

25.01: General Provisions and Administration

25.01.001 General Provisions and Applicability

The Zoning Code codified in this title provides for the division of the county into districts, within each of which the uses of land and buildings and the height and bulk of buildings and the open spaces about them are regulated as specified. The regulations established within the zoning ordinance apply throughout the county, unless an adopted specific plan for an area within the county sets forth alternate regulations, in which case the regulations in the specific plan shall control.

The construction or operations of San Benito County government buildings and facilities shall not be regulated by the provisions of this Zoning Code.

25.01.002 Purpose

This Zoning Code is adopted to promote and protect the public health, safety, peace, moral, comfort, convenience, and general welfare and for the accomplishment thereof and is adopted among other purposes for the following more particularly specified purposes:

- A. To assist in providing a definite plan of development for the County, and to guide, control and regulate the future growth of the County in accordance with this title;
- B. Achieve the arrangement of land uses depicted in the San Benito County General Plan, consistent with the goals and policies of the General Plan;
- C. To protect the character and the social and economic stability of agricultural, residential, commercial, industrial and other areas within the county and to assure the orderly and beneficial development of the areas;
- D. Facilitate the appropriate location of community facilities, institutions, transportation, and parks and recreational areas;
- E. Allow for public participation in government decision-making regarding land use and development in a manner consistent with State law.
- F. Define duties and powers of administrative bodies and officers responsible for implementation of the Code.

25.01.003 Relationship to Prior Ordinances, Rights, and Violations

The provisions of this Code supersede all prior ordinances codified in Title 25 of the San Benito Code and any amendments. No provisions of this Code shall validate any land use or structure established, constructed, or maintained in violation of the prior Zoning Code, unless such validation is specifically authorized by this Code and is in conformance with all other regulations.

The regulations of this Code and requirements or conditions imposed pursuant to this Code shall also not supersede any other regulations or requirements adopted or imposed by the San Benito County Board of Supervisors, the State of California, or any federal agency that has jurisdiction by law over uses and development authorized by this Code. All uses and development authorized by this Code shall comply with all other such regulations and requirements. Where conflict occurs between the provisions of the Code and any other County ordinance, chapter, resolution, guideline, or regulation, the more restrictive provisions shall control, unless otherwise specified.

25.01.004 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The San Benito County Board of Supervisors hereby declares that it would have passed this Code, and each section, subsection, sentence, clause, and phrase thereof, regardless of the fact that any or one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

25.01.005 Relationship to the General Plan

This Code implements the goals and policies of the San Benito County General Plan by regulating the use of land and structures within the county. This Code shall be consistent with the General Plan. Any permit, license, or approval issues pursuant to this Code must be consistent with the General Plan and all applicable Specific Plans. In any case where there is a conflict between this Code and the General Plan, the General Plan shall control.

25.01.006 Authorities

A. Purpose

This Chapter lays out the basic roles, responsibilities, and functions of all planning authorities, including the Board of Supervisors, Planning Commission, and Planning Director.

B. Board of Supervisors

The powers and responsibilities of the Board of Supervisors include, but are not limited to the following. The relationship of the Board of Supervisors to the Planning Commission and staff in the approval process is shown in Table 25.01-A, “Review Authorities.”

1. Consider and adopt, reject or modify proposed amendments to the General Plan, Zoning Code, Zoning Map, development agreements, specific plans, and environmental

documents related to any of the foregoing, pursuant to the provisions of the Amendments to the General Plan, Zoning Code, and Zoning Map section in Chapter 25.01.

2. Hear and decide appeals from decisions of the Planning Commission pursuant to the provisions of the Appeals section in Chapter 25.01.
3. Consider and adopt, reject, or modify Development Agreements, following a public hearing and recommended action by the Planning Commission, pursuant the provisions of the Development Agreements section in Chapter 25.01.
4. Establish, by resolution, a County Fee Schedule listing fees, charges, and deposits for various applications and services provided, pursuant to this Title.

C. Planning Commission

The powers and responsibilities of the Planning Commission include, but are not limited to the following. The relationship of the Planning Commission to the Board of Supervisors and staff in the approval process is shown in Table 25.01-A, “Review Authorities.”

1. Approve, modify, or deny Parcel Maps, Tentative Maps, Conditional Use Permits and Variances.
2. Make recommendations to the Board of Supervisors on development agreements.
3. Make recommendations to the Board of Supervisors on proposed amendments to the General Plan, Zoning Code, and Zoning Map, specific plans, and environmental documents related to any of the foregoing.
4. Hear and decide appeals from decisions of the Planning Director.
5. Hear and decide proposals to revoke permits.
6. Consider and adopt environmental determinations on any approvals that are subject to environmental review under the California Environmental Quality Act, pursuant to State law.
7. Annually review progress towards implementation of the General Plan and make recommendations to the Board of Supervisors based on any new legislation, development trends, or changing economic, social, and environmental conditions.
8. Such other powers and responsibilities as assigned or directed by the Board of Supervisors.

D. Planning Director

The powers and responsibilities of the Planning Director (“the Director”), or his/her designee, include, but are not limited to the following. The relationship of the Planning Director to the Board of Supervisors and Planning Commission in the approval process is shown in Table 25.01-A, “Review Authorities.”

1. Perform all the functions designated by State law, including, but not limited to the following:
 - a. Annual report related to implementation of the General Plan in compliance with Government Code Section 65400;
 - b. Review of public works projects for conformity to the General Plan in compliance with Government Code Section 65401; and
 - c. Review of acquisition of property for conformity to the General Plan in compliance with Government Code Section 65402.
2. Maintain and administer the Zoning Code, including the processing of applications, abatements, and other enforcement actions.
3. Clarify or make determinations when ambiguities exist with regard to the meaning of any provision of this Code or their application to a specific parcel or project.
4. Prepare rules and procedures necessary for conducting the Director’s business. They may include the administrative details of hearings officiated by the Director (e.g., scheduling, rules of procedure, and recordkeeping). These rules and procedures must be approved by Board of Supervisors resolution, following review and recommendation by the Planning Commission.
5. Issue administrative regulations for the submission and review of applications subject to the requirements of Government Code Section 65950, Deadlines for Project Approval Conformance; Extensions.
6. Issue a Zoning Clearance pursuant to provisions of the Zoning Clearance section in Chapter 25.01.012.
7. Approve, modify, or deny Administrative Use Permits, pursuant to the provisions of the Use Permits section in Chapter 25.02.002.
8. Approve, modify, or deny Home Occupation Permits and Rural Home Enterprises, pursuant to the provisions of Chapter 25.08.004.
9. Approve, modify, or deny Temporary Use Permits, pursuant to the provisions of the Temporary Use Permits section in Chapter 25.01.004.

10. Approve, modify, or deny a Minor Modification, pursuant to the provisions of the Administrative Modifications section in Chapter 25.02.008.
11. Approve, modify, or deny requests for Reasonable Accommodation for land use projects, pursuant to the provisions of the Reasonable Accommodation section in Chapter 25.02.010.
12. Conduct Minor Development Plan Review and approve, modify, or deny land use projects pursuant to the provisions of the Design Review section in Chapter 25.02.001.
13. Determine whether a project is subject to review under the California Environmental Quality Act and notify the applicant if any additional information is necessary to conduct the review.
14. Make recommendations to the Planning Commission and Board of Supervisors on all applications, appeals, and other matters upon which they have the authority and the responsibility to act under this Title.
15. Investigate and report to the Planning Commission on permit violations when the County has initiated revocation procedures, pursuant to the provisions of the Revocation of Permits section in Chapter 25.02.013.
16. Delegate administrative functions to members of the Planning Division.
17. Such other powers and responsibilities as assigned or directed by the Board of Supervisors.

E. Summary of Review Authorities for Decisions and Appeals

Table 25.01-A, below, identifies the Review Authority responsible for reviewing and making decisions on each type of application required by the Zoning Code.

Table 25.01-A: Review Authorities

Type of Action	Applicable Code Section	Role of Review Authority		
		Director	Planning Commission	Board of Supervisors
Legislative Actions				
Development Agreements and Amendments	County Code 19.11	Recommend	Recommend	Decision
Zoning Code and Zoning Map Amendments	25.01.011	Recommend	Recommend	Decision

General Plan and Specific Plan Amendments	25.01.011	Recommend	Recommend	Decision
Planning Permits, Approvals, and Administrative Actions				
Administrative Use Permits	25.02.002	Decision	Appeal	Appeal
Conditional Use Permits: Adoption	25.02.003	Recommend	Decision	Appeal
Modification and Revocation of Permits	25.02.012	Recommend	Decision	Appeal
Temporary Use Permits	25.02.004	Decision	Appeal	Appeal
Temporary Event Permits	25.02.005	Decision	Appeal	Appeal
Sign Permits	25.07.016	Decision	Appeal	Appeal
Minor Modifications	25.02.008	Decision	Appeal	Appeal
Variances	25.02.009	Recommend	Decision	Appeal
Planned Developments	25.05	Recommend	Decision	Appeal
Reasonable Accommodations	25.02.010	Decision	Appeal	Appeal
Development Plan Review	25.02.001	Decision	Appeal	Appeal
Home Occupation and Rural Home Enterprise Permits	25.08.004	Decision	Appeal	Appeal
Nonconforming Uses, Structures and Sites	25.01.012	Decision	Appeal	Appeal
Interpretations of this Zoning Code	25.01.009	Decision	Appeal	Appeal
Zoning Clearances	25.02.011	Issue	Appeal	Appeal
Zoning District Boundary Determinations	25.01.009	Decision	Appeal (Decision in Some Cases)	Appeal

Table Notes

1. "Recommend" means that the Review Authority makes a recommendation to a higher decision-making body; "Decision" means that the Review Authority makes the final decision on the matter; "Issue" means that the Director grants the Zoning Clearance after confirming compliance with all applicable provisions of this Zoning Code; and "Appeal" means that the Review Authority may consider and decide upon appeals to the decision of an earlier decision-making body.
2. When necessary, the Director may defer action and refer the request to the Planning Commission for consideration and final decision or may bring an Action from the Planning Commission to be made by the Director.
3. When necessary, the Planning Commission may defer action and provide a recommendation to the Board of Supervisors for consideration and final decision.

25.01.007 Public Hearing Procedures and Noticing

A. Noticing Requirements

Notice of public hearings shall be provided consistent with County procedures and as specified in this Code. §[LG1] 65090-96

B. Conduct of Public Hearings

The conduct of public hearing(s) shall include the following elements identified below.

1. Discretionary Review. At the public hearing, the authorized hearing body shall review the application and any pertinent materials submitted with the application, and any report based on County staff's investigation of the application.
2. The Applicant's Rights at Public Hearing. During any public hearing, the applicant for the application shall have the right to be represented to provide testimony and to present evidence.
3. The Public's Rights at Public Hearing. All other persons shall have the right to comment on any relevant aspect of the application under consideration.
4. Discretionary Action. Following the completion of testimony at a public hearing, action shall be taken to approve, conditionally approve, deny, continue, or take under advisement, the subject of the public hearing.
5. Continuation of Public Hearing. If the action is taken to continue the item being considered or to take the matter under advisement, before adjournment or recess, the person presiding at the public hearing shall publicly announce the time and place to which the hearing will be continued. No further notice shall be required.

6. Final Decision. The decision of the hearing body shall be considered final unless a decision is appealed. In all cases, the Board of Supervisors shall represent the final authority.

25.01.008 Appeals

A. Appeal of Director's Decisions

Any discretionary decision of the Director may be appealed to the Planning Commission within (10) ten calendar days after the date of the decision. An appeal shall be in writing and submitted to the Director in the form provided by the Planning Department, which shall be accompanied by the required filing fee. The Planning Commission shall render its decision within (30) thirty days following the close of the hearing on the appeal.

B. Appeal of Planning Commission Decisions

Any decision of the Planning Commission may be appealed within ten calendar days after the date of the Planning Commission's decision to the Board of Supervisors. The appeal shall be submitted in writing to the county clerk on the forms provided by the County, which shall be accompanied by the required fee.

Upon receipt of a completed appeal, the Director shall set the matter for hearing before the Board of Supervisors not less than (5) five days or more than (30) thirty days thereafter and shall give written notice of the hearing to the appellant, the applicant and the Planning Director.

The Board of Supervisors shall render its decision within (30) thirty days following the close of the hearing on the appeal.

25.01.009 Interpretations

A. Location and Boundaries of Zone

The designation, location and boundaries of the aforementioned zones and areas shall be by written description or by delineation on zoning maps which shall be adopted as specified in this title. The maps and written legal descriptions shall become a part of the zoning ordinance under this section and subject thereto. These maps and descriptions are not codified.

B. Determining Uncertain Zoning District Boundaries

1. The Director shall make decisions regarding uncertain zoning district boundaries. The Director's decision may be appealed to the Planning Commission.
2. Where uncertainty exists with respect to the boundaries of the various zones, the following rules shall be used in determining the following:
 - a. Where boundary lines are indicated as following streets and alleys they shall be construed as following the centerlines thereof.

- b. Where boundary lines are indicated as approximately following lot lines, the lot lines shall be construed to be the boundaries.
 - c. Where a boundary line divides a lot or crosses unsubdivided property, the location of the boundary shall be as indicated upon the zoning map using the scale appearing on the map.
 - d. Where a lot held in one ownership and of record at the effective date of the ordinance codified in this title is divided by a district boundary line, the entire lot shall be construed to be within the less restricted district; provided, that this regulation shall not apply if it increases the area of the less restricted portion of the lot by more than 20%.
- 3. Where further uncertainty exists, the Planning Commission upon written application, or upon its own motion, may by resolution determine the location of a disputed boundary, giving due consideration to the apparent indicated location thereof and the scale of the zoning map and the expressed intent of this title.
 - 4. Wherever any property is not, under these rules, specifically included in any district shown on the zoning map, the property is declared to be in an agricultural zone or as determined by the Planning Commission.

C. Use Determination

Determination of land uses not specifically listed in Chapter 25.03 (Zoning Map and Districts) shall be reviewed and determined by the Director per the provisions below.

- 1. **Director's Determination.** The Director has the authority to determine when a proposed land use that is not listed in Chapter 25.03 (Zoning Map and Districts) is similar to another listed use that is permitted or administratively permitted if the following findings can be made:
 - a. The characteristics of, and activities associated with, the proposed use are equivalent to those of one or more of the uses listed in the zoning district as allowable, and will not involve a greater level of activity, population density, intensity, traffic generation, parking, dust, odor, noise, or similar impacts as determined by special environmental studies as required by the Director, than the uses listed in the zoning district;
 - b. The proposed use will meet the purpose/intent of the zoning district that is applied to the location of the use;
 - c. The proposed use will be consistent with the goals, objectives, and policies of the General Plan, or any applicable specific plan or planned development district; and
 - d. The proposed use is not prohibited or illegal.

2. **Planning Commission Appeal.** The Director’s decision regarding a Use Determination can be appealed to the Planning Commission.
3. **Applicable Standards and Permit Requirements.** When the Director or Planning Commission determines that a proposed but unlisted land use is equivalent to a listed use, the proposed use will be treated in the same manner as the listed use in determining where the use is allowed, what permits are required, and what other standards and requirements of this Zoning Code apply.

25.01.010 Enforcement of this Zoning Code

A. Purpose

This Section establishes the responsibilities of various departments, officials, and public employees of the County to enforce the requirements of this Zoning Code and establishes uniform procedures the County will use to identify, abate, remove, and enjoin uses, buildings, or structures that are deemed to be in violation of this Title.

B. Enforcement Responsibilities

All departments, officials and public employees of the County vested with the duty or authority to issue permits, certificates or licenses shall comply with the provisions of this title and shall issue no permit, certificate or license for uses, buildings or purposes which may be in conflict with the provisions of this title and any such permit, certificate or license issued in conflict with the provisions of this title, intentionally or otherwise, shall be null and void.

1. **Director.** The Director shall enforce the provisions of this Title pertaining to the use of any land or structure, bulk, height and land coverage of structures, open spaces about structures and the dimensions and area of sites upon which structures are located.
2. **Other Officials.** Requirements pertaining to health and sanitation, fire protection and building code regulations shall be enforced by the respective agencies which have jurisdiction in such matters. Whenever there is a conflict between the provisions of this Title and other County, State and Federal regulations, the more restrictive regulations apply.

C. Revocation

Any permit granted under this Title may be revoked if any of the conditions or terms of such permit are violated or if any law or ordinance is violated in connection therewith. Notwithstanding this provision, no lawful residential use can lapse regardless of the length of time of the vacancy.

See also Title 1 of the County Code, “General Provisions; Code Enforcement,” for additional regulations related to nuisances, penalties, and administrative civil remedies.

D. Nuisance Defined

Any building, structure, or planting set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Title, any use of any land, building, or premises established, conducted, operated, or maintained contrary to the provisions of this Title, and failure to comply with any of the conditions of a permit granted under this Title is declared to be unlawful and a public nuisance.

E. Penalties

Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or failing to comply with a mandatory requirement of this Title shall be guilty of a misdemeanor but may be cited or charged, at the election of the enforcing officer or County Attorney, as an infraction. A person, firm, or corporation shall be deemed guilty of a separate offense for each day during any portion of which any violation of this Title is committed, continued, or permitted by such person, firm or corporation, and shall be punished accordingly.

F. Remedies

The remedies provided for herein shall be cumulative and not exclusive. Upon a finding of nuisance and after giving the property owner an opportunity to cure the nuisance and determining that the nuisance still exists, the Planning Commission or Board of Supervisors may impose any remedy available at law or in equity, which shall include, but is not limited to, any of the following or combination thereof:

1. Ordering the cessation of the use in whole or in part;
2. Imposing reasonable conditions upon any continued operation of the use, including those uses that constitute existing non-conforming uses;
3. Requiring continued compliance with any conditions so imposed;
4. Requiring the user to guarantee that such conditions shall in all respects be complied with;
or
5. Imposing additional conditions or ordering the cessation of the use in whole or in part upon.

25.01.011 Amendments to the General Plan, Zoning Code, and Zoning Map

A. Purpose

This Chapter establishes procedures for consideration and review of Amendments to the General Plan, Zoning Code, and/or Zoning Map, when there are compelling reasons to do so more specifically, this Chapter addresses:

1. Amendments to the General Plan, to address changes in State or Federal law and problems and opportunities that were unanticipated at the time of adoption or the last

amendment; and

2. Amendments to the Zoning Code and Zoning Map, whenever the public necessity, convenience, general welfare, or good practice justify such amendment, consistent with the General Plan.

B. Applicability

The procedures in this Chapter shall apply to:

1. All proposals to change the text of the General Plan, including any maps which are part of the General Plan; and
2. All proposals to change the text of this Zoning Code or to revise a zone or boundary line shown on the Zoning Map.

C. Authority

The Planning Commission shall act as the advisory body for all Amendments to the General Plan text, General Plan Land Use Map, Zoning Code text, and Zoning Code Map and provide recommendations to the Board of Supervisors. The Board of Supervisors shall act as the Review Authority, and after receiving recommendations from the Planning Commission, may adopt, reject, or modify all Amendments to the General Plan text, General Plan Land Use Map, Zoning Code text, and Zoning Code Map.

D. Initiation of Amendment

An Amendment to the General Plan, Zoning Code, or Zoning Map may be initiated by any qualified applicant identified in Section 25.01.013, Application Forms and Fees, the Director, or by a motion of the Board of Supervisors or Planning Commission.

E. Procedures

1. Application. A qualified applicant shall submit an application for amendment accompanied by the required fees by the County. The Planning Division may require an applicant to submit such additional information and supporting data as considered necessary to process the application. The Planning Division may allow Amendments to the General Plan, Zoning Code, and Zoning Map to be processed concurrently with other applications.
2. Staff Report. The Director shall prepare a report and recommendation to the Planning Commission on any amendment application. The report shall include, but is not limited to, a discussion of how the proposed amendment meets the criteria in this section for Zoning Amendments (if applicable), as well as an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). Applications involving projects for which an environmental document is required shall not be heard until the environmental assessment procedures required by CEQA are satisfied.

3. Public Hearing and Notice. All Amendments to the General Plan, Zoning Code, and Zoning Map shall be referred to the Planning Commission, which shall conduct at least one public hearing on any proposed amendment. At least (10) ten days before the date of any public hearing, the Planning Division shall provide notice. Notice of the hearing also shall be mailed or delivered to any local agency expected to provide essential facilities or services to the property that is the subject of the proposed amendment.

F. Planning Commission Hearing and Recommendation

1. Planning Commission Hearing. Before submitting a recommendation report to the Board of Supervisors, the Planning Commission shall conduct at least one public hearing in accordance with the Public Hearings provisions in 25.01.007.
2. Recommendation to Board of Supervisors. Following the public hearing, the Planning Commission shall make a recommendation on the proposed amendment to the Board of Supervisors. Such recommendation shall include the reasons for the recommendation, consistency with General Plan, and the relationship of the proposed amendment to other adopted documents. The recommendation shall be transmitted in the form of a memorandum to the Board of Supervisors, prepared by the Director.
3. Approval. If the Planning Commission has recommended approval of the proposed amendment, the Board of Supervisors is required to take final action pursuant to Board of Supervisors Hearing and Action in this Chapter.
4. Denial. If the Planning Commission has recommended against the proposed amendment, the Board of Supervisors is not required to take any further action unless an appeal is filed in accordance with the Appeals provisions of Chapter 25.01.008.

G. Board of Supervisors Hearing and Action

1. Board of Supervisors Hearing. After receiving the recommendation from the Planning Commission, the Board of Commissioners shall hold a hearing in accordance with the Public Hearings provisions in Chapter 25.01.007. The notice for the hearing shall include a summary of the Planning Commission recommendation.
2. Board of Supervisors Action. After the conclusion of the hearing, the Board of Supervisors may approve, modify, or deny the proposed amendment. If the Board of Supervisors proposes any substantial revision not previously considered by the Planning Commission during its hearings, the proposed revision shall first be referred to the Planning Commission for report and recommendation.

The Planning Commission shall not be required to officially consider the referral from the Board of Supervisors. If the Planning Commission does not report to the Board of Supervisors within (45) forty-five days after the referral, it shall be deemed that the

Commission recommends approval, and the amendment shall be returned to Board of Supervisors for action.

H. General Plan Consistency Required for Zoning Amendments

The Planning Commission shall not recommend, and the Board of Supervisors shall not approve a Zoning Amendment unless the proposed amendment is found to be consistent with the General Plan. In the case of a combined General Plan amendment and change of zone or Zoning Code amendment, a finding may be made that the Zoning Amendment is consistent with the General Plan as proposed to be amended.

25.01.012 Non-Conforming Uses, Structures, and Sites

A. Purpose and Intent

1. This section provides regulations for nonconforming land uses, structures, and parcels that were lawful before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated, or restricted differently under the current terms of this code or future amendments.
2. It is the intent of this section to discourage the long-term continuance of nonconformities that have the potential to create nuisance or other incompatibility issues and provide for their eventual elimination while allowing them to exist under the limited conditions outlined in this code.

B. Establishment of Legal Nonconforming Status

The provisions of this Chapter apply to sites, uses, and structures that have become nonconforming by adoption of this Title as well as sites, uses, and structures that become nonconforming due to subsequent amendments to its text or to the County Zoning Map.

C. Nonconformities Defined

Any lawfully established use or structure that is in existence on the effective date of this Title or any subsequent amendment thereto but does not comply with the standards and requirements of this Title shall be considered nonconforming.

1. A non-conforming use or structure may result from any inconsistency with the requirements of this Title including, but not limited to, use, location, density, floor area, height, setback, other development standards, or the lack of an approved Administrative Use Permit, Conditional Use Permit, or other required authorization.
2. A parcel of land may be considering nonconforming if it was previously used and/or developed without required site improvements including but not limited to paving, screening, landscaping, lighting, drainage, etc.

D. Continuance of Legal Nonconforming Uses and Structures

Any use or structure that was lawfully established prior to the effective date of this Title or of any subsequent amendments to its text or to the Zoning Map may only be continued and maintained provided there is no alteration, enlargement, addition, or other change to any building or structure or use therein; or no substitution, expansion, or other change including an increase in occupant load or any enlargement of the area, space, or volume occupied by or devoted to such use, except as otherwise provided in this Chapter. The right to continue a nonconforming use or structure shall attach to the land and shall not be affected by a change in ownership, tenancy, or management. The right to continue a nonconforming use or structure shall not apply to uses or structures determined by the Planning Commission or Board of Supervisors as described in this Chapter to be a public nuisance arising from conditions that constitute a threat to public health, safety or general welfare.

The right to continue a nonconforming use or re-occupy a nonconforming structure shall terminate if the nonconforming use has been abandoned or the nonconforming structure has been vacated for the relevant period described in the Abandonment of Nonconforming Uses Section.

E. Nonconforming Uses

Nonconforming uses shall not be expanded, modified, or substituted for another nonconforming use except as provided below.

1. **Expansion.** Nonconforming uses shall not expand in intensity and/or physical footprint.
2. **Absence of Permit.** Any use that is nonconforming solely by reason of the absence of a Use Permit may be changed to a conforming use by obtaining the appropriate Use Permit pursuant to the requirements with the provisions in the Use Permits sections in Chapter 25.02.
3. **Conditions.** The Director may impose reasonable conditions deemed necessary to ensure compliance with the required findings. The Planning Director may also require reasonable guarantees and evidence that such conditions are being, or will be, complied with.
4. **Abandonment of Nonconforming Use.** If the nonconforming use ceases to operate, whether with the intent to abandon the use or not, for a continuous period of one calendar year, it shall be considered abandoned and shall not be resumed, reestablished, reopened, or replaced by any use other than a conforming use. It is the responsibility of the applicant to provide evidence demonstrating to the satisfaction of the Director that the use was legally established and has not been abandoned.
 - a. **Abandonment.** The time period set forth above shall commence when the use ceases to operate, whether with the intent to abandon the use or not, and any one of the following occurs:

- i. The site is vacated;
 - ii. The business license expires or is revoked;
 - iii. Utilities are terminated; or
 - iv. The applicable lease is terminated.
 - b. **Extension of Abandonment Period.** The Director may approve an additional one-year time period during which the use will not be considered abandoned; provided that the Director finds that economic conditions warrant the additional time. If such additional time period is approved, the total period during which the use will not be considered abandoned shall not exceed two years from the date the use ceased to operate.
5. **Burden of Proof.** The burden of proof as to the nonconforming status of any use shall rest with the property owner, tenant, and/or resident.

F. **Nonconforming Structures**

Nonconforming structures may be continued and maintained in compliance with the following provisions.

1. **Additions and Enlargements.** Additions to and/or enlargements of nonconforming structures are allowed if the addition or enlargement complies with all applicable laws and requirements of this Title, the use of the addition/enlarged area of the property is authorized by this Title, and there is no increase in the discrepancy between existing conditions and the requirements of this Title, except as provided below.
2. **Maintenance and Repairs.** Structural and non-structural maintenance, repair, and interior alterations to a nonconforming structure are permitted if the changes and improvements do not enlarge the structure, change the building footprint, or increase building height or roof pitch. This excludes any improvements required to meet accessibility requirements.
 - a. **Nonconforming Setbacks, Residential Zones.** In Residential Zones, a nonconforming setback may be maintained and extended, and shall not be considered an increase in the discrepancy, provided that:
 - i. A new encroachment into any other required setback is not created;
 - ii. The height of the portion of the structure that is within the required setback is not increased; and
 - iii. Any residential additions above the first floor shall conform to the setbacks in effect at the time the application for the addition is submitted.

3. **Restoration of Damaged or Destroyed Nonconforming Structures.** A nonconforming structure that is damaged or partially destroyed by fire, explosion, earthquake, or natural disaster that was not caused by an act or deliberate omission of a property owner, their agent, or person acting on their behalf or in concert with them, may be restored or rebuilt subject to the following provisions.
 - a. **Restoration When Damage is 50 Percent or Less of Value.** If the cost of repair or reconstruction is less than or equal to 50 percent of the appraised value of the structure as determined by the Building Official, replacement of the damaged portions of the structure is allowed by right provided that the replaced portions are the same size, extent, and configuration as previously existed. The determination of the appraised value shall be made by a professional appraiser selected by the County, whose fee shall be paid by the building or property owner.
 - b. **Restoration When Damage Exceeds 50 Percent of Value.** If the cost of repair or reconstruction exceeds 50 percent of the appraised value of the structure, as determined pursuant to Subsection A above, the land and building shall be subject to the requirements of this Title, except as provided below.
 - i. **Residential Structures.** Any nonconforming multi-family residential structure may be reconstructed, restored, or rebuilt up to the size and number of dwelling units prior to the damage and the nonconforming use, if any, may be resumed subject to a Zoning Clearance in the case of single-unit dwellings or Director approval in the case of other residential uses, unless the review authority finds that the reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety, or general welfare of persons residing or working in the neighborhood.
 - ii. **Timing.** Building permits must be obtained within two years of the date of the damage or destruction and construction shall be completed within one year of issuance unless another time period is specified through Director consideration. Building permits must be maintained valid through the completion of the project.
4. **Burden of Proof.** The burden of proof as to the nonconforming status of any structure shall rest with the property owner, tenant, and/or resident.

G. Nonconforming Sites

A “nonconforming site” is a lot or parcel that is not in compliance with current site development standards (e.g., parking, landscaping, etc.) but which was in conformance when the site was developed.

In conjunction with the expansion of existing buildings or the construction of new buildings on a partially developed site, nonconforming sites shall be brought into compliance on the following basis.

In all cases, it is recognized that full compliance with the requirements of this Zoning Code may not be possible, due to limitations such as the size of the parcel. In such cases, a good faith effort to achieve compliance shall be sufficient.

Proposed Building Expansion	Required Site Improvements
Less than ten percent (10%) increase in floor area or 500 square feet of expansion, whichever is less	Exempt; no site improvements required.
Ten percent (10%) or greater increase in floor area	Landscaping shall be installed along street and building frontages to the extent possible
Thirty percent or greater increase in floor area	<p>One of the improvements below shall be made with the construction of the increased floor area, if enough site area is available:</p> <ul style="list-style-type: none"> a. Installation of additional parking to achieve as much compliance with parking requirements as possible; b. Installation of landscaping to achieve as much compliance with landscaping requirements as possible.
Fifty percent or greater increase in floor area	<p>Both of the items below shall be completed with the construction of the increased floor area, if enough site area is available:</p> <ul style="list-style-type: none"> a. Installation of additional parking to achieve as much compliance with parking requirements as possible; b. Installation of landscaping to achieve as much compliance with landscaping requirements as possible.

H. Abatement

The provisions of this Chapter are in addition to existing state law authority to declare and abate a public nuisance and other applicable provisions of the County Code. If a legal nonconforming structure or use is found to constitute a public nuisance, appropriate action may be taken by the County pursuant to the County Code.

25.01.013 Application Forms and Fees

This Chapter establishes uniform procedures for the preparation, filing, and processing of all land use permits and approvals provided for in this Title, unless superseded by a specific requirement of the Zoning Code or State law.

A. Forms and Fees

1. **Applicant.** The owner of property or the owner's authorized agent. If the application is made by someone other than the owner or the owner's agent, proof of the right to use and possess the property as applied for, satisfactory to the Director, shall accompany the application.
2. **Application Forms.** The Director shall prepare, and issue application forms and lists that specify the information that will be required from applicants for projects subject to the provisions of this Title.
3. **Supporting Materials.** The Director may require the submission of supporting materials as part of the application, including but not limited to: statements, photographs, plans, drawings, renderings, models, staking and flagging, material samples and other items necessary to describe existing conditions and the proposed project and to determine the level of environmental review pursuant to the California Environmental Quality Act (CEQA).
4. **Availability of Materials.** All submitted material becomes the property of the County, may be distributed to the public, and shall be made available for public inspection. At any time, upon reasonable request, and during normal business hours, any person may examine application materials in support of or in opposition at the Planning Division offices. Unless prohibited by law or superseded by specific permit confidentiality requirements, copies of such materials shall be made available at a reasonable cost.
5. **Reimbursement and Indemnification.** The application shall include an enforceable provision in which the applicant agrees to reimburse the County for the cost of processing the application and to defend the County in any legal actions arising from the County's processing and/or approval or denial.

B. Multiple Applications

1. **Concurrent Filing.** An applicant for a development project that requires the filing of more than one application (e.g., Conditional Use Permit, Tentative Map, etc.), shall file all related applications concurrently, together with all application fees required by the County. Under certain circumstances, the concurrent filing requirements may be waived by the Director.
2. **Concurrent Processing.** Multiple applications for the same project may be processed concurrently, each application shall be reviewed and approved or denied by the Review Authority designated by the Zoning Code. In the case of concurrent applications which

require review and approval by a lower authority and a higher authority (e.g., Planning Commission and Board of Supervisors), any approvals by the lower authority shall be contingent upon approval by the higher authority.

C. Application Fees

1. **Fee Schedule.** The Board of Supervisors shall approve by resolution a Fee Schedule that establishes flat fees or deposits for permits, procedures for processing flat fees or deposits, informational materials, penalties, copying, and other such items.
2. **Fee Payment.** No application shall be deemed complete, and processing shall not commence on any application until all required fees or deposits have been paid.
3. **Fee Waiver.** No fee shall be required when the applicant is the County, or if it is waived under any other provision of the San Benito County Code.
4. **Refund of Fees.** Application fees are non-refundable unless otherwise provided for in the San Benito County Code or by policy of the County.

D. Review of Applications

1. **Initial Completeness Review.** The Director shall determine whether an application is complete within (30) thirty days of the date the application is accepted and the required fee received, whichever is later, except for legislative acts (zoning amendments, Specific Plans, etc.) or where this time limit is superseded by state law.
2. **Incomplete Application.** If an application is deemed incomplete, the Director shall provide written notification to the applicant listing the application(s), forms, information, and any additional fees that are necessary to complete the application.
3. **Appeal of Determination.** Determinations of incompleteness are subject to the provisions of Appeals in Chapter 25.01.008.

E. Expiration of Applications

1. **Expiration of Application.** Based on noncommunication, the director may determine that an application has been abandoned. The applicant shall be informed that the County plans to deem the application expired and shall be given an opportunity to provide any missing materials within a reasonable time. Final notice of an expired application shall be mailed to the applicant if no response is received, or if missing materials are not provided.
2. **Notice of Expired Application.** When an application is deemed expired, the Director shall make a record of that date and also notify the applicant.
3. **Application Fees Refunded.** Any funds paid or deposited and not used at the time the application is deemed expired shall be refunded to the applicant.