUD zoning for the entire area of the subdivision inside the city limits, as provided in Chapter 4, Zoning Districts and Use Regulations. Preliminary and Final Plats which conform to the Final PUD Plan may then be submitted for approval as individual subareas within the overall PUD when they are ready for development. Any variation in land uses from those approved in the Final PUD Plan will require approval of an amended overall PUD plan, under the same procedures as required for the Final PUD Plan.
- ii. Concept Plan. At the Pre-Application Conference the Applicant will submit a Concept Plan for the proposed development. The PUD Concept Plan need not be engineered, but it must contain at least the following information in sufficient detail to permit understanding of the proposal:
  - 1) A map of the site, drawn to scale and showing north arrow, the boundaries of the proposed development, adjacent subdivisions, and the streets in the vicinity of the site.
  - 2) A map showing general topographic considerations affecting the site, floodplains and watercourses, recharge zones, geologic features and protected areas on the site and in the vicinity, and any other significant environmental features that may affect the site.
  - 3) The general layout proposed for the PUD, delineating the areas that are 1) proposed for residential development, 2) the forms and densities proposed in each such area, 3) the areas proposed for non-residential development and the general nature of the uses proposed in each such area, and 4) the areas proposed as open space or parks and the general character proposed for each such area.
  - 4) The total acreage of the site, the number of acres to be developed in each type of residential and non-residential development which is proposed, and the number of acres proposed to be dedicated as community open space.
  - 5) The total number of residential dwelling units of each type proposed, and the approximate gross square footage of each type of non-residential development proposed.
  - 6) All proposed amenities and enhancements with details.
- iii. Requirements for Preliminary PUD Submittal. In addition to the above requirements, the PUD submittal must contain or be accompanied by the following:
  - 1) A written report explaining the project, with a list of proposed variations and deviations from the requirements of this code, if any;
  - 2) Parking. Clear delineation of the areas which are to be reserved for off-street parking and loading, and the ratios of parking spaces to square feet of floor area for each lot to be developed in a non-residential use, and a clear delineation of the areas which are to

- be reserved for residential off-street parking and the number of parking spaces to be provided for each dwelling unit;
- 3) Fencing and Screening. The location, type and height of all proposed fences, screening walls, and other screening devices intended to buffer one land use from another or to buffer the PUD subdivision from adjacent properties;
  - 4) Community Open Space Areas. The location and character of all improvements to be made in community open space areas, including a general landscape plan for each area and proposed amenities;
  - 5) Building design and aesthetic standards;
  - 6) FORHA or HOA (Association). A draft of the legal Instrument establishing the Association.
- iv. Form and Content of Final PUD Plan. The Final PUD Plan will include 1) 24" by 36" copies of the Final PUD Plan, 2) 8 1/2" x 11" black and white copy, and 3) a digital file of the Final PUD Plan in a format specified by the City Manager (or designee). The Final PUD Plan will be drawn to a scale of 1-inch to 100 feet. Where more than one sheet is required, an index sheet of maximum size 18 inches by 24 inches will be filed showing the entire subdivision, and all scales must be uniform. The Final PUD Plan for the proposed development must be drawn by a Professional Engineer and must include the following:
- 1) Date, scale, north arrow, name of Subdivider, title of the plan/ development and name of the person preparing the PUD Plan;
  - 2) The location of the city limit lines and the outer border of the City's ETJ (if either traverses the subdivision or is contiguous to a subdivision boundary) and any other relevant jurisdictional lines;
  - 3) The location, ROW width, name and description of all existing or recorded streets and alleys within or adjacent to the subdivision, as determined from existing records, and the location of all intersections adjacent to the subdivision.
  - 4) The ROW and description of all proposed streets and alleys within the subdivision;
  - 5) The location, ROW, and type or purpose of all existing easements within and adjacent to the subdivision;
  - 6) The centerline of existing watercourses, creeks and drainage structures within and adjacent to the subdivision, and the limits of the 100-year flood plains if applicable;
  - 7) 2' topographic lines;
  - 8) The centerline of proposed watercourses, creeks and drainage structures, and the general nature and extent of any other water features that are proposed to be developed;
  - 9) The area and acreage in each distinct type of proposed land use;
  - 10) The areas and acreages which are to be dedicated as open space and parks, including an indication whether the dedication is to be as a public park, or a private park owned and managed by an Association;
  - 11) The location, type and height of the fences, walls or other screening devices which are proposed to buffer the PUD from adjacent developments and, within the PUD, to buffer one land use from another; and
  - 12) The information, which is presented graphically in the PUD plan must be accompanied by the following information in narrative or tabular form:



- I. The total number of dwelling units in each distinct type proposed;
  - II. The total acreage in each distinct type of residential development; and the resulting densities in dwelling units per acre;
  - III. The total acreage and gross square feet proposed in each distinct type of non-residential development;
  - IV. Descriptions of the number, size and character of any active recreational facilities and community meeting spaces which are to be included in the dedicated open space and parks; and
  - V. Calculations showing the minimum total area of open space and parks that is required by this Code, and the actual areas that are proposed to be dedicated as open space and parks. A narrative justification must accompany any request for a reduction in the open space requirement.
- v. Additional Requirements. In addition to the requirements for a Final Plat which apply to a conventional subdivision, the Final PUD Plan subdivision must contain or be accompanied by approved and executed copies of the following:
  - 1) Legal Instrument Establishing the Association. A legal instrument establishing the Association, approved by the City Attorney;
  - 2) Budget. A multi-year budget for the community association, approved by the City;
  - 3) Financial Guarantee. A bond or other financial guarantee of the full funding of the Association's reserve fund for repairs and maintenance of the open space areas and facilities; and
  - 4) Maintenance Agreement. A Maintenance Agreement between the Association and the City for repair and maintenance of the common areas and facilities which are to be dedicated as open space.
- c. Approval Criteria (PUD). The zoning change criteria in this Section, as it related to the PUD, will be considered by the Planning & Zoning Commission and, upon receipt of the Commission's recommendation to the City Council, the Council will consider the following specific objectives and criteria in making a determination on the development ordinance and Concept Plan associated with the PUD. Rezoning and development under the PUD district will be permitted only if the development ordinance and Concept Plan meet the following criteria:
  - i. Comprehensive Plan. The PUD must be compatible with the goals and policies of the Comprehensive Plan;
  - ii. Natural Features. Insofar as practicable, the landscape will be preserved in its natural state by minimizing tree and soil removal. The natural features of the landscape will be integrated into the subdivision design as amenities enhancing the developed environment.
  - iii. Environmentally Sensitive Features. Insofar as practicable, environmentally sensitive features will be preserved in their natural state. The environmentally sensitive features will be integrated into the subdivision design as amenities enhancing the developed environment.
  - iv. Buildings. Proposed buildings will be sited in harmony with the terrain and with other buildings in the vicinity that have a visual relationship to the proposed development.
  - v. Utility Infrastructure. Assurance of adequate utility infrastructure in conformance with the Utility Master Plan and Drainage Master Plan.
  - vi. Pathways, Driveways and Streets. Pedestrian paths, bicycle paths, driveways, parking areas and interior streets in the subdivision will be located and designed to take best advantage of



- the topography and natural features of the landscape, to separate vehicular, bicycle and pedestrian traffic as much as practical, and to contribute to rather than detract from the design of proposed land uses and neighboring properties.
- vii. Facilities. Provision of cultural and recreational facilities for all residents.
  - viii. Opens Spaces and Parks. Open spaces will link residential areas with each other and with related nonresidential destinations and provide amenities that enhance the residential environment. Where possible, these open spaces will link directly to parks, other open spaces, schools and other community institutions adjacent to the subdivision.
  - ix. Sequential / Staged Development. A Final PUD Plan may be divided into stages for sequential development over time. In such a case, the Final PUD Plan will include the entire area of the tract, which is to be developed as a PUD, and it will indicate the sequence and approximate schedule for development of all the various subareas within the tract. Development will be staged in a manner that can be accommodated by the timely provision of public utilities, facilities and services.
  - x. Minimum Requirements:
    - 1) No Minimum Lot Size. There is no minimum lot size for a residential lot in a PUD, provided that for each residential unit there is a net minimum of 4,000 square feet of site area. There is no minimum width and no minimum street frontage for a residential lot in a PUD.
    - 2) Setbacks. There are no minimum front, side or rear yard setback requirements in a PUD, except as follows:
      - I. Along the perimeter of a PUD, all lots must meet the same minimum setback requirements as would be required in a subdivision which is not a PUD, unless the City Council approves a lesser setback in the PUD Plan.
      - II. On any lot which has driveway access to a street, all buildings and other structures must be set back at least ten feet from the lot line adjacent to the street.
      - III. On any corner lot, no wall, fence or other structure may be erected above a height of three feet, and no hedge, shrub, tree or other vegetation may be maintained above a height of three feet, within the triangular area formed by the intersecting street edge lines and a straight line connecting such street edge lines at points 25 feet from the point of intersection measured along such street line.
    - 3) Drainage easements and utility easements will be provided as required by other provisions of this Code.
  - xi. Minimum Open Space Requirements. Each PUD will provide for a minimum amount of community open space as follows:
    - 1) For a residential PUD, the minimum requirement is 20 percent of the gross site area of the subdivision.
    - 2) For a non-residential PUD, the minimum requirement is ten percent of the gross site area of the subdivision.
    - 3) For a PUD that includes both residential and non-residential development, the total requirement is calculated according to the relative proportions of the gross site area of the subdivision that are proposed to be developed in residential and non-residential uses.
    - 4) Up to 25 percent of the minimum community open space requirement may be met by including 1/2 of the area of any public park, unimproved floodplain or other beneficial open space area which is contiguous and accessible to the subdivision and which, in the

judgment of the planning and City Manager (or designee) and the City Council, has a reasonable expectation of perpetuity. The City Manager and the City Council may also approve a decrease of up to 25 percent of the minimum community open space requirement when the PUD plan includes unique design features or amenities which achieve an especially attractive and desirable development, including, but not limited to, terraces, sculpture, water features, preservation and enhancement of unusual natural features or cultural resources, or other unusual amenities which the City Manager and City Council find will benefit the community as a whole in addition to the occupants of the subdivision. However, in no case may the total reduction in the minimum community open space requirement exceed 40 percent.

- 5) The community open space required by this section may either be dedicated to the City as public park land or be dedicated as common area for use by the residents / occupants of the PUD, to be owned and managed by the Association which is directly responsible to and controlled by the property s in the subdivision.
  - 6) In the case of community open space which is proposed to be dedicated as parkland, the City Manager (or designee) will inspect the area in the field and make a recommendation to the City Council at the time the Council considers the PUD plan as to the desirability of accepting the proposed dedication and the City's likely ability to fund the future operation and maintenance of the proposed facilities. The area to be so dedicated will be indicated on the Preliminary Plat as "Park Land Dedicated to (the name of management entity such as FORHA)." The total acreage of the park will be noted on the Final Plat, and the dedication of the park will also be noted in the narrative portion of the Final Plat where the Owner dedicates easements, ROW and other improvements to the City. All improvements to the required open space which are shown in the Final PUD Plan must be constructed by the Subdivider at the same time as the streets, drainage system and other components of the subdivision infrastructure are being constructed. Additionally:
    - I. Improvements to an open space that is internal to or otherwise distinctly associated with an individual subarea of a PUD, which is to be developed in stages, must be constructed at the same time as the other components of subdivision infrastructure shown on the Final Plat for that stage of the subdivision development.
    - II. No building permits will be issued, and no utility connections will be made for any building or structure on any lot outside the community open space until these improvements have been inspected and approved by the City Manager (or designee).
- d. Effect of Council Approval. City Council approval of a PUD also constitutes final approval of the binding PUD development ordinance and PUD Concept Plan that were attached to the PUD application, as modified by the City Council.
- i. Development Ordinance. The PUD development ordinance, as modified and approved by the City Council, becomes, in effect, a modification to the regulations and standards of this Code that apply only to the area of land described by the PUD development ordinance. All future or ongoing development approvals or permits within the area of the PUD will comply with the PUD development ordinance in addition to this Code.
  - ii. The PUD Concept Plan. As modified and approved by the City Council, the PUD Concept Plan becomes, in effect, an amendment to the City's Comprehensive Plan and Zoning Map that applies only to the area of land described by the PUD. All future or ongoing development

approvals or permits, including any plat-related approval, will comply with the PUD Concept Plan in addition to the City's Comprehensive Plan.

- iii. Minimum Requirements. Unless otherwise indicated in the approved PUD development ordinance or PUD Concept Plan, the minimum requirements for each development will be those stated in this Code for subdivisions and the requirements of the most restrictive standard Zoning District in which designated uses are permitted.
- e. Responsibility for Final Action. The Planning and Zoning Commission will review decisions regarding a PUD. The Commission will forward its recommendation to the City Council, which is responsible for final action on a PUD.
- f. Approval When Protested. If the Final PUD Plan is protested in writing by the owners of 20 percent or more either of the number of lots or of the area of land covered by the proposed change or the area of lots or area of land immediately adjoining the proposed PUD subdivision and within 200 feet from the proposed subdivision boundary, then the Final PUD plan may not be approved except by a vote of at least 3/4 of all members of the City Council. Computation of area covered by proposed change shall include the streets and alleys.
- g. Substantial Amendments to the Final PUD Plan. Alterations to the approved Final PUD Plan are classified as either substantial or nonsubstantial amendments. Substantial amendments must be approved by City Council following the same procedures as required for approval of the Final PUD Plan, including payment of the appropriate Filing Fees. A substantial amendment is any change that would:
  - i. Add a land use not previously approved as part of the PUD plan;
  - ii. Alter the land use in an area within 200 feet of a boundary of the PUD subdivision, Increase the overall density of the PUD by ten percent or more. However, in no case may the overall density of a PUD located inside the city limits exceed that permitted by the PUD zoning district;
  - iii. Reduce the total area to be dedicated as community open space, or which would alter the location of that area by ten percent or more; or
  - iv. In the judgment of the City Manager (or designee), would significantly alter the general character or overall design of the PUD.
- h. Nonsubstantial Amendments. All other amendments not deemed substantial shall be considered nonsubstantial amendments. Within 30 days from the official date of submission of the application for a Nonsubstantial Amendment, the City Manager must 1) approve it 2) approve it with conditions, which means the nonsubstantial amendment is approved once such conditions are fulfilled, and until the conditions are satisfied, it is considered denied, or 3) defer the Nonsubstantial Amendment to the City Council.
- i. Action by City Council, If Required. If the City Manager (or designee) defers the Nonsubstantial Amendment application, the City Council must consider the application at a regular meeting no later than 30 calendar days after the date on which the City Manager (or designee) deferred the application to the City Council. The City Council, upon simple majority vote, must 1) approve Nonsubstantial Amendment, 2) approve it with conditions, which means the Nonsubstantial Amendment is approved once such conditions are fulfilled, and until the conditions are satisfied, it is considered denied, or 3) deny the Nonsubstantial Amendment.

- j. Certified by City Manager (or designee). No application for approval of a Nonsubstantial Amendment will be considered completed and filed until all the items required by state law and this Code have been received and the application is certified by the City Manager (or designee).

## **(6) Conservation Development Alternative**

Refer to Section 8.3.

## **(7) Concept Plan**

- a. Purpose. The purpose of the Concept Plan is to provide for review of certain developments for compliance with the Comprehensive Plan, this Code, any additional adopted plans (e.g., Wastewater, Drainage or Water Plan), the compatibility of land uses, and the coordination of improvements within and among individual parcels of land or phases of development, **prior to City approval of a Preliminary Plat.**
- b. Applicability:
  - i. A Concept Plan is required for any development that meets the following criteria:
    - 1) If the property is undeveloped, is under one ownership, and is greater than 50 acres; or
    - 2) Is to be platted and developed in phases; or
    - 3) Will require off-site road, drainage, or utility connections or improvements that will have a substantial impact or effect on other properties or developments; or
    - 4) Is proposed for approval as a Planned Unit Development
  - ii. The City Manager (or designee) will determine during the Pre-Application Conference for any plat application whether a Concept Plan is required in accordance with the purpose stated in this Code. The City Manager (or designee)'s decision to require a Concept Plan may be considered by the Planning and Zoning Commission upon written request of the applicant
  - iii. When a development is located on a portion of a large tract under one ownership, is developed in phases, or is located on land that was not legally subdivided, the developer may be required to submit a Concept Plan for review and recommendation to City Council by the Planning and Zoning Commission.
- c. Approval Criteria. Concept Plans will be reviewed by the Commission using the applicable criteria for approval of subdivisions and plats in this Code, and forwarded to City Council for its review and final action.
- d. Responsibility for Final Action. The Planning and Zoning Commission will make recommendations regarding a Concept Plan. The Commission will forward its recommendation to the City Council, which is responsible for final action on Concept Plans.

Phases and Revisions. All current and future phases of development referenced in a Concept Plan will be designed and constructed in conformance with the Concept Plan. Any changes to project layout, land use, infrastructure design or construction, or other changes that would require a revision of subsequent plats or permits from what was originally proposed will require a revision of the Concept Plan prior to proceeding to apply for approval of subsequent development phases on the same property. All revisions to a Concept Plan will be subject to review and recommendation by the Commission and final approval by the City Council or designee.

## **Section 3.8 Subdivision and Property Development Related Applications**

This section applies to the following subdivision-related applications:

- Administrative Plats
- Preliminary Plat
- Final Plat
- Replat
- Development Plat
- Construction Plans

### **(1) General Requirements for Approval of Plats**

- a. Prior to the subdivision, re-subdivision, or development of any land within the City, or its extraterritorial jurisdiction, all plans, plats, and construction plans for infrastructure improvements must first be approved in accordance with regulations specified in subsections 3.8(1) (b) – (f) except for:
  - i. Construction of alterations to an existing building where no drainage, street, utility extension or improvement, additional parking or street access change is required to meet the standards of this Code are necessary to support such building alterations and no increase in the footprint of the building is proposed.
  - ii. Divisions of land created by order of a court of competent jurisdiction.
  - iii. A change in ownership of a property through inheritance or the probate of an estate.
  - iv. Cemeteries complying with all state and local laws and regulations.
  - v. Those plats exempted in LGC §212.004.
- b. Except as exempted in Section 3.8(1)a, above, no land may be subdivided or platted through the use of any legal description other than with reference to a plat approved by the City Council or the City Manager (or designee) in accordance with these regulations.
- c. No land described in this section may be subdivided or developed until the property owner has obtained approval of the applicable Plat, or Development Plat from the City Council or the City Manager as required by these regulations.
- d. No person will transfer, lease, sell or receive any part of a parcel before an Administrative Plat or Final Plat of such parcel and the remaining parcel have been approved by the City Council in accordance with the provisions of these regulations in this Code and filed of record with the appropriate County Clerk.
- e. The platting or subdivision of any lot or any parcel of land, by the use of Global Positioning System (GPS) using the Texas State Plane Coordinate System (SPCS) as a substitute for metes and bounds for the purpose of sale, transfer, lease or development is prohibited. The SPCS may be used as supporting documentation only and the datum source must be referenced.
- f. The Commission and the City Council will act on a plat within the timeframe specified in the state statutes. A plat is considered approved unless it is disapproved within that period.
- g. Conditional approval and denial. If the City Council conditionally approves or denies the plat, a written statement must be provided to the applicant clearly articulating each specific condition for the conditional approval or reason for denial. Each condition or reason specified in the written statement may not be arbitrary and must include a citation to the regulation, ordinance, or law that is the basis for the conditional approval or denial.
- h. Applicant Response to Conditional Approval or Denial. After the conditional approval or denial of a plat, the applicant may submit a written response that satisfies each condition for the conditional approval or remedies each reason for denial provided. The City Manager is

authorized to approve revisions required for conditional approval of the plat. The City Council shall determine whether to approve or deny the applicant's previously denied plat or conditionally approved, if forwarded to the City Council by the City Manager. Action shall be taken by the City Manager or City Council no later than the fifteenth (15th) calendar day after the date the response was submitted.

## **(2) Administrative Plat Review**

- a. Applicability. Minor Plats, Amending Plats, and Development Plats may be approved by the City Manager (or designee) following an evaluation for plan compliance and technical compliance with this Code.
  - i. Minor Plat. A Minor Plat is any plat involving four (4) or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities.
  - ii. Amending Plat. A plat that complies with LGC §212.016, as amended, which is generally submitted to correct errors and omissions, or make minor changes if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:
    - 1) Correct an error in a course or distance shown on the preceding plat;
    - 2) Add a course or distance that was omitted on the preceding plat;
    - 3) Correct an error in a real property description shown on the preceding plat;
    - 4) Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
    - 5) Show the location or character of a monument which has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
    - 6) Correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
    - 7) Correct an error in courses and distances of lot lines between two (2) adjacent lots if:
      - 8) Both lot owners join in the application for amending the plat;
      - 9) Neither lot is abolished;
      - 10) The amendment does not attempt to remove recorded covenants or restrictions; and
      - 11) The amendment does not have a materially adverse effect on the property rights of the other owners in the subdivision;
    - 12) Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
    - 13) Relocate one or more lot lines between one or more adjacent lots if:
      - The owners of all those lots join in the application for amending the plat;
      - The amendment does not attempt to remove recorded covenants or restrictions; and
      - The amendment does not increase the number of lots;
    - 14) Make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:
      - The changes do not affect applicable zoning and other regulations of the municipality, including water and on-site sewage facility regulations;

- The changes do not attempt to amend or remove any covenants or restrictions; and
  - The area covered by the changes is located in an area that the Commission or City Council has approved, after a public hearing, as a residential improvement area;
- 15) Replat one or more lots fronting on an existing street if:
- The owners of all those lots join in the application for amending the plat;
  - The amendment does not attempt to remove recorded covenants or restrictions;
  - The amendment does not increase the number of lots; and
  - The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities, or require a variance for water well lot sizing and setbacks or on-site sewage facility regulations.
- iii. Development Plat:
- 1) Development Plats are required for previously unsubdivided or unplatted land that is not being divided into separate parcels, as described in LGC §212.045.
  - 2) Any person who proposes the development of a tract of land within the City limits or the extraterritorial jurisdiction of the City must have a Development Plat of the tract prepared in accordance with this Section.
  - 3) No development will begin, nor any building permit, utility connection permit, or similar permit be issued until a development plat has been reviewed and approved.
  - 4) When an applicant is required to file a Preliminary Plat or Final Subdivision Plat by other requirements of this Section, a Development Plat is not required.
- iv. City Manager Endorsement. It will be unlawful to offer and cause to be filed any plan, plat, or replat of land within the City limits or ETJ of City of record with the appropriate County Clerk unless the plan, plat or replat bears the endorsement and approval of the City Manager (or designee).
- b. Approval Criteria (Administrative Plat). All subdivisions and plats of land will be reviewed using the criteria in this Code. Infrastructure construction plans must be filed and be consistent with Chapter 8 Environmental Protection, if needed. Subdivisions, plats and construction plans must be reviewed and approved before any final action may be taken by the City Manager (or designee) or the developer.
- c. Action Following Plat Approval. After approval of an Administrative Plat, the Developer will notify the City Engineer within ten (10) days which of the following construction procedure(s) the Developer proposes to follow:
- i. The Developer may file a Construction Plan, and upon approval of the Construction Plan by the City Manager (or designee), proceed with construction of streets, alleys, sidewalks, and utilities that the Developer is required to install. The City will inspect the work as it progresses, and upon completion and final acceptance by the City, and upon written request of the Developer, the approved plat may be filed of record with the appropriate County Clerk; or
  - ii. The Developer may elect to post fiscal surety and assurance of construction, if required, as provided in Chapter 9 Infrastructure and Public Improvements, in which case the surety of assurance will be filed with the City, together with a request that the plat be filed for record. In this case, the plat will be filed with the appropriate County Clerk. The City will inspect the construction work as it progresses and will make the final inspection to assure



compliance with City requirements; and upon completion of construction, the Developer will deliver to the City a two (2) year guarantee of workmanship and materials as provided in Chapter 9 Infrastructure and Public Improvements.

- iii. The City Engineer shall issue letter accepting documents, providing the requisite authority for the Subdivider to proceed with the construction of streets and utilities.
- d. Recordation. After the City Manager (or designee) has approved the plat, the City Engineer has approved the Construction Plan and the Subdivider has either posted fiscal surety and assurance of construction (see Chapter 12 Compliance and Enforcement) or completed required provision of infrastructure and public improvements, the plat will be recorded in the Office of the appropriate County Clerk. The Developer will pay the record filing fee as provided for in the City of Fair Oaks Ranch Fee Schedule Ordinance.

### **(3) Preliminary Plat Review**

- a. Applicability:
  - i. Other than for an Administrative Plat Review identified in Section 3.8(2) Preliminary Plat approval will be required before any land is subdivided.
  - ii. Preliminary Plats are required for land being divided into separate parcels, plats with five or more lots, and any plats that require public improvements that will be dedicated to the City.
  - iii. It will be unlawful to offer and cause to be recorded any Preliminary Plat of land within the City limits or extraterritorial jurisdiction of City with the appropriate County Clerk by any party other than the City Manager or another duly authorized representative of the City.
  - iv. Preliminary Plat is not required for plats where Replat is applicable.
- b. Preliminary Plat Application Requirements:
  - i. Engineering Information. Submission requirements for the Preliminary Plat will be established by the City Manager (or designee) and will include basic engineering information, in accordance with the Engineering Design Standards Manual, Appendix D of this Code necessary for the Planning and Zoning Commission to render an informed recommendation and for the City Council to render an informed decision (Detailed engineering information will be required for the Final Plat).
  - ii. Signature Block. A plat submitted for consideration as a Preliminary Plat is not required to have an area or signature block for any endorsement and approval by the City Council, as is required to file the Final Plat with the appropriate County Clerk.
- c. Approval Criteria. Subdivisions and plats of land will be reviewed using the criteria specified or referenced in this Code (Section 3.2).
- d. Responsibility for Final Action. The Commission will make recommendations regarding Preliminary Plat approval and forward its recommendation to the City Council for final action.
- e. Action Following Preliminary Plat Approval. After approval of a Preliminary Plat, the Subdivider will prepare and submit a Final Plat.
- f. Certification of exhibits: Refer to Section 3.8 (3) f.

### **(4) Final Plat Approval**

- a. Applicability:
  - i. Preliminary Plat and Construction Plan for all public improvement. Final Plats are technically complete versions of an already approved Preliminary Plat. No Final Plat may be considered



- or approved unless the Preliminary Plat and detailed engineering and Construction Plan for all public improvements for the same land has been approved.
- ii. Review. Final Plat review is required to ensure that a final recorded plat conforms to the Preliminary Plat as approved by the City Council and to the Construction Plan as approved by the City Manager or designee. The Final Plat must incorporate all changes from the Preliminary Plat that were considered and approved by the City Council and from the approved Construction Plan for all public improvements.
- b. Final Plat Application Requirements:
- i. Submission Requirements. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
  - ii. Support Documentation. When filed, the Final Plat must also provide all support documentation required by the appropriate County Clerk's office for recordation.
  - iii. Signature Block. A plat submitted for consideration as a Final Plat must have an area or signature block for any endorsement and approval by the City Council, as required to file the Final Plat with the appropriate County Clerk.
  - iv. Fiscal Security. If public improvements are not completed and accepted prior to submittal of a Final Plat for consideration, estimates for posting fiscal surety for landscaping requirements, maintenance, erosion and sedimentation control, roads, and utilities are also required for Final Plat review.
- c. Approval Criteria:
- i. Review. Subdivisions and plats of land will be reviewed using the criteria in this Code (Section 3.2) and any technical criteria referenced by this Code.
  - ii. Preliminary Plat. A Final Plat must be determined to be consistent with a previously approved Preliminary Plat.
  - iii. Construction Plan. The City Manager (or designee) must approve a construction plan for compliance with this Code and any required or agreed upon improvements, prior to approval of Final Plats.
- d. Responsibility for Final Action. The Commission will make recommendations regarding Final Plat approval and forward those recommendations to the City Council for final action.
- e. Recordation. If the City Council has approved the Final Plat, and the Subdivider has either posted fiscal surety and assurance of construction, or completed the required infrastructure and public improvements, the Final Plat becomes the instrument to be recorded in the Office of the appropriate County Clerk when all requirements have been met. The Subdivider will pay all associated fees and the City will file the Final Plat with the appropriate County Clerk within 60 days.
- f. Certification of exhibits: Refer to Section 3.8 (3) f.

## **(5) Replat**

- a. Applicability:
- i. Replat. A replat is any plat that complies with LGC §212.014, §212.0145, and §212.015, as amended, which is generally submitted to replat a subdivision or part of a subdivision without vacation of the original plat.
  - ii. Portions. Replatting a portion of a recorded lot is not permitted.

- iii. Development. A replat does not itself constitute approval for development of the property.
- b. Replat Application Requirements. Submission requirements for a replat will be similar to those required for Final Plats. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- c. Approval Criteria:
  - i. Review. Replats will be reviewed using the criteria in this Code (Section 3.2) and any technical criteria referenced by this Code.
  - ii. Construction Plan. The City Manager (or designee) must approve a construction plan for compliance with this Code and any required or agreed upon improvements, prior to approval of replat (if applicable).
- d. Responsibility for Final Action. The Commission will make recommendations regarding the Replat approval and forward those recommendations to the City Council for final action.
- e. Recordation. If the City Council has approved the replat, and the Subdivider has either posted fiscal surety and assurance of construction, or completed the required infrastructure and public improvements, the Replat becomes the instrument to be recorded in the Office of the appropriate County Clerk when all requirements have been met. The Subdivider will pay all associated fees fee and the City will file the Replat with the appropriate County Clerk within 60 days.
- f. Additional Requirements for Certain Replats.
  - i. Public Notice. In addition to a public hearing, public notice is required for a replat of a preceding plat if:
    - 1) During the preceding five (5) years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two (2) residential units per lot; or
    - 2) Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two (2) residential units per lot.
  - ii. Notice Requirements. Notice of the required hearing will be given at least 16 days before the date of hearing by:
    - 1) Publication in an official newspaper or a newspaper of general circulation in the area in which the municipality is located; and
    - 2) By written notice, with a copy of Subsection (iii) below attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.
  - iii. Variances. If the proposed replat requires a Variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the Planning and Zoning Commission or City Council, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the

- proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the Commission or City Council, or both, prior to the close of the public hearing.
- iv. In computing the percentage of land area under Subsection (iii), the streets and alleys will be included.
  - v. Compliance with Subsections (iii) and (iv) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.
- g. Certification of exhibits: Refer to Section 3.8 (3) f.

#### **(6) Construction Plans (City Engineer Approval)**

- a. Applicability. Construction plans must be submitted to the City Engineer prior to a Final Plat submittal for all existing or proposed streets, sidewalks, drainage and utility improvements, water quality controls, park improvements, and any other infrastructure or public improvements that are required or proposed to be constructed, reconstructed, improved, or modified to serve the development. Where the Final Plat is for property being developed in phases, the required construction plans must include the improvements specified in the or Preliminary Plat to serve the phase being platted. The construction plans are intended to provide for the detailed engineering drawings for all improvements required to serve the development. The construction plans must be kept as a permanent record of the City. The City Engineer, as referenced in this Code is acting as agent for the City Manager, and will have the powers specified in this Code only to the extent that the Engineer is expressly delegated those powers by the City Manager.
- b. Applications. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- c. Responsibility of Subdivider's Engineer. The registered professional engineer representing the Subdivider is responsible for the accuracy, completeness and conformance of all plans to City standards and must certify (with seal) the construction plans as to accuracy and design and conformance with all applicable City requirements. The City assumes no project design or engineering responsibility. The Subdivider's professional engineer certifying the plans is responsible for the accuracy and completeness of the documents and the soundness of the designs as submitted for review and actual construction.
- d. Approval Criteria. The purpose of the City Engineer's review is to ensure conformance to City policies and standards (Section 3.2); however, the City Engineer's review is limited to facts as presented on submitted plans. The City Engineer will approve any Construction Plan that is submitted and sufficiently shows compliance with any City approved or adopted design or construction criteria manuals, or in the absence of City approved or adopted design requirements, standard engineering practices. The City Engineer may not approve a Construction Plan that does not adequately represent construction of the approved infrastructure and public improvements included in the approved plat, or that he / she knows does not comply with this Code or other applicable law.
- e. Corrections to Actual Conditions. The City reserves the right to require corrections to actual conditions in the field that are found to be contrary to or omitted from submitted plans.

- f. Responsibility for Final Action. The City Engineer is responsible for final action on Construction Plans.

## **(7) Waivers**

The Commission may recommend to City Council the approval, approval with conditions, or disapproval of waivers of the standards required for plat approval, by using the criteria for consideration of Variances in Section 3.9. The request for waivers will be approved prior to approval of Plats.

## **Section 3.9 Site Development Related Applications**

This section applies to general issues related to development within the City of Fair Oaks Ranch and within the City's extraterritorial jurisdiction (ETJ).

- Letter of Regulatory Compliance
- Written Interpretation of the Unified Development Code Master or Common Sign Plan
- Temporary Use Permit
- Special Exception
- Site Plan Review, Site Development Permit, Stormwater Permit and Floodplain Development Permit
- Certificate of Design Compliance
- Appeal of an Administrative Decision
- Variance
- Sign Permit
- On-Site Sewage Facility Permit (OSSF)

### **(1) Letter of Regulatory Compliance (City Manager Approval)**

- a. Applicability. The Subdivider may obtain a Letter of Regulatory Compliance from the City Manager (or designee) prior to commencing work on any development and may be required to do so by the City as part of an application for another procedure. The Letter of Regulatory Compliance certifies that specific uses of land and any new development is in compliance with the requirements of these development regulations. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- b. Types of Letters of Regulatory Compliance:
- i. Zoning Verification Letter. A Zoning Verification Letter is a letter that indicates to a property owner that a specified use, clearly identified in the application, is permitted within the Zoning District. A Zoning Verification Letter does not vest the property owner with permission to proceed with a development; does not specify requirements that must be met for future development; and does not include a determination that a tract of land may be developed. The City Manager (or designee) may include additional information about the uses and standards required for a development to proceed, however, and such additional information does not constitute permission to proceed with development.
  - ii. Legal Lot Verification Letter. A Legal Lot Verification Letter is a letter in accordance with LGC §212.0115 that indicates whether or not a lot has been properly platted.
  - iii. Responsibility for Final Action. The City Manager (or designee) is responsible for final action.

## **(2) Written Interpretation of the Unified Development Code (City Manager Approval)**

- a. Applicability. The City Manager (or designee) will have the authority to make all written interpretations of this Code. Whenever there appears to be an uncertainty, vagueness, or conflict in the terms of the Code, the Manager, in consultation with City Staff, City Engineer, or the City Attorney, as may be appropriate, will make every effort to interpret the Code in such a way that it fulfills the goals of the Comprehensive Plan and this Code. The interpretation given by the City Manager (or designee) will be final unless an appeal is made by the applicant to the Zoning Board of Adjustments to overturn his decision. In such a case the burden will be on the applicant to prove that the City Manager(or designee)'s interpretation is unreasonable and in clear conflict with the governing law and the goals of the Comprehensive Plan.
- b. Specific Application Requirements for Written Interpretation. Submission requirements for written interpretations will be developed by the City Manager (or designee). Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- c. Approval Criteria (Written Interpretation). In addition to the general criteria for consideration of administrative procedures in Section 2.3 of this Code, the City Manager (or designee) will determine, based on analysis of the requested interpretation, and considering this Code, the correct interpretation for whatever question is raised.

## **(3) Master or Common Sign Plan (City Manager Approval)**

- a. Applicability. A master sign plan will be required for all multiple-tenant buildings, PUDs, and all multi-building or multi-occupant commercial developments before any signs for such development may be erected on the property. All owners, tenants, subtenants and purchasers of individual units within the development will comply with the approved master sign plan.
- b. Criteria for Approval. In addition to the general administrative review criteria in Section 2.3, in order to approve the Master Sign Plan the City Manager (or designee) must determine Plan provides that signs of a similar type and function within the development will have a consistent size, lettering style, color scheme and material construction, and meet the size and height limitations, location requirements, and other applicable requirements of this Code. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- c. Responsibility for Final Action. The City Manager (or designee) is responsible for final action.

## **(4) Temporary Use Permit (City Manager Approval)**

- a. Applicability. Temporary uses, as per Section 4.12, are required to obtain a Temporary Use Permit from the City Manager (or designee). The permit specifies the use, the period of time for which it is approved, and any special conditions attached to the approval. Applications must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- b. Approval Criteria. In addition to the general criteria for consideration of administrative procedures, the City Manager (or designee) will consider whether the application complies with the following standards:

- i. Land Use Compatibility. The temporary use must be compatible with the purpose and intent of this Code and the Zoning District in where it will be located. The temporary use will not impair the normal, safe, and effective operation of a permanent use on the same site. The temporary use will not endanger or be materially detrimental to the public health, safety or welfare, or injurious to property or improvements in the immediate vicinity of the temporary use, given the nature of the activity, its location on the site, and its relationship to parking and access points.
- ii. Compliance with Other Regulations. A Building Permit or temporary Certificate of Occupancy may be required before any structure to be used in conjunction with the temporary use is constructed or modified. All structures and the site as a whole will meet all applicable Building Code, Zoning District, and Fire Code standards and will be promptly removed upon the cessation of the use or event. Upon cessation of the event or use, the site will be returned to its previous condition (including the removal of all trash, debris, signage, attention attracting devices or other evidence of the special event or use).
- iii. Duration. The duration of the temporary use will be consistent with the intent of the use and compatible with the surrounding land uses. The duration will be established by the City Manager (or designee) at the time of approval of the Temporary Use Permit.
- iv. Traffic Circulation. The temporary use will not cause undue traffic congestion or safety concerns, as determined by the City Engineer, given anticipated attendance and the design of adjacent streets, intersections and traffic controls.
- v. Off-Street Parking. Adequate off-street parking will be provided for the temporary use, and it will not create a parking shortage for any of the other existing uses on or near the site.
- vi. Appearance and Nuisances. The temporary use will not cause any temporary or permanent nuisance. The temporary use will be compatible in intensity, appearance and operation with surrounding land uses in the area, and it will not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, dust, smoke, glare, spillover lighting, or other forms of environmental or visual pollution.
- vii. Other Conditions. The City Manager (or designee) will consider any other conditions that may arise as a result of the temporary use.
- viii. Public Conveniences and Litter Control. Adequate on-site rest room facilities and on-site solid waste containers may also be required. The applicant will provide a written guarantee that all litter generated by the event or use will be removed within a reasonable and appropriate timeframe at no expense to the City. The guarantee will be in a form and substance approved by the City Manager (or designee), which may include the requirement of a fiscal posting.
- ix. Signs and Attention-Attracting Devices. The City Manager (or designee) will review all signage in conjunction with the issuance of the permit. The City Manager (or designee) may approve the temporary use of attention attracting devices that generally conform to the requirements of this Code. The City Manager (or designee) may establish any additional conditions deemed necessary to ensure land use compatibility and to minimize potential adverse impacts on nearby uses, including, but not limited to, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirements for screening/buffering, and guarantees for site restoration and cleanup following the temporary use.

- c. Responsibility for Final Action. The City Manager (or designee) is responsible for final action.

## **(5) Special Exception**

- a. Applicability:
  - i. Application. The City Manager (or designee) may request that the Zoning Board of Adjustment consider a Special Exception, specifically permitted by this code, if an application for one is received.
  - ii. Circumstances. In order to provide a method by which human error (e.g., miscalculations) may be corrected, or deviations may be approved in certain circumstances, Special Exceptions may be permitted. Special Exceptions are specified deviations from otherwise applicable development standards where development is proposed that would be:
    - 1) Compatible with surrounding land uses.
    - 2) Harmonious with the public interest.
    - 3) Consistent with the purposes of this Code.
  - iii. The Board will have the authority to authorize an adjustment of up to ten (10) percent of any numerical standard.
  - iv. Special Exceptions require compliance with all other elements of this Code not specifically excused or permitted by the Special Exception.
- b. Application Requirements for Special Exceptions. Applications for Special Exceptions must be made in a format consistent with requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee).
- c. Approval Criteria. To approve an application for a Special Exception, the Zoning Board of Adjustments must determine that granting the Special Exception will:
  - i. Serve an obvious and necessary purpose.
  - ii. Ensure an equal or better level of land use compatibility than the otherwise applicable standards.
  - iii. Not materially or adversely affect adjacent land uses or the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks or other land use considerations.
  - iv. Not adversely affect adjoining property values in any material way.
  - v. Generally consistent with the purposes and intent of this Code.
- d. Responsibility for Final Action. The Zoning Board of Adjustment is responsible for final action.

## **(6) Site Plan Review, Site Development Permit, and Floodplain Development Permit (City Manager or Designee Approval)**

- a. Applicability. Prior to any excavation, clearing, or other land alteration for the purpose of development within the City limits an applicant must submit a Site Plan for approval and issuance of a site Development Permit under this section. A development within the ETJ must submit a Site Plan for approval of drainage and water quality provisions. No such excavation or development will be lawful or permitted to proceed without issuance of a site Development Permit. All improvements reflected on approved Site Plans must be constructed at the time of development. All terms and conditions of site Development Permit approval must be met at the time of development.



- b. Criteria for Approval. A Site Plan will be approved, and a site Development Permit issued if the development is in compliance with the general criteria for approval of administrative review procedures, the requirements of Chapters 6 Site Development Standards and Building Form Standards, of this Code and compliance with the following:
  - i. The Concept Plan and development agreement or ordinance governing the parcel of land to which the Site Plan is related.
  - ii. Any additional Site Plan approval criteria required under Chapter 7 Design Standards of this code, or any additional approval criteria for overlay districts, or any Site Plan approval criteria adopted as part of a neighborhood or special area plan.

Prior to final approval of any Site Plan within the city limits, the City Engineer must certify to the City Manager (or designee) that the Site Plan meets all requirements for a Stormwater Permit. Approval of the Site Plan constitutes approval of the Site Development Permit and Stormwater Permit.

- c. Responsibility for Final Action. Chapter 2 Review Authority and Procedures specifies the entity responsible for issuance of a Site Development Permit. The City Manager (or designee) is responsible for final action on Site Development Permits as required by this code.

#### **(7) Stormwater Permit (City Engineer Approval)**

- a. Applicability. A Stormwater Permit is required prior to any land disturbance within the city limits or the City's extraterritorial jurisdiction (ETJ) to ensure conformance to the stormwater management provisions and other applicable requirements of this Code. Issuance of a Site Development Permit or a Final Plat for a single-family residential subdivision within the city limits constitutes approval of a Stormwater Permit for that specific development.
- b. Criteria for Approval:
  - i. Professional Engineer. The applicant must ensure that the application for a Stormwater Permit was prepared or reviewed and approved in writing by a licensed professional engineer prior to submission to the City.
  - ii. Stormwater and Pollution Management Requirements. A Stormwater Permit will be issued after the City Engineer has determined that the development meets the stormwater and pollution management requirements of Chapters 8, Environmental Protection and 9, Infrastructure and Public Improvements of this Code.
  - iii. Applicable Related Permits. A Stormwater Permit approved by the City is conditioned upon approval of all applicable related permits required from the Texas Environmental Quality Commission (TCEQ), the U.S. Environmental Protection Agency (EPA) or any other state or federal agency being issued by that agency. Permits issued by entities such as the EPA, which may issue permits closer in time to construction, will be made available to the City within seven (7) days after having received such permit(s).
- c. Responsibility for Final Action. The City Engineer is responsible for final action.

#### **(8) Appeal of an Administrative Decision**

Procedures, including initiation of appeals of administrative decisions, are explained in Chapter 2 Review Authority and Procedures. Appeals of zoning related decisions and similar regulations will be heard by the Zoning Board of Adjustment as per Section 2.3. The appeal must be filed not later than the 20th day after the date the decision is made. The Zoning Board of Adjustment shall decide the



appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed, in compliance with LGC 211.010(d)). All other administrative appeals will be heard by the City Council.

- a. **Effect of Appeal.** All development activities permitted by the action being appealed, or any subsequent approval, must stop upon appeal, and remain inactive until the appeal is resolved. All activities remain stayed, unless the City Manager (or designee) certifies in writing that such a cessation of activity would cause imminent peril to life and property, in which case a restraining order granted by the board or a court of record on application and notice to the City is granted upon a showing of due cause.
- b. **Approval Criteria.** The appropriate governing body will consider whether official action was appropriate considering the facts of the case and the requirements contained in this Code. The City Council will make its decision based on this Code and the information presented by the applicant and the City Manager (or designee).
  - i. **Basis for Appeal.** An applicant may only appeal the specific reasons given for the administrative disapproval or denial. An applicant may not appeal the disapproval or denial without effectively establishing that the specific basis for the administrative disapproval or denial was incorrect.
  - ii. **Burden of Proof in Appeals.** When an appeal is made to the City Council, the City Manager's (or designee's) action is presumed to be valid. The applicant will present sufficient evidence and have the burden to justify a reversal of the action being appealed. The City Manager (or designee) may present evidence and argument to the contrary. When an appeal is made to the Zoning Board of Adjustment, a decision to reverse a determination by the City Manager (or designee) or other administrative official, or to otherwise rule in favor of an applicant on a variance on the terms of the zoning ordinance, shall require a vote of 75 percent of the members of the Board, as per Local Government Code, 211.009 (c).
  - iii. **Crucial Findings.** All findings and conclusions necessary to the permit or appeal decision will be based upon reliable evidence. Competent evidence will be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.
  - iv. **Responsibility for Final Action.** Where appeals are to City Council, the Council is responsible for final action. Where appeals are made to the Zoning Board of Adjustment, the Board's action is considered final, subject only to judicial review.

## **(9) Variance**

- a. **Applicability:**
  - i. **Judicial Variance.** The Zoning Board of Adjustment will have the authority to hear and grant requests for a Variance or exception to the zoning-related development standards of this Code.
  - ii. **Policy Variance.** The City Council will have the authority to hear and grant requests for a Variance from all other development standards upon the recommendation of the Planning and Zoning Commission.
  - iii. **Waivers of plat approval standards.** Waivers of the standards required for plat approval are not considered Variances and must be requested from the Planning and Zoning Commission

and then the City Council during the plat review process. These waivers must be approved prior to approval of the plat.

- iv. Minimum or Maximum Measurement. Any Variance request up to ten (10) percent of any minimum or maximum measurement required by this Code may be treated as a Special Exception as per Section 3.9 of this Unified Development Code
  - v. Precedent. A Variance to the development standards of this Code will be considered an exception to the regulations contained herein. Granting of a Variance in one case does not set a precedent for a subsequent case. Each Variance request will be judged on its own merit based on subparagraph (b) below.
- b. Criteria for Review:
- i. Required Findings. A Variance from the requirements of this code may be granted by the governing body under certain circumstances. To grant a Variance, the body must find that the literal enforcement of this code would result in unnecessary hardship, and also find that the spirit of the ordinance will be served, and substantial justice done, by granting the Variance or exception. In making the required findings, the authorizing body will take into account the nature of the proposed use of the land involved, the existing use of land in the vicinity, the number of persons who will reside or work in the proposed development, the possibility that a nuisance may be created, and the probable effect of such Variance upon traffic conditions and upon public health, convenience, and welfare of the vicinity. No Variance will be granted unless the authorizing body finds that all of the following apply:
    - 1) There are extraordinary or special conditions affecting the land involved such that strict application of the provisions of this Code will deprive the applicant of a reasonable use of its land. For example, a Variance might be justified because of topographic, or other special conditions unique to the property and development involved, while it would not be justified due to inconvenience or financial disadvantage;
    - 2) The Variance is necessary for the preservation of a substantial property right of the applicant;
    - 3) Granting of the Variance will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area, or to the City in administering this Code;
    - 4) Conditions that create the need for the Variance do not generally apply to other property in the vicinity;
    - 5) Conditions that create the need for the Variance are not the result of the applicant's own actions;
    - 6) Granting of the Variance would not substantially conflict with the Comprehensive Plan and the purposes of this Code; and
    - 7) Because of the conditions that create the need for the Variance, the application of this Code to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
    - 8) Finding of undue hardship as applied to a structure. In considering a judicial variance as applied to a structure, the Zoning Board of Adjustment may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the UDC:

- I. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under V.T.C.A., Tax Code, § 26.01;
- II. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- III. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- IV. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- V. The city considers the structure to be a nonconforming structure.

Insufficient Findings. The fact that property may be utilized more profitably should a Variance be granted may not be considered, standing alone, as grounds for a Variance. Additionally, the following types of possible findings do not constitute sufficient grounds for granting a Variance:

Property cannot be used for its highest and best use;

There is a financial or economic hardship. There is a self-created hardship by the property owner his / her agent; or

The development objectives of the property owner are or will be frustrated.

- c. Limitations. The governing body may not grant a Variance when the effect of the Variance would allow any of the following:
  - i. The establishment of a use not otherwise permitted in the applicable Zoning District;
  - ii. Increase the density of a use above that permitted by the applicable district;
  - iii. A nonconforming use of land to be physically extended;
  - iv. Change the Zoning District boundaries shown on the Official Zoning Map; or
  - v. Conflicts with any State or Federal regulations.
- d. Limitation on Variances for Signs. No Variance for a sign may increase the overall permitted area of a sign. Sign-related Variances may only be granted, in accordance with this section, for height or other location restrictions. Variances from Water Quality, Floodplain, or Stormwater Management Regulations.
- e. Following recommendation for the City Manager (or designee) the City Council will make a final decision on any Variance request from water quality, floodplain, or stormwater management regulations.
- f. Responsibility for Final Action:
  - vi. Policy Variance. Policy Variance requests will be reviewed by the Planning and Zoning Commission and its recommendations forwarded to the City Council for final action on the Variance request.
  - vii. Judicial Variance. Judicial Variance requests will be reviewed by the Zoning Board of Adjustment which is responsible for final action on the request.

## **(10) Sign Permit**

Applicability. No sign may hereafter be erected, moved, added to, or structurally altered within the City or the ETJ without a permit issued by the City Manager (or designee) in conformity with the provisions of

this Section and Section 10.4 of this Code. No Building Permit issued under the provisions of this Code for signs will be considered valid unless signed by the City Manager (or designee).

- a. Criteria for Approval. In addition to the general criteria for approval of administrative procedures, the City Manager (or designee) will base the final action on the following criteria:
  - i. Building Code. Whether the intended sign conforms in all respects with all applicable regulations and standards of this Code and any applicable construction or safety standards of the City's Building Code.
  - ii. Master Sign Plan. If the subject property has a Master Sign Plan, development agreement or ordinance governing it, whether the plans, specifications and intended use of such building or structures or part thereof, including the proposed sign, conform in all respects to the development agreement or ordinance.
- b. Responsibility for Final Action. The City Manager (or designee) is responsible for final action. Appeals of City Manager (or designee) actions regarding sign-related Building Permits will be considered and decided by the Zoning Board of Adjustment.

#### **(11) On-Site Sewage Facility Permit (City Manager or County Approval)**

Applicability. On-site Wastewater (OSSF) Permits will be required from the appropriate County for any development that applies for a Development Permit and wishes to use a septic tank or similar type of OSSF. The approved county permit must be presented before installing new or replacement Septic Systems.

- a. Approval Criteria. Bexar, Comal and Kendall Counties each have established their own criteria for review and approval for OSSF Permit applications. The Applicant must contact the County Environmental Health Department in the County in which the property is located for further information.
- b. Responsibility for Final Action. County in which the property is located is responsible for final action.

#### **(12) Building Permits**

- a. Applicability. An application for a Building Permit is required within the city limits, or for property located in the City's ETJ that is part of a development agreement, prior to placement or construction of a building or structure. The Address Plat needs to be submitted to city staff prior to permits being issued. Approval of an application for a Building Permit authorizes the property owner to construct, alter or place a structure on the lot, tract or parcel. Approval of an application for a Building Permit also authorizes the property owner, upon completion of a structure intended for human occupancy, to make application for a Certificate of Occupancy (CO).
- b. Review Process and Application. An application for a Building Permit will be prepared in accordance with the requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). The City will make information regarding the format requirements and materials required for the application available.
- c. Approval Criteria. The Building Official will determine whether to approve a Building Permit based on the following criteria:

- i. Application. The application generally conforms to all prior approved development applications for the property and any Variance petition authorizing variation from the standards otherwise applicable to the permit;
  - ii. Building Site. The location of the structure on the property is in accordance with all prior approved development applications;
  - iii. Conformance. The proposed plan for construction or alteration conforms to the Building Code and other applicable codes adopted by the City;
  - iv. Fees. All applicable fees, including impact fees, have been paid;
  - v. Final Plat. The Final Plat of the property has been recorded in the County plat records; and
  - vi. Infrastructure. All public infrastructure required has been installed and accepted by the City or appropriate surety has been posted guaranteeing the construction of the required public infrastructure.
- d. Expiration and Extension:
  - i. Expiration. A Building Permit for all development will expire if the building or work authorized by such permit is not commenced and completed within 365 days from the date of issue of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 365 days.
  - ii. Extension. Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence or complete under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit will be extended more than twice.
- e. Responsibility for Final Action. The City Manager (or designee) is responsible for final action on Building Permits as required by this Code.

### **(13) Certificates of Occupancy (CO)**

- a. Applicability. Approval of a Certificate of Occupancy (CO) authorizes habitation or other occupancy of the structure in accordance with the terms of the certificate. An application for a CO is required within the city limits, or for property located in the City's ETJ that is part of a development agreement, after the construction, alteration or placement of a structure on a lot, tract or parcel and prior to habitation or any use of the structure. A CO is not to be confused with a "Certificate of Completion" for structures that require a permit but are not suitable for living, i.e., fences, pergolas, decks etc. A CO is also required prior to a change in the use of any structure. A CO is required for the following:
  - i. Occupancy. Occupancy and use of a building hereafter erected or structurally altered by more than 50 percent;
  - ii. Change in Use of Building. Change in use of an existing building to a use of a different classification.
  - iii. Change in Use of Land. Change in the use of land to a use of a different classification.
  - iv. Non-conforming Use. Any change in the use of a non-conforming use.

- b. Review Process and Application. In most cases a CO will be issued following a successful final inspection but in the case of a change of use an application for a CO will be prepared in accordance with the requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). The City will make information regarding the format requirements and materials required for the application available.
- c. Criteria for Approval. The Building Official will apply the following criteria in deciding the application for a Certificate of Occupancy:
  - i. Building Site. The location of the structure on the property is in accordance with the approved application for the Building Permit;
  - ii. Change of Use. Where a change of use in an existing structure is proposed, the use conforms to the use regulations governing the property;
  - iii. The Structure. The structure, following inspection by the building official, was built in conformity with the Building Code, Fire Code and other applicable building regulations;
  - iv. Infrastructure. All required infrastructure including, but not limited to, water, wastewater, streets, drainage, electric, and gas infrastructure has been installed, completed and is operational to the subject property; and that;
  - v. There are no outstanding permit requirements, including delinquent taxes;
  - vi. The building site and structure are in compliance with all applicable city codes.
- d. Revocation of Certificate. The Building Official may institute proceedings to revoke a CO whenever the official determines that the certificate has been issued in error, or on the basis of incorrect information supplied, or that the use, dimensions, or other features of the structure authorized for occupancy, or any portion thereof, is in violation of any provision of this Code, of the Building Code or other construction codes.
- e. Responsibility for Final Action. The City Manager (or designee) is responsible for final action on Certificates of Occupancy as required by this Code.

#### **(14) Relief from Signage Regulations**

- a. Applicability. The owner of property seeking to erect, move, add to, or alter a sign within the city limit or the ETJ may seek relief from the regulations found in Chapter 10 of this Code by requesting a signage Variance from the Zoning Board of Adjustment.
- b. Review Process and Application. The owner of the affected property or its authorized agent may seek a signage Variance by applying to the City Manager (or designee) on such forms and with such supporting documents as may be required by the City.
- c. Approval Criteria: Criteria used in the review will be whether the:
  - i. Applicable regulation does not allow for reasonable use of the property;
  - ii. Hardship for which the relief is sought is owing to a special condition inherent in the property itself, such as restricted area, shape, topography or physical features;
  - iii. Special condition is unique to the particular property at issues, and is not generally characteristic of other parcels of land in the area;
  - iv. Relief sought does not alter the character of, or impair the use of, adjacent properties;
  - v. Relief sought is not to alleviate a self-created hardship; and
  - vi. Relief sought is not primarily for financial reasons.
- d. Responsibility for Final Action. The ruling of the Zoning Board of Adjustment is final.

### **(15) Group Living Operating License**

- a. Purpose. The purpose of the Group Living Operating License is to:
  - i. Maintain adequate health & safety standards for protection of the residents;
  - ii. Ensure that adequate fire, police and emergency response vehicles or patrols are available; and to
  - iii. To identify and facilitate appropriate responses for residents who may require special assistance during an emergency.
- b. Applicability. It is unlawful for any person to construct, maintain, or operate within the City, any group or community home, halfway house, or other group living facility unless such person first obtains a use permit. A request for reasonable accommodation to accomplish the goals and policies of the Fair Housing Act (42 U.S.C. 3601) may be authorized.
- c. Review Process and Application. An application for a Group Living Operating License will be prepared in accordance with the requirements established by the City Manager (or designee). Applications must include all materials determined necessary by the City Manager (or designee). The City will make information regarding the format requirements and materials required for the application available. The City will investigate the application and inspect the proposed plans and specifications. For a new group or community home, halfway house or other group living facility, the Group Living Operating License will not be issued until a Certificate of Occupancy has been approved.
- d. Criteria for Approval. The City Manager (or designee) will apply the following criteria in deciding the application for a Group Living Operating License:
  - i. Improvements. Improvements on the property are in accordance with the requirements of this Code;
  - ii. Operations. Operations of the property comply with the requirements of this Code;
  - iii. Other Codes. Structures and site comply with the Building Code, Fire Code, Property Maintenance Code and other applicable regulations (including the Americans with Disabilities Act).
  - iv. Permit Requirements. Current and valid state licenses and a current and valid Certificate of Occupancy issued by the City of Fair Oaks Ranch.
- e. Revocation of Certificate. The City Manager (or designee) may institute proceedings to revoke a Group Living Operating License whenever the official determines that the license has been issued in error; or on the basis of incorrect information supplied; or that the use, dimensions, or other features of the structure or property authorized for occupancy, or any portion thereof, is in violation of any provision of this Code, of the Building Code or other construction codes; or that the property is in violation of the this Code applicable to group or community homes, halfway houses or other group living facility. Before any such license is revoked, the City must give 10-days' notice to the holder of such license to correct violations. If the license is revoked, the license may be reissued to the licensee if the reasons for such revocation have been duly corrected, or a license may be issued to another qualified applicant.
- f. Responsibility for Final Action. The City Manager (or designee) is responsible for final action on Group Living Operating Licenses as required by this code.