

## 25.02: Permits and Other Planning Actions

### 25.02.001 Development Plan Review

The Development Plan Review process provides for the review of new construction and additions or other physical modifications to sites and buildings.

Two types of Development Review are established:

- A. Minor Development Plan Review, a staff-level review and approval of new, non-exempt development
- B. Major Development Plan Review, review of new, non-exempt development by the Planning Commission

A third type of project review to determine compliance with development standards, Zoning Clearance, is described in 25.02.011.

#### A. **Approving Authority**

- 1. Zoning Clearance does not involve approval of a project and is described elsewhere in this Chapter (25.02.011).
- 2. Minor Development Plan Reviews. The Planning Director shall act as the Review Authority for Minor Development Plan Reviews.

The Planning Director may, at his or her discretion, forward any application for a Minor Development Plan Review to the Planning Commission.

The Planning Director must refer an application for a Minor Development Plan Review to the Planning Commission if the applicant or applicant's representative, or any member of the public, requests a public hearing in writing. Such forwarded applications shall be processed as a Major Development Plan Review.

- 3. Major Development Plan Reviews. The Planning Commission shall act as the Review Authority for Major Development Plan Reviews.

## B. Review of Exempt Projects

The Director may, at his or her discretion, require that a project which is defined as exempt from Development Plan Review be processed as a Minor or Major Development Plan Review, as deemed appropriate by the Director.

The Director's decision to process an otherwise exempt project may be appealed as provided in this Code.

## C. Thresholds for Types of Development Plan Review

New construction and additions or physical modifications to buildings shall be categorized as Exempt or subject to Minor or Major Development Plan Review as shown below.

**Table 25.02-A**

<b>Development Plan Review Thresholds</b>			
	<b>Exempt (Requires Zoning Clearance)</b>	<b>Minor Development Plan Review</b>	<b>Major Development Plan Review</b>
<b>Single-Family Residential Structures in All Zoning Districts<sup>1</sup></b>	Additions or exterior modifications to existing single-family residences and accessory structures  New construction of a custom single-family home and accessory structures	Master home plans for subdivisions of up to 10 lots  Master landscaping, lighting, and fencing plans for single-family residential subdivisions	Master home plans for residential subdivisions greater than 10 lots
<b>Multi-Family Residential Structures in All Zoning Districts<sup>1</sup></b>	Additions or modifications to multi-family residential structures which do not result in an increase in the number of residential units	New multi-family development with 4 or less dwelling units	New multi-family development with 5 or more dwelling units

<b>Non-Residential (Commercial, Office, Institutional) Structures<sup>1</sup></b>	New buildings, additions or modifications to structures that add less than 2,500 square feet to an existing building	Additions or modifications to structures that add 2,501 to 5,000 square feet to an existing building  New structures of 3,000 square feet or less	Additions or modifications to structures that add 5,001 square feet or more to an existing building  New structures greater than 5,000 square feet
<b>Agricultural / Industrial Structures<sup>2</sup></b>	Barns, garages, workshops, and other similar structures up to 5,000 square feet  Additions to existing structures are exempt	Barns, garages, workshops, and other similar structures 5,001 square feet to 10,000 square feet  Additions to existing structures are exempt	Barns, garages, workshops, and other similar structures greater than 10,000 square feet  Additions to existing structures are exempt
<b>Other<sup>1</sup></b>	Interior alterations that do not change the permitted use of the structure  Signs, including freestanding signs and signs attached to a building  Fences and Walls: <ul style="list-style-type: none"> <li>• Retaining walls less than thirty-six (36) inches in height.</li> <li>• Fences located on residential or agricultural property constructed in compliance with</li> </ul>	Other development of similar scale and impact, as determined by the Director, that is not explicitly subject to Major Development Plan Review per this section	Hillside Development, per Chapter 25.07 of this Code  Other development of similar scale and impact, as determined by the Director, that is not explicitly subject listed in this subsection

	<p>the standards of this section</p> <ul style="list-style-type: none"> <li>• Fences and walls required by a state or federal agency, or by the County for public safety.</li> </ul> <p>Other development of similar scale or impact, as determined by the Director, that is not explicitly subject to Minor or Major Development Plan Review per this section</p>		
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1. General accessory in all non-Agricultural zones are regulated in sections 25.07.006 and 25.07.007
2. Accessory structures in Agricultural zones are regulated in section 25.07.008

#### **D. Application**

Applications for Development Plan Review shall be filed with the Planning Division on prescribed application forms and all application fees paid.

#### **E. Notice of Application Filing**

Notices of the application filing shall be distributed as follows:

1. Notices for Major Development Plan Reviews shall meet the criteria for public notice and hearing before the Planning Commission. Notices shall include the following:
  - a. A statement that staff is considering the application (but not necessarily staff's recommendation); and
  - b. A statement that a public hearing will be held; and
  - c. A specific deadline (of not less than seven calendar days from the date of the mailing) to respond in writing to provide comments.

2. Notices for Minor Development Plan reviews shall be provided as follows:
  - a. A notice describing the proposed project shall be mailed to property owners and occupants on properties adjacent to the subject site; and
  - b. The notice shall indicate that staff is considering the application (but not necessarily staff's recommendation); and
  - c. The notice shall indicate that, unless requested, a public hearing will not be held; and
  - d. The notice shall include a deadline of not less than seven calendar days from the date of the mailing to respond in writing to provide comments or request a public hearing.

#### **F. Public Hearings**

1. Minor Development Plan Review. Applications for Minor Development Plan Review shall be reviewed by staff and do not require a public hearing unless a hearing is requested.
2. Minor Development Plan Review with Hearing Requested. All applications for Minor Development Review for which a public hearing is requested require a public hearing at the Planning Commission, which shall be advertised and conducted as provided in this Code.
3. Major Development Plan Review. Applications for Major Development Plan Review require a public hearing at the Planning Commission, which shall be advertised and conducted as provided in this Code.

#### **G. Required Findings**

All of the following findings must be made in order to approve a Minor or Major Development Plan Review. Evidence in support of these findings shall be documented for all Minor and Major Development Plan Review approvals. Other chapters may contain additional specific findings or criteria that apply to the approval of Development Plan Reviews in specific circumstances.

1. The proposed development is compliant with applicable General Plan policies, zoning regulations, specific plan provisions, and any other applicable regulations.
2. The proposed development respects terrain, drainage, onsite and offsite infrastructure, etc.; is compatible with adjacent development and uses; and will not create conflict with vehicular, bicycle, or pedestrian circulation.
3. That the site has adequate sewer disposal (e.g., sewer or septic), water, power, and other required utilities, or will provide these as part of the development of the site.
4. The proposed project will not be detrimental to the public health, safety and general welfare, nor result in adverse effects on neighboring residents, businesses, or property.

#### **H. Conditions of Approval**

In approving a Development Plan Review, the Reviewing Authority may impose reasonable conditions to ensure that the development will allow all of the findings for approval to be made. Conditions of approval shall not affect the operation of any use in the structure.

#### **I. Modifications**

Minor changes to approved Major or Minor Development Plan Reviews which result in minor design revisions or minor modifications or substitutions to conditions of approval which are substantially the same as the approved conditions may be made by the Director through the Zoning Clearance process.

Changes to an approved Major or Minor Development Plan Review which are in the Director's opinion not minor may be approved by the Director (for any Development Plan Review originally approved by the Director) or following a public hearing at the Planning Commission (for Major Development Plan Reviews originally approved by the Planning Commission).

#### **J. Notice of Decision**

An official notice of approval or denial of a Development Plan Review shall be provided to the applicant. The notice shall include:

1. The Reviewing Authority's decision and the date of the decision;
2. Any conditions of approval; and
3. A deadline to file an appeal of the decision, which shall be per the Appeals procedures in Chapter 25.01 of this Code.

#### **K. Appeals**

Any person can appeal the Director's or Planning Commission's decision per the procedures established in Chapter 25.01 of this Code.

#### **L. Effective Date**

The Director's and Planning Commission's approval shall be final when the deadline for an appeal by the public or applicant has expired without the filing of an appeal.

Applications which have been appealed shall be deemed not approved until the subsequent Review Authority takes action to approve or deny, and that appeal period, if applicable, has expired without the filing of an appeal.

#### **M. Expiration**

Approvals for Minor or Major Development Plan Reviews shall not automatically expire and shall remain in effect until revoked or replaced by a subsequent approval, unless a condition of approval which must be completed by a specific date is not complied with, in which case the approval may be returned to the approving authority for revocation.

#### **N. Overlapping or Multiple Approvals Not Permitted**

Only one Minor or Major Development Plan Review approval may be approved for a parcel or development site. Approval of a new Development Plan Review shall be considered to revoke any previously approved approval.

### **25.02.002 Administrative Use Permits**

Administrative Use Permits are provided for the individual review of a use at a specific location to ensure that their operation will be compatible with surrounding areas and uses. Administrative Use Permits are provided for certain uses to expedite the processing of applications by allowing staff review and approval. Administrative Use Permits are provided for uses which require individual scrutiny but are generally less potentially impactful than uses for which a Conditional Use Permit is required.

#### **A. Approving Authority**

The designated Approving Authority for an Administrative Use Permit is the Planning Director.

The Planning Director may, at his or her discretion, forward an application for an Administrative Use Permit to the Planning Commission for decision. The Director may refer an application to the Planning Commission for any of the following reasons:

1. The applicant or applicant's representative or any member of the public requests, in writing, a public hearing.
2. At the discretion of the Director.

Administrative Use Permits referred to the Planning Commission shall be processed in the same manner as a Conditional Use Permit.

## **B. Uses Requiring Administrative Use Permits**

Uses which require Administrative Use Permits are shown in the use tables in Chapter 25.03 of this Zoning Code.

## **C. Application**

Applications for Administrative Use Permits shall be filed with the Planning Division on the prescribed application forms.

## **D. Notice of Application Filing**

Once an application for an Administrative Use Permit has been determined to be complete, notice of the application shall be mailed to all persons owning and/or residing on property within 300 feet of the exterior boundaries of the property for which the permit has been applied. The notice shall also be posted on the website, and at the project site by the applicant in a location that is readable from the public right of way.

1. The notice shall indicate that staff is considering the application but need not include a proposed decision.
2. The notice shall indicate that, unless requested, a public hearing will not be held.
3. The notice shall include a deadline of not less than ten (10) calendar days to respond in writing to provide comments or request a public hearing from the date of the notice.

## **E. Required Findings**

All of the following findings must be made in order to approve an Administrative Use Permit:

1. The proposed use is administratively permitted within the applicable zone and complies with all other applicable provisions of this Title and all other titles of the County of San Benito County Code, General Plan and any applicable Specific Plan;
2. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
3. The proposed use complies with any design or development standards applicable to the zone or the use in question, unless waived or modified pursuant to the provisions of this Title;
4. The site is physically suitable for the type, density, and intensity of the use being proposed, including access, utilities, and the absence of physical constraints.

The Director shall provide his or her determination to approve or deny in writing to applicant.



#### **F. Conditions of Approval**

In approving an Administrative Use Permit, the Director may impose reasonable conditions or restrictions to ensure that the project's operation will allow all of the findings for approval to be made. The Director may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

Conditions of approval may be included requiring that specific actions take place by specified deadlines. Noncompliance with such conditions may result in revocation, as provided in this section.

#### **G. Modification of Conditions**

Minor changes to an approved Administrative Use Permit to modify or substitute conditions of approval which are substantially the same as the approved conditions may be made by the Director. No public notice shall be required for such changes.

Changes to an approved Administrative Use Permit which are in the Director's opinion not minor may be approved following a public hearing at the Planning Commission.

#### **H. Notice of Decision**

The Director's decision to approve or deny an application for an Administrative Use Permit shall be provided to the applicant in writing.

The Notice of Decision shall include:

1. The Director's decision and the date of the decision
2. Any conditions of approval
3. A deadline for the public or applicant to file an appeal of the decision, which shall be (10) ten calendar days from the day on which the notice was mailed.

#### **I. Appeals**

The public or applicant can request an appeal of the Director's decision per the procedures established in Chapter 25.01.008 of this Code.

The Commission can request that the application be scheduled for a public hearing to review the Director's decision.

#### **J. Effective Date**

The Director's approval shall be final when the deadline for the filing of an appeal by the public or applicant has expired without the filing of an appeal.

Applications which have been appealed or scheduled for review at the request of the Planning Commission shall be deemed not approved until the Planning Commission takes action to approve or deny.

**K. Expiration**

No automatic expiration for an Administrative Use Permit is imposed by this Code. Conditions may be required to be complied with by a certain date.

**L. Revocation**

An Administrative Use Permit can be revised or revoked following a public hearing by the Planning Commission based on non-compliance with conditions of approval or to address issues which have arisen due to the operation of the use despite adherence to all approved condition of approval. Noticing and hearing procedures for revocation shall be the same as for the initial consideration of the Administrative Use Permit.

### **25.02.003 Conditional Use Permits**

Conditional Use Permits are provided for the individual review of uses at specific locations to ensure that their operation will be compatible with surrounding areas and uses.

**A. Approving Authority**

The Planning Commission shall act as the Review Authority for Conditional Use Permits.

**B. Uses Requiring Conditional Use Permits**

Uses which require Conditional Use Permits are shown in the use tables in Chapter 25.03 of this Zoning Code.

**C. Application**

Applications for Conditional Use Permits shall be filed with the Planning Division on the prescribed application forms.

**D. Public Notice and Hearing**

All applications for Conditional Use Permits shall require public notice and hearing before the Planning Commission pursuant to the provisions of Public Hearings section in Chapter 25.01.007 of this Zoning Code.

**E. Findings**

All of the following findings must be made in order to approve a Conditional Use Permit:

1. The proposed use is conditionally permitted within the applicable zone and complies with

all other applicable provisions of this Title and all other titles of the County of San Benito County Code, the General Plan and any applicable Specific Plan;

2. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
3. The proposed use complies with any design or development standards applicable to the zone or the use in question, unless waived or modified pursuant to the provisions of this Title;
4. The site is physically suitable for the type, density, and intensity of the use being proposed. Suitability criteria may include, but are not limited to, access, utilities, and the absence of physical constraints.

#### **F. Conditions of Approval**

In approving a Conditional Use Permit, the Director may impose reasonable conditions or restrictions to ensure that the project's operation will allow all of the findings for approval to be made. The Director may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

Conditions of approval may be included requiring that specific actions take place by specified deadlines. Noncompliance with such conditions may result in revocation, as provided in this section.

#### **G. Modification**

Modifications to an approved Conditional Use Permit may be made per the provisions of the Modification of Approvals section in Chapter 25.02.

#### **H. Notice of Decision**

An official notice of approval or denial of a Conditional Use Permit shall be provided to the applicant. The notice shall include:

1. The date of the decision
2. Any conditions of approval
3. A deadline to file an appeal of the decision, which shall be per the procedures in Chapter 25.01 of this Code.

#### **I. Appeals**

The public or applicant can request an appeal of the Planning Commission's decision per the procedures established in Chapter 25.01.008 of this Code.

**J. Effective Date**

The Planning Commission's approval shall be final when the deadline for an appeal by the public or applicant has expired without the filing of an appeal.

Applications which have been appealed shall be deemed not approved until the Board of Supervisors takes action to approve or deny.

**K. Expiration**

No automatic expiration for a Conditional Use Permit is imposed by this Code. Conditions may be required to be complied with by a certain date. If such conditions are not followed, revocation may proceed as provided in this section.

**L. Revocation**

A Conditional Use Permit can be revised or revoked following a public hearing by the Planning Commission based on non-compliance with conditions of approval or to address issues which have arisen due to the operation of the use despite adherence to all approved condition of approval. Noticing and hearing procedures for revocation shall be the same as for the initial consideration of the Conditional Use Permit.

**M. Reapplication for Denied Conditional Use Permit**

If a conditional use permit is denied, no new application for a new permit substantially the same as the one denied shall be considered for a period of one year following denial.

**N. Automatic Issuance of a Conditional Use Permit to Holder of Surface Mining Operations Permit**

Upon the issuance of the operations permit, pursuant to the surface mining operation and reclamation code set out in the Surface Mining and Reclamation Section in Chapter 25.08.017, a conditional use permit shall automatically be issued by the Planning Director without further hearing and without additional fee to the holder of the operations permit. All conditions of the operations permit shall be conditions of the use permit. The status of the use permit shall be the same as that of the operations permit.

## **25.02.004 Temporary Use Permits**

**A. Purpose**

The purpose of this section is to establish regulations for uses of private property that are temporary in nature. These provisions place restrictions on the duration of the temporary use, its location, and other development standards. The intent of these regulations is to ensure that the temporary use does not adversely impact the long-term uses of the same or neighboring sites, or impact the general health, safety, and welfare of persons residing within

the community. (Refer to the section on Temporary Events and Permits for regulations related to events.)

## **B. Permit Required**

Except as otherwise provided in this Zoning Code, the temporary uses listed in this section shall require the issuance of a Temporary Use Permit from the Planning Director prior to establishment of the use. The Planning Director may impose conditions on the approval of a temporary use.

## **C. Temporary Use Regulations**

1. Exempt temporary uses. The following temporary uses are exempt from the permit requirements of this section, provided they comply with the development standards listed below.
  - a. Emergency facilities. Temporary facilities to accommodate emergency public health and safety needs and activities;
  - b. Construction yards—On-site. Yards and sheds for the storage of materials and equipment used as part of a construction project, provided a valid building permit has been issued and the materials and equipment are stored on the same site as the construction activity;
  - c. Miscellaneous. Activities conducted on public property or within the public right-of-way that are approved by the County or as otherwise required by the County Code.
  - d. Garage or yard sales, provided that no more than three (3) sales are conducted at the same address in any calendar year.
2. Allowed temporary uses and related standards. The following temporary uses may only be established after first obtaining a valid Temporary Use Permit. Uses that do not fall within the categories defined below shall comply with the use and development regulations and planning permit requirements that otherwise apply to the property.
  - a. Construction office. A temporary construction office, used during the construction of a main building or buildings on the same site;
  - b. Construction yards—Off-site. Site contractors' construction yards, in conjunction with an approved construction project;
  - c. Model homes. A model home or model home complex may be authorized before the completion of subdivision improvements;
  - d. Temporary real estate offices, including sales trailers and related facilities. May be established within the area of an approved residential subdivision project, solely for

the first sale of homes. In addition, conditions of approval regulating the hours of operation, landscaping, or other aspects as deemed necessary may be imposed as part of the Temporary Use Permit;

- e. Seasonal sales lots. Temporary seasonal sales activities (e.g., Christmas trees, pumpkin sales, and other similar outdoor sales) may be permitted in any commercial or industrial zoning district, or on any religious facility or school site that abuts a collector or arterial roadway as designated in the General Plan. Seasonal sales may be permitted in any non-residential zoning district upon issuance of a Temporary Use Permit. The term of permit shall not exceed sixty (60) days per calendar year, which may be used in up to three (3) consecutive or nonconsecutive periods (e.g. 20+20+20 or 10+10+40)..
  - f. Food Trucks. Permitted on private property in any commercial or industrial zoning district, or on any religious facility or school site that abuts a collector or arterial roadway as designated in the General Plan. Food Trucks may operate on private property in any non-residential zoning district upon issuance of a Temporary Use Permit. The term of permit shall not exceed sixty (60) days per calendar year, which may be used in up to three (3) consecutive or nonconsecutive periods (e.g. 20+20+20 or 10+10+40).
  - g. Temporary dwellings, including mobile homes, when a primary dwelling is being constructed or remodeled may be permitted, provided a valid building permit has been issued. The temporary dwelling shall be limited to a maximum of one year.
  - h. Other temporary uses and activities that typically occur on private property.
3. When a temporary use is not specifically listed in this section, the Director shall determine whether the proposed use is similar in nature to listed uses(s) and shall establish the term and make necessary findings and conditions for the particular use.

#### **D. General Standards for Temporary Uses**

Each use granted a Temporary Use permit shall comply with all applicable zoning district and development standards as outlined in this Zoning Code. The Director shall establish the following standards in combination with the provisions above and, based on the type of temporary use, in addition to standards within the Zoning Code for guidance:

- 1. Measures for removal of the activity and site restoration, to ensure that no changes to the site would limit the range of possible future land uses otherwise allowed by this Zoning Code.
- 2. Limitation on the duration of approved temporary structures to a maximum of one year, so they shall not become permanent or long-term structures.
- 3. Other requirements as appropriate to minimize any adverse impacts of the use.

## **E. Similar Uses**

When a temporary use is not specifically listed in this section, the Director shall determine whether the proposed use is similar in nature to listed uses(s) and shall establish the term and make necessary findings and conditions for the particular use, consistent with the provisions in Chapter 25.01.006.

## **25.02.005 Temporary Event Permits**

### **A. Purpose**

The purpose of this section is to ensure that the operators of privately-run or -sponsored temporary events obtain all required permits and approvals from the County and other agencies to ensure the safety of the public attending the events. This section applies to events taking place entirely on private property and to privately-run or -sponsored events which occur partially or entirely on public property (e.g., an event in a public park, or a parade or event taking place on public streets).

### **B. Temporary Event Permit and Compliance with All County and Outside Agency Permits Is Required**

All temporary events shall obtain an approved temporary event permit from the County at least ten (10) calendar days before the event, and shall comply before, during, and after the event with all requirements, conditions, etc., which may be imposed by the County and/or outside agencies. County departments and other public agencies to be consulted include:

1. San Benito County Building and Safety Department
2. San Benito County Public Works Department
3. San Benito County Administrative Office
4. San Benito County Fire Department
5. San Benito County Sheriff
6. San Benito County Department of Environmental Health

Coordination with these agencies will be facilitated and verified by the County, as described in subsection 6, below. Some of these agencies may require separate permits or approvals, which are in addition to the Temporary Event Permit.

A temporary use permit is required for some types of commercially oriented temporary activities that are not considered temporary events. Please see the provisions in Temporary Uses.

**C. Application for a Temporary Event Permit**

The temporary event sponsor shall submit an application for a temporary event permit to the County not less than forty five (45) days prior to the start of the temporary event.

**D. Temporary Events Defined**

Temporary events are generally one-time events, including annual or recurring events. Examples include fairs; carnivals; rodeos; shows; walking, running, and/or bicycling events and races; parades, and tent revival meetings. The County may limit the number of temporary events at a location, including either the same event held on multiple occasions or different events.

**E. Temporary Structures**

Any temporary structure used for a temporary event shall be approved by the Fire Marshall or Building Official. This includes tents, but excludes tables, chairs, umbrellas, or inflatable objects.

**F. Verification of Compliance with County and Agency Requirements**

Unless a temporary event is exempt as defined below, the Planning Department shall verify either that:

1. The event does not require a review or permit by the departments or agencies listed in subsection B, above.
2. Any required permits from the departments and agencies listed above have been obtained. Once coordination has been verified by the Planning Department, a temporary event permit will be issued, and the temporary event may proceed.

**G. Exempt Temporary Events**

The following are exempt from the requirements of this section, unless they require approval or permits from any of the departments or agencies listed above:

1. Temporary facilities to accommodate emergency public health and safety needs and activities.
2. Noncommercial events conducted at private homes (weddings, parties, etc.), which do not involve the construction of temporary structures in the required front yard.
3. Yard or garage sales.
4. Holiday displays.



5. Promotional events and grand opening celebrations in established commercial shopping centers that do not interfere with vehicular traffic on public or private streets and driveways, do not disrupt the proper functioning of parking areas, do not involve the outdoor sale of goods and merchandise, and do not exceed two days in duration.
6. Uses or events which are consistent with the clearly intended use of the facility (e.g., sporting events in a stadium or a play in a theater), as determined by the Planning Director.

While exempt from the requirements of this chapter, these temporary events must comply with all applicable County and other requirements.

#### **H. Temporary Event Standards**

Temporary events must comply with the following standards:

1. All parking spaces for patrons and guests shall be provided on-site where the activity is taking place. On-street or off-site parking may be used in lieu of on-site parking if approved by the Planning Director.
2. Vehicular access to the event site shall not create traffic conflicts or congestion on County streets during the operation of the event.
3. Noise created by the event shall not exceed the levels outlined in the San Benito County Noise Ordinance.
4. The concentration or placement of persons, animals, structures, or vehicles shall not interfere with emergency access.
5. Temporary events shall be limited to three days in length.

The County may limit the number of temporary events at a location, including either the same event held on multiple occasions or different events, so they shall not become long-term or permanent.

#### **I. Bond and Insurance**

Bonding or insurance may be required to be in place in advance of a temporary event, as follows:

1. The County may require a sponsor of a temporary event to post a bond or to otherwise financially secure that the event location is restored to its original condition and that the County is fully reimbursed for any unanticipated law enforcement or emergency medical expenses. The County shall determine the amount of the bond or other security, and the event sponsor shall post it with the permitting authority.

2. The County may require that the sponsor of a temporary event show proof of liability insurance naming the County as an additional insured.

#### **J. Enforcement**

The County may require the immediate closure of any nonexempt event that is operating without a temporary event permit or is not in compliance with any requirements, conditions, etc., which have been imposed by the County or any agency.

### **25.02.006 Crowding Fowl Permits**

#### **A. Crowding Fowl Permit Required in the County**

Notwithstanding any other provision in this code, keeping, raising, or harboring six or more crowding fowl is an unlawful use in the county without a valid crowding fowl permit.

#### **B. Fees**

Permit fees shall be paid annually in the following amounts:

6—10 crowding fowl	\$125
11 or more	\$1,500

#### **C. Administrative Permits for Crowding Fowl**

1. It is unlawful for any person to keep, raise or harbor crowding fowl within the county without first having obtained an administrative permit therefor from the Planning Director. The administrative permit shall be a temporary permit, subject to annual renewal.
2. The Planning Director may issue an administrative permit for the keeping, raising or harboring of six to ten crowding fowl under any conditions and restrictions deemed necessary for the protection of animal and/or public health, safety or welfare, and may specify such conditions and restrictions in the administrative permit. Every application for a crowding fowl permit shall be made on crowding fowl permit forms provided by the Planning Department, accompanied by the appropriate filing fee as established by resolution of the Board of Supervisors from time to time.
3. Administrative permits may be modified or revoked for the same reason(s) that a conditional use may be modified or revoked. Any proceedings to modify or revoke an administrative permit shall be conducted by the Planning Director.

#### **D. Conditional Use Permits for Crowing Fowl**

It is unlawful for any person to house eleven (11) or more crowing fowl without first having obtained a conditional use permit.

#### **E. Additional Findings for Denial of Conditional Use Permits for Crowing Fowl**

The Planning Commission may refuse to issue a conditional use permit for the housing of crowing fowl to:

1. Any person whose conditional use permit for crowing fowl has been suspended or revoked, for the period in the case of suspension, during which the order of suspension is in effect plus an additional one year from the effective date of the suspension; or, in the case of revocation, for five years after the effective date of the order of revocation;
2. Any person who has been or is an officer, agent or employee of any crowing fowl operation whose conditional use permit for crowing fowl has been suspended or revoked and who was responsible for, or participated in, the violation upon which the order of suspension or revocation was based, for the period in the case of suspension, during which the order of suspension is in effect plus an additional one year from the effective date of the suspension; or, in the case of revocation, for five years after the effective date of the order of revocation;
3. Any person who is in violation of any of the provisions of this title; and
4. Any person who has been convicted of the crime of cruelty to animals, whether in this state or any other jurisdiction, for a period of ten (10) years following the service of any sentence or completion of any condition of conviction, whichever is later.

#### **F. Permit Standards**

No crowing fowl permit shall be approved unless it complies with the following standards and the Planning Director, Code Enforcement Officer, Health Officer and Animal Control Officer find that it will not cause an adverse impact on the public health, safety or welfare:

1. Compliance with standards. All persons who own, keep, raise, harbor or maintain crowing fowl shall comply with the crowing fowl housing standards specified in Article II of this chapter. A violation of the standards required by Article II of this chapter shall be a violation of this chapter.
2. Hours of enclosure. Crowing fowl shall be confined inside the walled and roofed enclosure specified in Article II of this chapter between the hours of 8:00 p.m. and 6:00 a.m. each day.
3. Acknowledgment of standards. A copy of the applicable standards for housing of crowing fowl shall be supplied to any applicant requesting an application for a crowing fowl

permit. By signing the application form, the applicant shall acknowledge receipt of such standards and shall agree to comply with them and to allow inspections at reasonable times to confirm compliance with them.

4. Non-compliance with standards. Each person who owns, keeps, raises, harbors or maintains crowing fowl shall correct any deficiencies noted by the Animal Control Officer or Planning Director within a reasonable period of time as specified by the Animal Control Officer or Planning Director. Plans for new or remodeled facilities shall be submitted to the Animal Control Officer and Planning Director for review. Upon request by the Animal Control Officer or Planning Director, the applicant must make the premises, facilities and equipment available for the purpose of ascertaining compliance with such standards.

#### **G. Conditions of Approval**

Any crowing fowl permit granted shall be subject to such conditions and restrictions deemed necessary for the protection of animal and/or the public health, safety and general welfare. The Planning Commission may provide that issuance of a crowing fowl permit shall be contingent upon acceptance and observance of specified conditions, including but not limited to the conditions specified in § 25.43.005 of this title. In addition, a crowing fowl permit shall be subject to the following conditions:

1. Compliance with any regulations regarding the keeping or raising of poultry as a conditional use in the applicable zoning district;
2. Compliance with the housing standards specified in Article II of this chapter;
3. At the time the permit is issued, the applicant shall reside on the subject property; and
4. The applicant's consent to inspections at reasonable times without prior notice by the Planning Director or Animal Control Officer to ensure continued and ongoing compliance with applicable standards and conditions of approval.

#### **H. Inspections**

Public and animal health, safety and welfare require periodic inspections of all facilities housing crowing fowl within the county to ensure the protection of animals kept therein from unhealthy or inhumane conditions and practices. Accordingly, the Planning Director or Animal Control Officer shall have the right to inspect at reasonable times and shall inspect at intervals deemed appropriate by the Planning Director or Animal Control Officer, all crowing fowl permit holders within the county. As a condition of the issuance of any permit for crowing fowl, each permit holder shall agree to allow such inspection, which acknowledgment shall be made as part of the application and file.

#### **I. Exceptions**

The following are exempt from the provisions of this article:

1. Future Farmers of America (FFA) or 4-H projects conducted by the occupants on the premises are not subject to the requirements of this article except that an administrative permit must be filed with the Planning Department. Administrative permit forms shall be available at the Planning Department and may be filed free of charge; and
2. Poultry farms of chickens, ducks, geese, pigeons, pheasants, peafowl, turkeys or guinea fowl that are regulated by a conditional use permit, conditional uses in agricultural rangeland, and conditional uses in agricultural productive district, are not subject to the requirements of this article.

### **25.02.007 Lot Line Adjustments**

The Planning Division shall review lot line adjustment requests with the development standards of the Zoning Code through the Zoning Clearance process and provide input to the Public Works Division.

### **25.02.008 Minor Modifications to Development Standards**

#### **A. Purpose**

This section allows for adjustments to certain Zoning Code provisions to allow creative design solutions and to accommodate unique site conditions. Adjustments are not intended to convey special privileges to a property beyond what would be otherwise permitted within the zoning district and are only for minor deviations from the code. See the Variances section in 25.02.009 for more significant deviations from the code and Chapter 25.07.009, Height Exceptions.

While a minor modification allows for creative design, the Variance is reserved for limited circumstances where the property is severely constrained through dimension, topographical, or other site limitations.

#### **B. Applicability**

An adjustment may be granted to modify certain requirements of this Zoning Code, as listed in Table 25.02-B.

**Table 25.02-B**

<b>Minor Modification Amounts</b>	
Standard	Maximum Reduction or Increase
Parking or loading spaces	10% reduction in number of required spaces
Setbacks	20% reduction in required setback
Maximum lot coverage	10% increase in allowed coverage
Maximum height	10% increase in height
Fence/wall height	Up to 2' increase in height
Landscaping (required area)	10% decrease
Grading (amount approved through Major or Minor Development Plan Review)	10% increase or decrease

**C. Exclusions**

Minor modifications cannot be granted for any of the following standards:

1. Lot area, width, or depth.
2. Residential density.

**D. Application**

An application for a Minor Modification shall be filed to the Planning Division. The application shall state in writing the nature of the request and explain how the required findings are satisfied. The applicant shall also submit dimensioned plans illustrating the requested Minor Modification.

**E. Procedures**

1. The Planning Director makes final determinations on adjustment applications. The Planning Director may choose to refer any adjustment application to the Planning Commission for hearing and decision.
2. Public Notice and Hearing. Minor modifications do not require a public hearing or notice.

## **F. Findings**

The review authority may approve an adjustment, with or without conditions, only after first making all of the following findings:

1. That the proposed development is of sufficient size and is designed to provide a desirable environment within its own boundaries.
2. The proposed development is compatible with existing and proposed land uses in the surrounding area.
3. That any exceptions to or deviations from the density, requirements or design standards result in the creation of project amenities that would not be available through strict adherence to code provisions (e.g., additional open space, protection of natural resources, improved pedestrian connectivity, public plazas, etc.).
4. Granting the adjustment will not adversely affect the interests of the public or the interests of residents and property owners in the vicinity of the premises in question.
5. The adjustment is consistent with the General Plan or any applicable Specific Plan or development agreement.
6. The adjustment is the minimum required.
7. The adjustment does not grant a privilege not available to other properties where an adjustment was not granted.

## **G. Conditions of Approval**

In approving an adjustment, the review authority may do the following:

1. Impose conditions to ensure that the adjustment does not grant special privileges inconsistent with the limitations on other properties in the vicinity and zoning district in which the property is located.
2. Impose conditions (e.g., the placement, height, nature, and extent of the use, buffers, landscaping and maintenance, off-site improvements, performance guarantees, screening, surfacing, hours of operation) to ensure that the approval complies with the findings required by this chapter.

## **25.02.009 Variances**

### **A. Purpose**

This Chapter is intended to provide relief from the strict application of this Title where this would deprive the property owner of privileges enjoyed by similar properties because of the subject property's unique and special conditions.

### **B. Applicability**

Variances may be granted to vary or modify physical development standards.

Variances may not be granted to allow uses or activities that this Title does not authorize for a specific lot or site.

### **C. Review Authority**

The Planning Commission is empowered to grant variances, in order to prevent or lessen the practical difficulties and unnecessary physical hardships inconsistent with the objectives of this title as would result from a strict or literal interpretation and enforcement of certain of the regulations described by this title. The Commission shall approve only such variances as are in harmony with the general purpose and intent of this title and in accordance with the specific regulations set forth

### **D. Criteria for Issuance**

1. Variances from the terms of this title shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this chapter deprived the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
2. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant to special privileges inconsistent with the limitations upon other property in the vicinity and zone in which the property is situated.
3. A variance shall be approved only when the strict and literal interpretation of regulations in the particular case would involve practical difficulties or unnecessary hardships, and only to the extent necessary to overcome the difficulties or unnecessary hardships.

### **E. Hearings**

The Commission shall hold a public hearing on each application for a variance as provided in the public hearing section of this title.



## **F. Findings**

A variance in whole or in part or subject to conditions may be approved by the Commission if from the information presented in the application and at the public hearing it appears to be in compliance with the criteria set forth in this chapter and the Commission makes all of the following findings:

1. That there are exceptional or extraordinary circumstances applying to the property involved or to the proposed use;
2. Granting the variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district, and denied to the subject property owner;
3. That the allowance of the variance will not, under the circumstances of the particular case, be materially detrimental to the public welfare or materially injurious to persons or property in the vicinity; and
4. The proposed project would be compatible with the existing aesthetics, character, and scale of the surrounding neighborhood, and considers impacts on neighboring properties.

## **25.02.010 Reasonable Accommodation**

### **A. Purpose**

This Chapter establishes the procedures to request Reasonable Accommodation for persons with disabilities seeking equal access to housing under the California Fair Employment and Housing Act, the Federal Fair Housing Act, and the Americans with Disabilities Act (“the Acts”) in the application of zoning law and other land use regulations, policies, procedures, and conditions of approval.

### **B. Applicability**

1. A request for Reasonable Accommodation may be made by any person with a disability, their representative, or any other entity, when the application of zoning law or other land use regulation, policy, or procedure acts as a barrier to fair housing opportunities.
2. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.
3. A request for Reasonable Accommodation may include a change or exception to the practices, rules, and standards for the development, siting, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

### **C. Review Authority**

The Director shall act as the Review Authority for Reasonable Accommodation applications based on consideration of the requirements of this Chapter. Requests submitted for concurrent review with another discretionary land use application shall be reviewed by the Review Authority for the discretionary land use application.

### **D. Application**

An application for a Reasonable Accommodation shall be prepared, filed, and processed in compliance with the provisions of the Applications section in Chapter 25.01.013. No noticing or public hearing are required for a Reasonable Accommodation request. In addition to any other information required under the San Benito County Code, an applicant submitting a request for Reasonable Accommodation must provide the following information:

1. Description of the accommodation request;
2. The applicant's name, address, and telephone number;
3. Location of the subject property, including address and assessor's parcel numbers;
4. Name and address of the property owner and the owner's written consent to the application;
5. The current actual use of the subject property;
6. Verifiable documentation of the individual's disability status;
7. The regulation(s), policy, or procedure for which accommodation is sought;
8. Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling; and
9. Additional information necessary for County Planning Division staff to facilitate proper consideration of the request, consistent with fair housing laws.

### **E. Procedures**

The Director shall make a written determination within (45) forty-five days of the application being deemed complete and either approve, modify, or deny a request for Reasonable Accommodation in compliance with the Required Findings section below.

#### **F. Required Findings**

The Director must consider all of the following factors in order to approve or deny a request for Reasonable Accommodation that will be consistent with the Acts.

1. Whether the housing, which is the subject of the request, will be used by an individual defined as disabled under the Acts;
2. Whether the request for Reasonable Accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
3. Whether the requested Reasonable Accommodation would impose an undue financial or administrative burden on the County; and
4. Whether the requested Reasonable Accommodation would require a fundamental alteration of a County program or law, including but not limited to land use and zoning.

#### **G. Conditions of Approval**

In granting a request for Reasonable Accommodation, the Review Authority may impose any conditions of approval deemed reasonable and necessary to ensure that the Reasonable Accommodation would comply with the findings required herein. The conditions shall also state whether the accommodation granted shall terminate if the recipient of the accommodation was requested no longer resides on the property.

#### **H. Appeals, Expiration, Extensions, and Revisions**

1. **Appeals.** Reasonable Accommodation decisions may be appealed as provided for in Chapter 25.01.008.
2. **Expiration, Extensions, and Revisions.** Reasonable Accommodations may only be expired, extended, or revised as provided for in Chapter 25.01.011. A Reasonable Accommodation may be terminated if the accommodation is no longer required, or if the recipient of the accommodation no longer resides at the property.

### **25.02.011 Zoning Clearance**

#### **A. Purpose**

Zoning Clearance is a nondiscretionary administrative verification procedure used by the County to verify that a proposed land use, improvement, or structure complies with the list

of activities allowed in the applicable zone and the development standards applicable to the use, improvement, or structure.

## **B. Applicability**

Where Chapter 25.01.012 or another provision of this Zoning Code requires a Zoning Clearance as a prerequisite to establishing a land use, improvement, or structure, a Zoning Clearance shall be required at the time of the Director's review of any of the following:

1. **Initiation of a Land Use.** A Zoning Clearance shall be obtained before the initiation or commencement of any use of land not requiring the construction of a structure or improvement.
2. **Change of Use.**
  - a. Whenever a use is proposed to be changed from a use for which a Zoning Clearance has been issued, whether or not the new use involves a new lessee, operator, or owner, a new Zoning Clearance shall first be obtained.
  - b. A Zoning Clearance shall also be required even if the lessee, operator, or owner of the previous use did not file for or receive a Zoning Clearance.
3. **Business License.** A Zoning Clearance shall be obtained before the County issues a new or modified Business License.
4. **Other Activities.** Any other activities as specified in this Zoning Code.
5. **Accessory Dwelling Units:** Unless otherwise exempt, a Zoning Clearance for Accessory Dwelling Units shall be obtained prior to submittal of an application for a building plan check and a permit to construct an Accessory Dwelling Unit.

## **C. Review Authority**

The Director or his/her designee shall act as the Review Authority for Zoning Clearance applications based on consideration of the requirements of this Chapter.

## **D. Review Procedure**

1. **Application.** Applications and fees for a Zoning Clearance shall be submitted in accordance with the provisions set forth in the Zoning Code. The Director may request that the Zoning Clearance application be accompanied by a written narrative, plans, and other related materials necessary to show that the proposed development, alteration, or use of the site complies with all provisions of this Title and the requirements and conditions of any applicable use permit or other discretionary land use approval.

2. **Determination.** If the Director determines that the proposed use or structure is allowed as a matter of right by this Title and conforms to all the applicable development and use standards, the Director shall issue a Zoning Clearance. An approved Zoning Clearance may include attachments of other written or graphic information, including but not limited to, statements, numeric data, site plans, floor plans, and building elevations and sections, as a record of the proposal's conformity with the applicable regulations of this Title. Prior to issuing any building permit or subdivision approval, the Director shall review the application to determine whether the use or structure complies with all provisions of this Title or any applicable use permit or other discretionary land use approval and that all conditions of such permits and approvals have been satisfied.
3. **Exceptions.** No Zoning Clearance shall be required for the continuation of previously approved or permitted uses and structures or uses and structures that are not subject to any building or zoning regulations.

## **25.02.012 Modification, Revocation and Termination**

### **A. Purpose**

This Chapter provides procedures for securing modification or revocation of previously approved permits or approvals.

### **B. Process**

Modification, revocation, or termination shall take place in the same manner in which the permit or application was originally approved, and by the same body which made the approval. If a public hearing was required for the original approval, a public hearing shall be required to consider modification, revocation, or termination.

### **C. Modifications**

1. The County's action to modify a permit or approval, instead of revocation, may include conditioning any operational aspect of the project, including buffers, duration of the permit or entitlement, hours of operation, noise, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, or any other aspect/condition determined to be reasonable and necessary to ensure that the permit or approval is operated in a manner consistent with the original findings for approval.
2. The County shall provide a notice of intention to modify to the owner(s) of the property and any current occupants of the property not less than (30) thirty days before the public hearing at which the Review Authority is scheduled to consider the modification.

### **D. Revocations or Termination**

The County's action to revoke or terminate a permit or approval, instead of modifying it, shall

have the effect of terminating the permit or approval and denying the privileges granted by the original permit or approval.

The County shall provide a notice of intention to revoke to the owner(s) of the property and any current occupants of the property not less than (30) thirty days before the public hearing at which the Review Authority is scheduled to consider the revocation.

1. **Hearings Required.** The Review Authority that approved the original permit or approval shall hold a public hearing to modify or revoke a permit or approval granted in compliance with the provisions of this Code. The hearing shall be conducted in compliance with Public Hearings in Chapter 25.01.007 unless otherwise specified in this section.
2. **Notice.** Permit modification and revocation shall be subject to review and approval or denial at a noticed public hearing in compliance with the Public Hearings section in Chapter 25.01.007.
3. **Appeal.** A decision on a permit modification or revocation shall be subject to the Appeals section in Chapter 25.01.008.

#### **E. Required Findings**

Any permit or approval, issued in compliance with this Code, may be modified or revoked by the Review Authority that originally granted the permit or approval by the same procedure under which the permit was issued for any of the following causes:

1. Compliance with any term or condition of the permit or approval has not been achieved;
2. The property or portion thereof subject to the permit or approval is used or maintained in violation of any statute, ordinance, law, or regulation;
3. The use for which the permit or approval was granted has been determined to be detrimental to the public health, safety or welfare and is a nuisance; or
4. Changes in technology or in the type or amount of development in the vicinity of the use, or other good cause, warrants modification of the conditions of operation or imposition of additional conditions of operation to assure that the use remains compatible with existing and potential uses or other property within the general area in which the use is located.