

City of Hermosa Beach

**Zoning and Subdivision
Ordinance Update**

Draft

**ADMINISTRATIVE
PROCEDURES**

May 2024

NOTE TO READER:

- The code section numbers are intended to be placeholders. Renumbering will occur once the comprehensive Zoning Ordinance Update is completed.
- This draft contains yellow text boxes to aid the reader's review and will not be apart of the final adopted draft. The text boxes identify notable changes, recently adopted language, and state laws.

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Chapter 17.01 Introductory Provisions

17.01.010 Title

Title 17 of the Hermosa Beach Municipal Code shall be known and cited as the "Hermosa Beach Zoning Ordinance", "Zoning Ordinance of the City of Hermosa Beach", or "Zoning Ordinance".

17.01.020 Purpose

The purpose of the Zoning Ordinance is to implement the City's General Plan and to protect and promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare. More specifically, the Zoning Ordinance is adopted to achieve the following objectives:

- A. Provide standards for the orderly growth and development of the City, and guide and control the use of land to provide a safe, harmonious, attractive, and sustainable community.
- B. Achieve the arrangement of land uses depicted in the Hermosa Beach General Plan, consistent with the goals and policies of the General Plan.
- C. Enhance the appearance of the City and promote high-quality design.
- D. Preserve and enhance the quality of life and character of residential neighborhoods.
- E. Promote economic growth and the creation of jobs.
- F. Facilitate the appropriate location of community facilities, institutions, transportation, and parks and recreational areas.
- G. Allow for public participation in government decision-making regarding land use and development in a manner consistent with State law.
- H. Define duties and powers of administrative bodies and officers responsible for implementation of the Zoning Ordinance.

17.01.030 Authority

The Hermosa Beach Zoning Ordinance is adopted pursuant to the authority contained in Section 65850 of the California Government Code.

17.01.040 Relationship to the General Plan

This Zoning Ordinance implements the goals and policies of PLAN Hermosa, the Hermosa Beach General Plan, and Coastal Land Use Plan, by regulating the use of land and structures within the City. This Zoning Ordinance and the General Plan shall be consistent with one another. Any permit, license, or approval issued pursuant to this Zoning Ordinance must be consistent with the General Plan and all applicable specific plans.

17.01.050 Applicability

- A. **Applicability to Property.** This Zoning Ordinance shall apply, to the extent permitted by law, to all property within the corporate limits of the City of Hermosa Beach and to property for which applications for development and/or subdivisions have been submitted to the City of Hermosa Beach, including all uses, structures, and land owned by any private person, firm, corporation or organization, or the City of Hermosa Beach or other local, State, or Federal agencies. Any governmental agency shall be exempt from the provisions of this Zoning Ordinance only to the extent that such property may not be lawfully regulated by the City.
- B. **Minimum Requirements.** The provisions of this Zoning Ordinance shall be minimum requirements for the promotion of the public health, safety, and general welfare. Where this Zoning Ordinance provides for more discretion on the part of a City official or body, that discretion may be exercised to impose more stringent requirements than set forth in this Zoning Ordinance as may be necessary to promote orderly land use development and the purposes of this Zoning Ordinance.
- C. **Compliance with Regulations.** No land shall be used, and no structure shall be constructed, occupied, enlarged, altered, demolished, or moved in any zone, except in accordance with the provisions of this Zoning Ordinance, including the development and performance standards herein, and any permit issued pursuant hereto. The temporary or transitory nature of a use does not exempt it from this requirement.
- D. **Conflicting Regulations.** The regulations of this Zoning Ordinance and requirements or conditions imposed pursuant to this Zoning Ordinance shall not supersede any other regulations or requirements adopted or imposed by the Hermosa Beach City Council, the State of California, or any Federal agency that has jurisdiction by law over uses and development authorized by this Zoning Ordinance. All uses and development authorized by this Zoning Ordinance shall comply with all other such regulations and requirements. Where conflict occurs between the provisions of the Zoning Ordinance and any other City ordinance, chapter, resolution, guideline, or regulation, the more restrictive provisions shall control, unless otherwise legally required.
- E. **Private Agreements.** This Zoning Ordinance shall not interfere with or annul any recorded easement, covenant, or other agreement now in effect, provided that where this Zoning Ordinance imposes a greater restriction than imposed by an easement, covenant, or agreement, this Zoning Ordinance shall control. The City of Hermosa Beach shall not be responsible for monitoring or enforcing private agreements.
- F. **Prior Ordinance.** The provisions of this Zoning Ordinance supersede all prior ordinances codified in Title 17 of the Hermosa Beach Municipal Code and any amendments. No provisions of this Zoning Ordinance shall validate any land use or structure established, constructed, or maintained in violation of the prior Zoning Ordinance, unless such validation is specifically authorized by this Zoning Ordinance and is in conformance with all other regulations.

G. Effect on Previously Approved Projects and Projects in Progress.

1. **Building Permit.** Any building or structure for which a Building Permit has been issued may be completed and used in accordance with the plans, specifications, and permits on which said Building Permit was granted, provided at least one inspection has been requested and posted for the primary structure on the site where the permit is issued and provided construction is diligently pursued and completed within six months of permit issuance. No extensions of time except as provided for in the Building Code shall be granted for commencement of construction, unless the applicant has secured an allowed permit extension from the Community Development Department.
2. **Previously Approved Land Use Authorization.** This Zoning Ordinance shall not interfere with, repeal, abrogate, or annul any previously granted land use authorization. All allowances, requirements, and conditions of approval of previous land use authorizations shall apply until the applicable review authority specifically repeals the allowance, requirement of this Title, or condition.
3. **Land Use Authorization in Process.** An application for a discretionary land use authorization that has been accepted by the Community Development Department as complete for processing prior to the adoption of this Zoning Ordinance or any applicable amendment shall be processed according to the requirements of this Zoning Ordinance or the prior Zoning Ordinance upon written request from the project applicant. The written request shall be made no later than 30 days after the effective date of this Zoning Ordinance and at least one action must be taken by the review authority within 210 days of the effective date of this Zoning Ordinance.

- H. **Application During Local Emergency.** The City Council may authorize a deviation from a provision of this Zoning Ordinance during a local emergency declared and ratified under the Hermosa Beach Municipal Code. The City Council may authorize a deviation by resolution without notice or public hearing.

17.01.060 Responsibility for Administration

The Zoning Ordinance shall be administered by the Hermosa Beach City Council, Planning Commission, and Community Development Department as established in Chapter TBD, Planning Authorities.

17.01.070 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Zoning Ordinance 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 Zoning Ordinance. The Hermosa Beach City Council hereby declares that it would have passed this Zoning Ordinance, 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.

17.01.080 Fees

The City Council shall establish by resolution, and may amend and revise from time to time, fees for processing the discretionary entitlement applications and other permits authorized or required by this Zoning Ordinance. All fees shall be paid at the time an application is filed, and no processing shall commence until the fees are paid in full.

Chapter 17.02 Zoning Review Authorities

17.02.010 Purpose

This Chapter lays out the basic roles, responsibilities, and functions of all planning authorities under this Title, including the City Council, Planning Commission, and Community Development Director (Director).

17.02.020 City Council

The powers and responsibilities of the City Council include, but are not limited to the following:

- A. Consider and adopt, deny, or modify proposed General Plan Amendments, Local Coastal Program, Specific Plans, and environmental documents related to any of the foregoing, pursuant to Chapter TBD, Amendments.
- B. Consider and adopt, reject or modify proposed amendments to the Zoning Ordinance and Zoning Map and environmental documents related to any of the foregoing, pursuant to Chapter TBD, Amendments.
- C. Consider and adopt, reject, or modify Development Agreements, following a public hearing and recommended action by the Planning Commission, pursuant to Chapter TBD, Development Agreements.
- D. Hear and decide appeals from decisions of the Planning Commission pursuant to Section TBD, Appeals and Calls for Review.
- E. Establish, by resolution, a Master Fee Schedule charges, and deposits for various applications and services provided, pursuant to Title 2.

17.02.030 Planning Commission

The powers and responsibilities of the Planning Commission include, but are not limited to the following:

- A. Annually review progress towards implementation of the General Plan and make recommendations to the City Council based on any new legislation, development trends, or changing economic, social, and environmental conditions.
- B. Approve, modify, or deny Precise Development Plans, Conditional Use Permits, Variances, and Certificates of Appropriateness.

- C. Make recommendations to the City Council on Development Agreements.
- D. Make recommendations to City Council on proposed amendments to the General Plan, Specific Plan(s), Zoning Ordinance and Zoning Map and environmental documents related to any of the foregoing.
- E. Hear and decide appeals from decisions of the Community Development Director.
- F. Hear and decide proposals to revoke permits, pursuant to Section TBD, Revocation of Permits.
- G. Make environmental determinations on any approvals that are subject to environmental review under the California Environmental Quality Act, pursuant to State law.
- H. Such other powers and responsibilities as assigned or directed by the City Council.

17.02.040 Community Development Director

The powers and responsibilities of the Community Development Director ("the Director"), or their designee, include, but are not limited to the following:

- A. Maintain and administer the Zoning Ordinance, including the processing of applications, abatements, and other enforcement actions.
- B. Assist in the use of the Zoning Ordinance for members of the public and other City departments.
- C. Review applications for permits and licenses for conformance with this Title and issue a Zoning Clearance when the proposed use, activity or building is allowed by right and conforms to all applicable development and use standards.
- D. Approve, modify, or deny Minor Use Permits, pursuant to Chapter TBD, Use Permits.
- E. Approve, modify, or deny Temporary Use Permits, pursuant to Chapter TBD, Temporary Use Permits.
- F. Approve, modify, or deny a modification, pursuant to Chapter TBD, Modifications.
- G. Approve, modify, or deny requests for Reasonable Accommodation for land use projects, pursuant to Chapter TBD, Reasonable Accommodation.
- H. Decide requests for Minor Revisions to Approved Permits, pursuant to Section TBD, Revisions to an Approved Permit.
- I. Refer items to the Planning Commission where, in the Director's determination, the public interest would be better served by a Planning Commission public hearing and action.
- J. Oversee the preparation of environmental review for various entitlements and make environmental determinations for any discretionary review for which the Community Development Director is the review authority in accordance with the California Environmental Quality Act, pursuant to State law.
- K. Make recommendations to the Planning Commission and City Council on all applications, appeals, and other matters upon which they have the authority and the responsibility to act under this Title.

- L. Investigate and report to the Planning Commission on permit violations when the City has initiated revocation procedures, pursuant to Section TBD, Revocation of Permits.
- M. Delegate administrative functions to members of the Community Development Department.
- N. Other duties and powers as may be assigned by the City Manager or may be established through legislation.

17.02.050 Review Authorities for Decisions and Appeals

Summary of Review Authorities for Decisions and Appeals, summarizes the powers and duties that each review authority has under this Title. Where a project requires more than one type of application, all permit requests shall be reviewed and decided on by the highest review authority established for any of the applications.

The Community Development Director may refer any item for which the Director makes a determination to the Planning Commission where, in the Director’s opinion, the public interest would be better served by a Planning Commission public hearing and action.

SUMMARY OF REVIEW AUTHORITIES FOR DECISIONS AND APPEALS				
<i>Decision Type</i>	<i>Advisory Body</i>	<i>Review Authority *</i>	<i>Appeal Body</i>	<i>Public Notification</i>
Ministerial Action				
Zoning Clearance	-	Staff/Director	N/A	No
Administrative Action				
Administrative Permit	-	Director	Planning Commission	No
Temporary Use Permit		Director	Planning Commission	No
Reasonable Accommodation	-	Director	Planning Commission	No
Minor Modification		Director	N/A	No
Quasi-Judicial Action				
Certificate of Appropriateness	Director	Planning Commission	N/A	Yes
Conditional Use Permit	-	Planning Commission	City Council	Yes
Minor Use Permit	-	Director	Planning Commission	Yes
Variance	-	Planning Commission	City Council	Yes
Minor Exception	-	Director	Planning Commission	Yes
Parking Plan	-	Planning Commission	City Council	Yes
Amendment to Planning Entitlement	-	Planning Commission	City Council	Yes

Time Extension Request by original Review Authority	-	Planning Commission	City Council	Yes	
Precise Development Plan	-	Planning Commission	City Council	Yes	
Determination of Legality of Nonconforming Residential Buildings	-	Planning Commission	City Council	Yes	
Zoning Interpretation	-	Director	Planning Commission	No	
Similar Use Determination	-	Director	Planning Commission	No	
Legislative Action					
General Plan Amendment	Planning Commission	City Council	N/A	Yes	
Specific Plan Amendment	Planning Commission	City Council	N/A	Yes	
Zoning Amendments	Zone Text Amendment	Planning Commission	City Council	N/A	Yes
	Zone Change	Planning Commission	City Council	N/A	Yes
Development Agreement	Planning Commission	City Council	N/A	Yes	
Historic Landmark Nomination	Planning Commission	City Council	N/A	Yes	

Chapter 17.03 Administrative Procedures

17.03.010 Purpose

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

17.03.020 Application Forms and Fees

- A. **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 Community Development Director, shall accompany the application.
- B. **Application Materials.**
 - 1. **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. The Director shall publish and make available a list of submittal requirements, including required application fees, on the City’s website and at the Community Development Department office.

2. **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, material samples, technical studies, and other items necessary to describe existing conditions and the proposed project and determine the level of environmental review pursuant to the California Environmental Quality Act (CEQA).
3. **Availability of Materials.** All submitted material becomes the property of the City, 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 Community Development Department office. Unless prohibited by law or superseded by specific permit confidentiality requirements, copies of application materials shall be made available. The City shall charge fees for copies in accordance with the fee resolution adopted by City Council.

C. Multiple Applications.

1. **Concurrent Filing.** An applicant for a project which requires more than one permit (e.g., Conditional Use Permit, Variance, and Precise Development Plan, etc.), shall file all related applications concurrently, together with all application fees. The concurrent filing requirements may be reduced in accordance with the fee resolution adopted by the City Council.
2. **Concurrent Processing.** Multiple permits for the same project shall be processed concurrently and shall be reviewed and decided on by the highest review authority designated for any of the applications, unless prohibited by State law.

Clarification added to concurrent is not permitted when in conflict with State law.

D. Application Fees.

1. **Fee Schedule.** The Council shall approve by resolution a Master Fee Schedule that establishes fees for permits, informational materials, penalties, copying, and other such items in accordance with Title 2.
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. **Refund of Fees.** Application fees are non-refundable regardless of the review authority's decision. Filing fees cover the costs incurred by the City for staff's review of the application materials, preparation of required findings, notices, and postings. In the case of an application withdrawal prior to the public hearing notice, the Director, at the request of the applicant, may authorize a partial refund in accordance with department policy.

17.03.030 Review of Applications

- A. **Initial Completeness Review.** The Director shall determine whether an application is complete within 30 days of the date the application is filed and required fee received.

1. **Incomplete Application.** If an application is deemed incomplete, the Director shall provide written notification to the applicant listing the applications for permit(s), forms, information, and any additional fees that are necessary to complete the application and specify a time limit for submittal of the requested information. The time limit to submit additional information shall be at least 30 days.
 - a. **Zoning Ordinance Violations.** An application shall not be found complete if conditions exist on the site in violation of this Title or any permit or other approval granted in compliance with this Title, unless the proposed project includes the correction of the violations or, in the sole discretion of the Director, the application is deemed complete notwithstanding the violation.
 - b. **Appeal of Determination.** Determinations of incompleteness are subject to the provisions of Section TBD, Appeals and Calls for Review, except there shall be a final written determination on the appeal no later than 60 days after receipt of the appeal. The fact that an appeal is permitted to both the Planning Commission and the City Council does not extend the 60-day period.
 - c. **Expiration of Application.** If an applicant fails to correct the specified deficiencies within the specific time limit pursuant to Section TBD, A.1, the application shall expire and be deemed withdrawn, unless an extension is granted by the Director. After the expiration of an application, review shall require the submittal of a new, complete application, along with all required fees.
 2. **Complete Application.** When an application is deemed complete, the Director shall make a record of that date. If an application requires a public hearing, the Director shall schedule it and notify the applicant of the date and time, pursuant to Section TBD, Public Notice.
- B. **Referral of Application.** At the discretion of the Director, or where otherwise required by this Title, State or Federal law, any application filed in compliance with this Title may be referred to any City department, public agency, or interest group that may be affected by or have an interest in the proposed land use project.
 - C. **Extensions.** The Director may, upon written request and for good cause, grant extensions of any time limit for review of applications imposed by this Title.

17.03.040 Environmental Review

All discretionary projects shall be reviewed for compliance or exemption with the California Environmental Quality Act (CEQA). The designated planning authority for the entitlement shall be responsible for taking action on the corresponding exemption or environmental review. Environmental review will be conducted pursuant to Title 14 of the California Code of Regulations (CEQA Guidelines). If Title 14 of the California Code is amended, such amendments will govern City procedures.

17.03.050 Public Notice

Unless otherwise specified, whenever the provisions of this Title require public notice, the City shall provide notice as required by this section and by the California Government Code.

A. Notification Method. Public Notice shall be provided a minimum of 10-days, but no more than 45-days, prior to the public hearing or to a Director's decision.

Table has been expanded to include noticing for Minor Use Permits and summarize notification type and methods.

Permit Type		Notice Type	Notification Method				
			Mailing Radius	Website	Site Posting	Newspaper	
Minor Exception		Notice of Pending Action	✓	Adjacent and Abutting* Properties	✓	None	None
Minor Use Permit		Notice of Pending Action	✓	100'	✓	None	None
All Other	Residential Projects	Notice of Hearing	✓	300'	✓	✓	✓
	Commercial Projects	Notice of Hearing	✓	500'	✓	✓	✓
*Adjacent and Abutting properties include properties located across a street or alley.							

B. Mailed Notice. At least ten (10) days before the date of the public hearing or the date of action when no public hearing is required, the Director (or the City Clerk for City Council hearings) shall provide notice by First-Class mail delivery to the following:

1. The applicant, the owner, and any occupant of the subject property;
2. The occupants and tenants with the specific notification radius for the permit type or approval;
3. All neighborhood and community organizations that have previously filed a written request for notice of projects in the area where the site is located;
4. Any person or group who has filed a written request for notice regarding the specific application;

5. School districts and any other local agency expected to provide essential facilities or services to the property which is the subject of the application, whose ability to provide those facilities and services may be affected; and
 6. Blind, Aged, and Disabled Communities. Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, notice procedures shall incorporate the blind, aged, and disabled communities in order to facilitate their participation.
- C. **Alternative Method for Large Mailings.** If the number of owners to whom notice would be mailed or delivered is greater than 1,000, instead of a mailed notice, notice may be provided by providing notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation in the City and posted in three public locations at least 10 days prior to the hearing or the date of action when a public hearing is required.
- D. **Newspaper Notice.** At least ten (10) days before the date of the public hearing or the date of action when no public hearing is required, the City shall publish a notice in at least one newspaper of general circulation in the City.
- E. **Internet Notice.** At least ten (10) days before the date of the public hearing or the date of action when no public hearing is required, the Director (or the City Clerk for City Council hearings) shall provide notice on the City's website.
- F. **Site Posting.** At least ten (10) days before the date of the public hearing a minimum of one public notice shall be posted on the project site in a conspicuous place along the property frontage abutting the public-right-of way.
- G. **Additional Notice.** The Director may provide additional notice of the hearing in a manner deemed appropriate.
- H. **Content of Public Notice.** The notice shall include the following information:
1. The location of the real property, if any, that is the subject of the application;
 2. Name of applicant.
 3. A general description of the proposed project or action;
 4. The City's assigned file numbers to the application.
 5. A statement indicating if the project is located within the Coastal Zone.
 6. The date, time, location, and purpose of the public hearing or the date of action when no public hearing is required;
 7. The identity of the review authority;
 8. The names of the applicant and the owner of the property that is the subject of the application;
 9. A statement indicating the level of environmental review, if any, is applicable to the project. The location and times of any environmental impact assessment prepared in connection with the application, may be viewed by the public;
 10. A statement that any interested person or authorized agent may appear and be heard;
 11. A statement describing how to submit written comments; and
 12. For City Council hearings, the Planning Commission recommendation.

Content reordered and expanded to include name of applicant and indication if the project is located within the Coastal Zone

- I. **Failure to Notify Individual Properties.** The validity of the proceedings shall not be affected by the failure of any property owner, resident, or community organization to receive a mailed notice.

17.03.060 Conduct of Public Hearings

Whenever the provisions of this Title require a public hearing, the hearing shall be conducted in compliance with the requirements of State law as follows.

- A. **Generally.** Hearings shall be conducted pursuant to procedures adopted by the hearing body. Hearings are not required to be conducted according to technical rules relating to evidence and witnesses.
- B. **Scheduling.** Hearings before the City Council shall be scheduled by the City Clerk. All other hearings shall be scheduled by the Director of Community Development.
- C. **Public Hearing Testimony.** Any person may appear at a public hearing and submit oral or written evidence, either individually or as a representative of a person or an organization.
- D. **Time Limits.** The City Council may establish time limits for individual testimony.
- E. **Continuance of Public Hearing by the Planning Commission.** The body conducting the public hearing may by motion continue the public hearing to a fixed date, time and place without additional hearing notice or may continue the item to an undetermined date and provide notice of the continued hearing.
- F. **Decision.** The public hearing shall be closed before a vote is taken.

17.03.070 Findings and Notice of Action

Section name update and reordered.

When deciding to approve, approve with conditions, modify, revoke or deny any discretionary permit under this Title, the review authority shall issue a Notice of Action and make findings of fact as required by this Title.

- A. **Findings.** Findings, when required by State law or this Title, shall be based upon consideration of the application, plans, testimony, reports, and other materials that constitute the administrative record and shall be stated in writing in the resolution or record of the action on the permit.
- B. **Date of Action.** The review authority shall decide to approve, modify, revoke, or deny any discretionary permit following the close of the public hearing, or if no public hearing is required, within 30 days of the date the City has determined an application to be complete.
- C. **Notice of Action.** After the Director or Planning Commission takes any action to approve, modify, or deny an application that is subject to appeal under the terms of this Title, the Director shall issue a Notice of Action. The Notice shall describe the action taken, including any applicable conditions, and shall list the findings that were the basis for the decisions.
 1. **Council Report of Planning Commission Action.** Pursuant to Section 2.52.040, City Council Review of Decisions of the Planning Commission, of the Hermosa Beach Municipal Code, all Planning Commission actions shall

be placed as a report item on the City Council's agenda at the next regular City Council meeting following the Commission's action.

2. **Director's Action.** The Director shall mail the Notice to the applicant and to any other person or entity that has filed a written request for such notification with the Community Development Department within the 10-day public notice of the decision being made. The notice shall include information regarding the appeals process.

17.03.080 Scope of Approval

- A. **Scope.** The scope of approvals includes only those uses and activities proposed in the application, excluding other uses and activities. Unless otherwise specified, the approval of a new use shall terminate all rights and approvals for previous uses no longer occupying the same site or location.
- B. **Conditions.** The site plan, floor plans, building elevations, and/or any additional information or representation, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or submitted during the approval process shall be deemed conditions of approval. Any approval may be subject to requirements that the applicant guarantees, warranties, or ensures compliance with submitted plans and conditions in all respects.
- C. **Actions Voiding Approval.** If the construction of a building or structure or the use established is contrary to the description or illustration in the application, to either violate any provision of this Title or require additional permits, then the approval shall be deemed null and void.
- D. **Periodic Review.** All approvals may be subject to periodic review to determine compliance with the permit and applicable conditions. If a condition specifies that activities or uses allowed under the permit are subject to periodic reporting, monitoring, or assessments, it shall be the responsibility of the permit holder, the property owner, or successor property owners to comply with such conditions.

17.03.090 Effective Dates: Expiration and Extension

- A. **Effective Dates.** A decision shall be effective on the date of action except as provided below. No building permit or business license shall be issued until after the effective date.
 1. **Planning Commission Decisions.** All Planning Commission actions shall become effective after the following, whichever is later:
 - a. The next regular City Council meeting following the Planning Commission's action unless the City Council initiates review pursuant to Section 2.52.040, City Council Review of Decisions of the Planning Commission, of the Hermosa Beach Municipal Code.
 - b. After the expiration of the 15-day appeal period following the date of action, unless an appeal is filed pursuant to Section TBD, Appeals and Calls for Review.

2. **Director Decisions Subject to Appeal.** A Director's decision on an application for any approval subject to appeal shall become effective after the expiration of the 15-day appeal period following the date of action, unless an appeal is filed pursuant to Section TBD, Appeals and Calls for Review.
 3. **Amendments to the Zoning Ordinance or Zoning Map.** Amendments to the Zoning Ordinance or Zoning Map shall take effect 30 days after the second reading of the ordinance, unless adopted by urgency in accordance with applicable law.
- B. **Expiration.** The review authority, in the granting of any permit, may specify a time, consistent with the purposes of the use and necessary to safeguard the public safety, health and welfare, within which the proposed use must be undertaken and actively and continuously pursued. If no time period is specified, any permit granted under this Title shall automatically expire when no project or use has been exercised or extended within two years after the date of the approval, except as provided below.
1. **Extension for Permit Where a Coastal Development Permit is Required.** The time limits for any permit for development that also requires a Coastal Development Permit shall be automatically extended to be the same as the term of such Coastal Development Permit.
 2. **Extension for Permit Granted in Conjunction with Tentative Map.** The time limits for any permit granted in conjunction with an approved tentative tract map shall be automatically extended to be the same as the term of such tentative Tract Map.
 3. **Extensions for Permits Associated with Development Agreements.** The time limits for any permit granted in conjunction with a Development Agreement shall be extended to the same as the term of such Development Agreement.
 4. **Other Extensions.** The approving body may approve a one-year extension of any permit or approval granted under this Title upon receipt of a written application with the required fee at least 30 days prior to the expiration date.
- C. **Exercise of Permit.**
1. **Exercise of Planning Approval or Permit.** An approval or permit for the use of a building or property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the site.
 2. **Exercise of Building Permit.** A permit for the construction of a building or structure is exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

17.03.100 Minor Modification

No revision in the use or structure for which a permit or other approval has been issued is permitted unless the permit is revised as provided for in this Title.

- A. **Minor Modifications.** The Community Development Director may approve minor revisions to approved plans and permits, excluding late-night establishments and outdoor uses when it can be found that the modification is consistent with the original application findings, environmental analysis, and conditions approved by the original Review Authority. The modifications may not substantially expand or intensify the use or approved floor area by an amount greater than ten percent or 1,500 square feet, whichever is less.

Added 1,500 sq. ft. maximum allowed addition based on Planning Commission comments.

17.03.110 Revocation of Permits

Any permit granted under this Title may be revoked or revised for cause if any of the conditions or terms of the permit are violated or if any law or ordinance is violated.

- A. **Initiation of Proceeding.** Revocation proceedings may be initiated by the City Council, Planning Commission, or Director.
- B. **Public Notice, Hearings, and Action.** After conducting a duly-noticed public hearing, the Planning Commission shall act on the proposed revocation, pursuant to Chapter TBD, Public Notice.
- C. **Required Findings.** The Planning Commission may revoke or modify the permit if it makes any of the following findings:
1. That the approval was obtained by fraud or material misrepresentation that vitiates one of the required findings of the permit;
 2. That the use or activity for which such approval was granted has permanently ceased to exist as evidenced by demolition, alteration, subsequent use of the space, or similar conditions;
 3. That the use or activity for which such approval was granted has been suspended or dormant for longer than 12 consecutive months, as demonstrated by any form of evidence or documentation.
 4. That the permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
 5. That the use for which the approval was granted was or is so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance;
 6. That the circumstances under which the permit was granted have been changed by the owner or operator to such a degree that one or more of the findings contained in the permit is no longer valid and the public health, safety, and welfare merit revocation of the permit; or
 7. That the conditions of approval are found to be inadequate to mitigate the impacts of the use allowed by the permit, and the public health, safety and welfare merit modification of the permit.
 8. For a restaurant with on-sale alcoholic beverages, the business is not operating as a restaurant because the primary function of the operation is the sale or offering for sale of alcoholic beverages and not the sale or offering for sale of food. A food to alcohol sales ratio provides a

quantitative tool to help evaluate whether the business is operating as a restaurant whose primary function is the sale or offering for sale of food, as opposed to a business whose primary purpose is the sale of alcoholic beverages. For purposes of determining whether this finding can be made, an on-sale restaurant that maintains a minimum of 50 percent of the total gross sales, computed monthly, from the sale of prepared food is presumed to be a restaurant. An on-sale restaurant that does not meet these percentages has the burden of demonstrating that it operates as a restaurant, as that term is defined in Section TBD, Commercial Uses. Refusal to provide the information requested under this subsection within 60 days shall be deemed prima facie evidence that the business is not operating as a restaurant.

- D. **Notice of Action.** Following Planning Commission action to revoke or modify a permit, the Director shall issue a Notice of Action within five business days. The Notice shall describe the Commission's action with its findings. The Director shall mail notice to the permit holder and to any person or entity who requested the revocation proceeding.

17.03.120 Appeals and Calls for Review

- A. **City Council Calls for Review.** Two members of the City Council may initiate review of all actions of the Planning Commission pursuant to Section 2.52.040, City Council Review of Decisions of the Planning Commission, of the Hermosa Beach Municipal Code.
- B. **Appeals.**
1. **Applicability.** Any action by the Director or Planning Commission in the administration or enforcement of the provisions of this Title may be appealed in accordance with this Section.
 - a. **Appeals of Director Decisions.** Decisions of the Director may be appealed to the Planning Commission by filing a written appeal with the Community Development Department. The Planning Commission's decision is final and may not be appealed to City Council.
 - b. **Appeals of Planning Commission Decisions.** Decisions of the Planning Commission may be appealed to the City Council by filing a written appeal with the City Clerk. The City Council's decision is final.
 - c. **Appeal of Planning Commission Recommendations.** Recommendations of the Planning Commission may not be appealed.
 2. **Rights of Appeal.** Appeals may be filed by the applicant, by the owner of property, or by any other person aggrieved by a decision that is subject to appeal under the provisions of this Ordinance.
 3. **Time Limits.** Unless otherwise specified in State or Federal law, an aggrieved member of the public, including the applicant may file an appeal in writing

fifteen (15) calendar days following the date which the action was taken. However, the City Council may call up a Planning Commission decision within the 15-day period or at the next available City Council meeting, whichever time period is greater. In the event an appeal period ends on a Saturday, Sunday, or any other day the City is closed, the appeal period shall end at the close of business on the next consecutive business day.

4. **Procedures.**

- a. **Filing.** The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be accompanied by the required fee.
- b. **Proceedings Stayed by Appeal.** The timely filing of an appeal shall stay all proceedings in the matter appealed including, but not limited to, the issuance of City building permits and business licenses.
- c. **Transmission of Record.** The Director, or in the case of appeals to the City Council, City Clerk, shall schedule the appeal for consideration by the authorized hearing body within 60 days of the date that a complete appeal application is filed. The Director shall forward the appeal, the Notice of Action, and all other documents that constitute the record to the hearing body. The Director shall also prepare a staff report that responds to the issues raised by the appeal and may include a recommendation for action.

5. **Standards of Review.** When reviewing any decision on appeal, the appeal body shall use the same standards for decision-making required for the original decision. The appeal body may revise or adopt the same decision and findings as were originally approved; it also may request or require changes to the application as a condition of approval.

6. **Public Notice and Hearing.** Public notice shall be provided, and the hearing conducted by the applicable appeal body pursuant to Section TBD, Public Notice. Notice of the hearing shall also be given to the applicant and party filing the appeal and any other interested person who has filed with the City Clerk a written request for such notice. In the case of an appeal of a Planning Commission decision, notice of such appeal shall also be given to the Planning Commission. The Planning Commission may be represented at the hearing.

7. **Action.** An action to grant an appeal shall require a majority vote of the hearing body members. A tie vote shall have the effect of rejecting the appeal.

17.03.130 Zoning Determination and Similar Use Determinations

Requests for determinations of this Title and verifications relating to prior approvals or permits may be made to the Director. Requests shall be in writing.

A. **Zoning Determination.** A request for an interpretation of the Zoning Ordinance may be made for provisions that are unclear.

1. **Community Development Director Interpretations:**

a. **Director's Administrative Zoning Determination.** As part of the director's administrative authority, the Director may initiate a code interpretation whenever necessary to clarify a conflicting provision or procedure of the code.

b. **Director's Formal Zoning Determination.** The Director may respond to formal inquiries regarding code provisions. The interpretation shall be in writing and will be made available by the Community Development Department pursuant to this section. Formal Director's Interpretations are binding and may be appealed. A fee for a formal interpretation shall be assessed in accordance with City's Master Fee Schedule.

This section clarifies the Director's authority to: 1) administer the Zoning Ordinance; and 2) add procedures and establish findings for Similar Use Determinations.

2. **Procedures.** The Community Development Director shall file a formal Zoning Determination with the Planning Commission within 60-days of the determination. Following the acceptance of the determination the Community Development Director shall:

a. Publish the determination to the City's website; and

b. Update the Zone Code to reflect the determination within a reasonable timeframe.

B. **Similar Use Determination.** A request for a Similar Use Determination may be made for a use not listed in the Zone.

1. **Findings.** The Community Development Director may find a use that is not listed in the zone is allowed provided the following findings can affirmatively be made:

a. The characteristics of, and activities associated with, the proposed use are not more intense than those 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 than comparable uses in the zone;

b. The proposed use will meet the purpose of the zone 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; and

d. The proposed use is not specifically prohibited.

2. **Procedures.** The Community Development Director shall file the use determination findings with the Planning Commission within 60-days of the determination. Following the acceptance of the determination the Community Development Director shall:

a. Publish the determination to the city's website; and

b. Update the Zone Code to reflect the determination within a reasonable timeframe.

Chapter 17.04 Zoning Clearance

17.04.010 Purpose.

The purpose of a Zoning Clearance is to ensure that a proposed use, structure, or matter requiring ministerial review complies with the standards, limitations, and other applicable regulations of the Title.

17.04.020 Applicability

A Zoning Clearance is required for any proposed construction or the establishment of a use – as specified in the Title.

17.04.030 Review Authority

The Community Development Director or their designee may grant a Zoning Clearance when required by this Title.

17.04.040 Procedures.

- A. **Application.** Applications for Zoning Clearance shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD "Application Forms and Fees" and Section TBD "Review of Applications." Language was simplified for clarity.
- B. **Report of Decision and Findings.** Except as set forth below, the Community Development Director shall issue the Zoning Clearance no more than thirty (30) days following the filing of a complete application therefor. Approval will be based upon determining the request complies with the standards, limitations and other regulations in the governing section, which may include the imposition of conditions and limitations to ensure the permit is consistent with said requirements and protects the public health, safety and welfare; otherwise, the Director shall deny the application and provide the applicant a written statement of the reasons the permit cannot be issued. The applicant shall be advised in writing of the right to appeal the Director's Decision pursuant to Section TBD, Appeals and Calls for Review.

Notwithstanding above, permits for accessory dwelling units and or junior accessory dwelling units shall be decided within one hundred twenty (120) days of receipt of a complete application and subject to the provisions outlined in Chapter 17.21.

17.04.050 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Ministerial or non-discretionary Zoning Clearances are not eligible for appeal, unless otherwise provided below or when required by state law
 - 1. Accessory Dwelling Unit Permit pursuant to HBMC Section 17.21.050.

- B. **Revocation.** Any Zoning Clearance may be revoked by the Director or the review authority body for any of the following causes:
1. That any term or condition has not been complied with;
 - a. That the property for which the Zoning Clearance was granted is used or maintained in violation of any statute, law, regulation, condition of approval or this Title;
 - b. That the use for which the Zoning Clearance was granted has not operated for at least twelve (12) consecutive months, or has ceased to exist, or has been abandoned;
 - c. That the use for which the Zoning Clearance was granted is deemed detrimental to the public health or safety or constitutes a nuisance.
- C. **Expiration.** A Zoning Clearance shall expire at the conclusion of the permitted use or activity, not to exceed one year from the effective date if no expiration or term is stated therein, and the property shall thereafter be used in compliance with the provisions of this Title and Code.

The administrative section (HBMC 17.55) was adopted by City Council in November 2023 as part of the Housing Element zone changes. As proposed, this section will be retitled to Zoning Clearance with no other substantive change.

Chapter 17.05 Administrative Permit

17.05.010 Purpose

The purpose of an Administrative Permit is to ensure that a proposed use or matter for which an Administrative Permit is required complies with the standards, limitations and other regulations applicable to the subject use or matter.

17.05.020 Applicability

Approval of an Administrative Permit is required for uses or developments specifically identified in any section of this Title.

17.05.030 Review Authority

The Community Development Department may grant Administrative Permits for all such uses and matters required by this Title to be reviewed and allowed only upon the granting of an Administrative Permit.

17.05.040 Procedures

- A. **Application Filing.** Applications for Administrative Permits shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD "Application Forms and Fees" and Section TBD Review of Applications. The application for an Administrative Permit shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Report of Decisions and Findings.** Except as set forth below, the Community Development Director shall issue the Administrative Permit no more than thirty

(30) days following the filing of a complete application therefor. Approval will be based upon determining the request complies with the standards, limitations and other regulations in the governing section, which may include the imposition of conditions and limitations to ensure the permit is consistent with said requirements and protects the public health, safety and welfare; otherwise, the Director shall deny the application and provide the applicant a written statement of the reasons the permit cannot be issued. The applicant shall be advised in writing of the right to appeal the Director's Decision pursuant to Section TBD, Appeals and Calls for Review.

17.05.050 Required Findings

The Director or their designee must make all of the following findings to approve or conditionally approve an Administrative Permit application. The inability to make one or more of the findings is grounds for denial of an application. Written findings shall be prepared when a denial decision is rendered.

- A. The proposed use is allowed within the applicable zone with Administrative Permit approval, and complies with all other applicable provisions of this Zoning Ordinance and the Municipal Code;
- B. The proposed use is consistent with the General Plan and any applicable specific plan;
- C. The site is physically adequate for the type, density, and intensity (e.g., number of employees and customers) of use being proposed, including provision of services (e.g., sanitation and water), public access, and the absence of physical constraints;
- D. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses on site and in the vicinity of the subject property; and
- E. The establishment, maintenance, or operation of the proposed use at the location proposed will not endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or the general welfare of persons residing or working in the vicinity of the proposed use.

17.05.060 Conditions of Approval

The Community Development Director may impose reasonable conditions deemed necessary to ensure compliance with the findings for an Administrative Permit listed in Section TBD, Required Finding.

17.05.070 Appeals, Expiration, Revocation, etc.

- A. **Effective Date – Appeals.** Decisions of the Community Development Director may be appealed to the Planning Commission by filing an appeal within fifteen (15) days of the Director's decision; provided, that upon affixing the signature of the applicant to an issued permit, the permit shall become effective and the right to appeal shall be waived. Appeals shall be filed in writing with the Community

Development Department accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing, unless the applicant agrees to waive the requirement so that the matter may be heard at an earlier time. The Commission's review shall be limited to a determination of whether the application complies with the requirements of the governing section. The filing of an appeal within such time shall stay the effective date of the decision until the Commission has acted on the appeal. The Commission's decision shall be final and conclusive, unless the governing section specifically provides for a direct or subsequent appeal to the City Council.

Appeals to the City Council shall be filed with the City Clerk accompanied by a fee set by resolution of the City Council. The filing of an appeal within ten (10) days shall stay the effective date of the decision until the council has acted on the appeal as hereinafter set forth in this Title. Upon receipt of a written appeal, the Planning Commission shall transmit to the Council the Planning Commission's complete record of the case. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing, unless the applicant agrees to waive the requirement so that the matter may be heard at an earlier time. The Council shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed unless requested by the applicant. The Council's review shall be limited to a determination of whether the application complies with the requirements of the governing section. The council shall announce its findings within forty (40) calendar days of the hearing, unless good cause is found for an extension, and the decision shall be mailed to the applicant. The council's decision shall be final and conclusive.

- B. **Revocation.** Any Administrative Permit may be revoked by the Director or the decision-making body for any of the following causes:
1. That any term or condition has not been complied with;
 2. That the property for which the Administrative Permit has been granted is used or maintained in violation of any statute, law, regulation or condition of approval;
 3. That the use for which the Administrative Permit was granted has not been exercised for at least twelve (12) consecutive months, or has ceased to exist, or has been abandoned;
 4. The Administrative Permit has been issued for a short-term vacation rental, which has received three (3) affirmed violations of the ordinance codified in this section or any of the City's quality of life ordinances, such as noise violations, disturbing the peace, or creating a public nuisance, within a 12-month period; or,
 5. That the use for which the Administrative Permit was granted has been so exercised as to be detrimental to the public health or safety or so as to constitute a nuisance.

A hearing to show cause why the permit should not be revoked shall be held by the issuing body prior to the revocation of any administrative permit. Written notice shall be provided the permit holder at least ten (10) days prior to the hearing stating the reasons therefor.

- C. **Expiration.** An Administrative Permit shall expire at the conclusion of the permitted use or activity, not to exceed one year from the effective date if no expiration or term is stated therein, and the property shall thereafter be used in compliance with the provisions of this Title and Code.

Chapter 17.06 Temporary Use Permits

17.06.010 Purpose

This Chapter establishes a process for review and approval of uses that are intended to be of limited duration of time and will not permanently alter the character or physical facilities of the site where they occur.

17.06.020 Applicability

Approval of a Temporary Use Permit is required for uses or developments specifically identified in any section of this Title which requires a Temporary Use Permit.

17.06.030 Review Authority

The Community Development Director shall act as the review authority for Temporary Use Permits based on consideration of the requirements of this Chapter and Section TBD, Temporary Uses.

17.06.040 Procedures

- A. **Application.** An application for a Temporary Use Permit shall be submitted at least 30 days before the use is intended to begin with the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Temporary Use Permit shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Report of Decision and Findings.** Except as set forth below, the Community Development Director shall issue the Temporary Use Permit no more than thirty (30) days following the filing of a complete application therefor. Approval will be based upon determining the request complies with the standards, limitations and other regulations in the governing section, which may include the imposition of conditions and limitations to ensure the permit is consistent with said requirements and protects the public health, safety and welfare; otherwise, the Director shall deny the application and provide the applicant a written statement of the reasons the permit cannot be issued. The applicant shall be advised in writing of

the right to appeal the Director's decision pursuant to Section TBD, Appeals and Calls for Review.

17.06.050 Required Findings

The Community Development Director must make both of the following findings to approve or conditionally approve a Temporary Use Permit application. The inability to make one or more of the findings is grounds for denial of an application.

- A. The proposed use will not unreasonably affect adjacent properties, their owners and occupants, or the surrounding neighborhood, and will not in any other way constitute a nuisance or be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the area of such use or to the general welfare of the City; and
- B. The proposed use will not unreasonably interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed use and will not create a demand for additional parking that cannot be safely and efficiently accommodated by existing parking areas.

17.06.060 Conditions of Approval

The Community Development Director may impose reasonable conditions deemed necessary to ensure compliance with the findings for a Temporary Use Permit listed in Section TBD, Required Findings, including the items below.

- A. Provision of a certificate of insurance acceptable to the City's risk manager.
- B. Submission of a performance bond or other surety devices, if necessary, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition, to the satisfaction of the Community Development Director.
- C. Prior to the event, the applicant shall provide a statement to the City stating that the organizers of the event agree to indemnify, hold harmless, and defend the City, its officers, agents and employees from any and all liability or claims that may be brought against the City arising out of its approval of the Temporary Use Permit, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
- D. Each site occupied by a temporary use shall be cleaned of debris, litter, or other evidence of the temporary activity on completion or removal of the activity, and shall thereafter be used in compliance with the provisions of this Title.
- E. Other conditions determined by the Community Development Director to ensure the operation of the proposed temporary use in a compatible, efficient, harmonious, nuisance-free, orderly, and safe, manner, including, but not limited to the following:
 - 1. Regulation of ingress, egress, and traffic circulation.
 - 2. Regulation of fire protection and access for fire vehicles.
 - 3. Regulation of lighting and signage.
 - 4. Regulation of hours of operation, staffing, or other aspects of the use.

5. Provisions for sanitary facilities and waste collection and disposal.
6. Safety and security measures.
7. 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 Title.

17.06.070 Appeals, Expiration, Revocation, etc.

- A. **Appeals.** Temporary Use Permit decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Temporary Use Permit approval is effective and may only be extended or revised as provided for in Chapter TBD, Effective Dates: Expiration and Extension.
- C. **Revocation.** Temporary Use Permit approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

This section was adopted by City Council in November 2023 as part of the Housing Element Zone Text changes.

Chapter 17.07 Housing Accessibility - Reasonable Accommodation for Disability

17.07.010 Purpose and Applicability.

This section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes, and other land use regulations, policies and procedures. Fair Housing Laws means "Fair Housing Amendments Act of 1988" (42 U.S.C. Section 3601, et seq.), including reasonable accommodation required by 42 U.S.C. Section 3604(f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900, et seq.), including reasonable accommodation required specifically by California Government Code Sections 12927(c)(1) and 12955(l), as any of these statutory provisions now exist or may be amended from time to time.

A request for reasonable accommodation may be made by any person with a disability, his/her representative, or any business or property owner when the application of a zoning law, building code provision or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. 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 such impairment or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws.

A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development 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. Requests for reasonable accommodation shall be made in the manner prescribed by this section.

It is the intent of this section that, notwithstanding time limits provided to perform specific functions, application review, decision making and appeals proceed expeditiously, especially where the request is time sensitive, and so as to reduce impediments to equal access to housing.

- A. Application Submittal. Any person with a disability may request a reasonable accommodation on a form supplied by the community development department including the following information, accompanied by a fee established by resolution of the city council:
1. The applicant's or representative's name, mailing address and daytime phone number;
 2. The address of the property for which the request is being made;
 3. The specific code section, regulation, procedure or policy of the City from which relief is sought;
 4. A site plan or illustrative drawing showing the proposed accommodation;
 5. An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant's use and enjoyment of the subject property;
 6. The basis for the claim that the Fair Housing Laws apply to the individual(s) and evidence satisfactory to the City supporting the claim, which may include a letter from a medical doctor or other licensed health care professional, a disabled license, or any other appropriate evidence;
 7. A detailed explanation of why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the City;
 8. Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested; and
 9. Any other information required to make the findings required by subsection (D) of this section consistent with the Fair Housing Laws.

A request for reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing.

A reasonable accommodation does not affect or negate an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

If an individual needs assistance in making the request for reasonable accommodation, the City shall provide assistance to ensure that the process is accessible.

Should the request for reasonable accommodation be made concurrently with a discretionary permit, then the fee for a reasonable accommodation application may be waived provided that the prescribed fee shall be paid for all other discretionary permits.

B. Reviewing Authority.

1. Applications for reasonable accommodation shall be reviewed by the Community Development Director or designee.

C. Findings. The reviewing authority shall approve the request for a reasonable accommodation if, based upon all of the evidence presented, the following findings can be made:

1. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with disabilities protected under Fair Housing Laws;
2. The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the Fair Housing Laws;
3. The requested accommodation will not impose an undue financial or administrative burden on the City, as defined in the Fair Housing Laws and interpretive case law; and
4. The requested accommodation will not require a fundamental alteration in the nature of the City's zoning or building laws, policies and/or procedures, as defined in the Fair Housing Laws and interpretive case law. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning or building program:
 - a. Whether the requested accommodation would introduce uses not otherwise permitted in the neighborhood; and
 - b. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.

D. Decision.

1. The review authority shall consider an application and issue a written determination within forty (40) calendar days of the date of receipt of a completed application.
2. If necessary to reach a determination on any request for reasonable accommodation, the review authority may request further information from the applicant consistent with this section, specifying in detail what information is required. In the event a request for further information is made, the applicable time period to issue a written determination shall be stayed until the applicant reasonably responds to the request.
3. The review authority's written decision shall set forth the findings, any conditions of approval, notice of the right to appeal, and the right to request reasonable accommodation on the appeals process, if necessary. The decision shall be mailed to the applicant.
4. The reasonable accommodation shall be subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this section.

5. In making the approval findings in subsection (D) of this section, the review authority may approve alternative reasonable accommodations that provide an equivalent level of benefit to the applicant.
6. The written decision of the reviewing authority shall be final unless appealed in the manner set forth below.
7. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
8. Where the improvements or modifications approved through a reasonable accommodation would generally require a variance, a variance shall not be required.

E. Appeals.

1. The decision on a reasonable accommodation may be appealed to the City Council within ten (10) calendar days of the issuance of a written decision.
2. The appeal shall be made in writing including a statement of the grounds for appeal and accompanied by a fee established by resolution of the City Council.
3. The City Council shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than sixty (60) calendar days after an appeal has been filed. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.
4. The City shall provide notice of an appeal hearing to the applicant. The Council shall announce its findings within forty (40) calendar days of the hearing, unless good cause is found for an extension, and the decision shall be mailed to the applicant. The council's action shall be final.
5. If an individual needs assistance in filing an appeal on an adverse decision, the City shall provide assistance to ensure that the appeals process is accessible.

F. Waiver of Time Periods. Notwithstanding any provisions in this section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this section or may request a continuance regarding any decision or consideration by the City of a pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City, shall not constitute failure by the City to provide for prompt decisions on applications and shall not be a violation of any required time period set forth in this section.

G. Notice to the Public of Availability of Accommodation Process. The City shall prominently display in the public areas of the Community Development Department at City Hall a notice advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this section. City employees shall direct individuals to the display whenever they are requested to do so or reasonably believe that individuals with disabilities or their representatives may be entitled to a reasonable accommodation.

H. Expiration, Time Extension, Violation, Discontinuance, and Revocation.

1. Any reasonable accommodation approved in accordance with the terms of this section shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:
 - a. A building permit has been issued and construction has commenced;
 - b. A certificate of occupancy has been issued;
 - c. The use is established; or
 - d. A time extension has been granted.
2. The Community Development Director may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three (3) years. An application for a time extension shall be made in writing to the Community Development Department no less than thirty (30) days or more than ninety (90) days prior to the expiration date.
3. Notice of the Director's Decision on a time extension shall be provided as specified in subsection (E)(3) of this section.
4. Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.
5. An accommodation is granted to an individual and shall not run with the land unless the Director finds that the modification is physically integrated on the property and cannot feasibly be removed or altered. Any change in use or circumstances that negates the basis for the granting of the approval may render the reasonable accommodation null and void and/or revocable by the City, and thereafter the reasonable accommodation may be required to be removed or substantially conformed to the code if reasonably feasible.
- I. **Amendments.** A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application and shall be processed in accordance with the requirements of this section. The Community Development Director may waive the requirement for a new application and approve the changes if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

Chapter 17.08 Minor Exceptions

17.08.010 Purpose

The purpose of this Chapter is to establish a means of granting relief from locational, developmental, and operational standards where doing so would be consistent with this Title and the General Plan, and where it is not possible or practical to approve a Variance.

17.08.020 Applicability

Section Reserved.

17.08.030 Review Authority

Community Development Director. However, the Director may refer any application for a Minor Exception for a project that may generate substantial public controversy or involve significant land use policy decisions to the Planning Commission for decision.

Concurrent Processing. If a request for a Minor Exception is being submitted in conjunction with an application for another approval, permit, or entitlement that requires Planning Commission action, it shall be heard and acted upon at the same time and in the same manner as that application.

17.08.040 Procedures

- A. **Application.** An application for a Minor Exception shall be filed to the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Minor Exception shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Notice.** An application for a Minor Exception shall require a public notice prior to the Director's decision pursuant to Section, TBD Public Notice.
- C. **Report of Decisions and Findings.** Except as set forth below, the Community Development Director shall issue the Minor Exception no more than thirty (30) days following the filing of a complete application therefor. Approval will be based upon determining the request complies with the standards, limitations and other regulations in the governing section, which may include the imposition of conditions and limitations to ensure the permit is consistent with said requirements and protects the public health, safety and welfare; otherwise, the Director shall deny the application and provide the applicant a written statement of the reasons the permit cannot be issued. The applicant shall be advised in writing of the right to appeal the Director's Decision pursuant to Section TBD, Appeals and Calls for Review.

17.08.050 Required Findings

The Community Development Director must make all of the following findings to approve or conditionally approve a minor exception application. The inability to make one or more of the findings is grounds for denial of an application.

- 1. The requested minor exception is warranted by practical difficulties;
- 2. The requested minor exception is warranted by an unnecessary hardship;
- 3. The requested minor exception is necessary to avoid inconsistencies with the general intent of this Title; or

4. The requested minor exception for the same development standard has not been approved within the last 10 years.

17.08.060 Conditions of Approval

In approving a Minor Exception, the review authority may impose reasonable conditions or restrictions and/or require reasonable guarantees and evidence that such conditions are being, or will be, complied with, to achieve the findings for a Minor Exception.

17.08.070 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Minor Exception decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Minor Exception approval is effective and may only be extended or revised as provided for in Section TBD, Effective Dates: Expiration and Extension.
- C. **Revocation.** The Minor Exception approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.09 Minor Use Permits

17.09.010 Purpose

The Minor Use Permit review and approval process is intended to apply to uses that are consistent with the with the goals, objectives, and policies of the General Plan and purposes of the zone where they are proposed but require special consideration to ensure that based on the specifics can be designed, located, and operated in a manner that will be compatible with the surrounding area and uses.

17.09.020 Applicability

Approval of a Minor Use Permit is required for uses or developments specifically identified in any section of this Title which requires a Minor Use Permit.

17.09.030 Review Authority

The Community Development Director or designee shall be the review authority for Minor Use Permits. However, the Director may refer any application for a Minor Use Permit for a project that may generate substantial public controversy or involve significant land use policy decisions to the Planning Commission for decision. In that case, the application shall be processed as a Conditional Use Permit.

17.09.040 Procedures

- A. **Application.** Applications for Minor Use Permits shall be filed with the Community Development Department on the prescribed application forms pursuant to

Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Minor Use Permit shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.

- B. **Public Notice and Hearing.** All applications for Minor Use Permits shall require a public notice prior to the Director or designee decision, pursuant to Section TBD, Public Notice.
- C. **Report of Decisions and Findings.** Except as set forth below, the Community Development Director shall issue the Minor Use Permit no more than thirty (30) days following the filing of a complete application therefor. Approval will be based upon determining the request complies with the standards, limitations and other regulations in the governing section, which may include the imposition of conditions and limitations to ensure the permit is consistent with said requirements and protects the public health, safety and welfare; otherwise, the Director shall deny the application and provide the applicant a written statement of the reasons the permit cannot be issued. The applicant shall be advised in writing of the right to appeal the Director's decision pursuant to Section TBD, Appeals and Calls for Review.

17.09.050 Required Findings

The Community Development Director or designee must make all of the following findings to approve or conditionally approve a Minor Use application. The inability to make one or more of the findings is grounds for denial of an application.

- A. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Title and all other Titles of the Hermosa Beach Municipal Code;
- B. The proposed use is consistent with the General Plan and any applicable specific plan;
- C. The proposed use will not be averse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
- D. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses and circulation in the vicinity; and
- E. The site is physically suitable for the type of the use being proposed, including access, utilities, and the absence of physical constraints.

17.09.060 Conditions of Approval

In approving a Minor Use Permit, the review authority may impose reasonable conditions or restrictions and/or require reasonable guarantees and evidence that such conditions are being, or will be, complied with, to achieve the following outcomes:

- A. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;

- B. Achieve the general purposes of this Title or the specific purpose of the zone in which the project is located;
- C. Achieve the findings for a Use Permit listed in Section TBD, Required Findings; or
- D. Mitigate any potentially significant impacts identified because of environmental review conducted in compliance with the California Environmental Quality Act.

17.09.070 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Minor Use Permit decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Minor Use Permit approval is effective and may only be extended or revised as provided for in Section TBD, Effective Dates: Expiration and Extension.
- C. **Reapplication Upon Denial.** After the denial of a Minor Use Permit has become final, no further application for the same use shall be filed for the same property for the ensuing 12 months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fees.
- D. **Revocation.** Minor Use Permit approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.10 Conditional Use Permits

17.10.010 Purpose.

The purpose of a Conditional Use Permit shall be to provide the individual review of certain uses, which due to the nature of the use, size, or intensity of the use require a Planning Commission review.

17.10.020 Applicability

Approval of a Conditional Use Permit is required for uses or developments specifically identified in any section of this Title which requires a Conditional Use Permit.

17.10.030 Review Authority

The Planning Commission may grant Conditional Use Permits to determine if the use proposed, or the location of that use, is compatible with the surrounding uses, or may be made compatible with the imposition of conditions of approval.

17.10.040 Procedures

- A. **Application.** Applications for Conditional Use Permits shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Conditional Use Permit shall include data or

other evidence in support of the applicable findings required by Section TBD, Required Findings.

- B. **Public Notice.** An application for a Conditional Use Permit shall require a public notice prior to the Planning Commission decision, pursuant to Section TBD, Public Notice.
- C. **Public Hearing.** An application for a Conditional Use Permit shall require a public hearing before the Planning Commission pursuant to Section TBD Conduct of Public Hearings.
- D. **Report on Findings and Decision.** Not more than twenty (20) days following the public hearing on a Conditional Use Permit, the Planning Commission shall announce its findings by formal report and said report shall recite, among other things, the facts and reasons which, in its opinion, make the granting or denial of the Conditional Use Permit and when granted, shall recite such conditions and limitations as it may impose.
- E. **Report to be Numbered and Kept as Permanent Record.** The formal report of the Planning Commission announcing its decision on a Conditional Use Permit shall be numbered consecutively in the order of filing and shall become a permanent record in the file of the Planning Commission.
- F. **Notice of decision to applicant.** Not later than ten days following the rendering of a decision ordering that a Conditional Use Permit be granted or denied, a copy of the report shall be mailed to the applicant and their attorney at the address shown on the application filed with the Planning Commission.
- G. **Effective date – Time limitation for appeal.** The order of the Planning Commission in granting or denying a Conditional Use Permit shall become final and effective ten days from the date of the succeeding City Council meeting at which it is determined whether or not to review the decision of the Planning Commission pursuant to Section 2.52.040 of this code until within such ten-day period an appeal in writing is filed with the Council by any person dissatisfied with the decision of the Planning Commission. The filing of such appeal within such time shall stay the effective date of the order of the Planning Commission until such time as the Council has acted on the appeal as hereinafter set forth in this Title.
- H. **Transmission of Planning Commission's record to City Council.** Upon receipt of a written appeal filed with the City Clerk as provided herein, the Planning Commission shall thereupon transmit to the City Council the Planning Commission's complete record of the case.
- I. **Council to hold public hearing on appeal.** Not more than forty (40) calendar days following filing of a written appeal, the City Council shall conduct a duly advertised public hearing, public notice of which shall be given at least ten calendar days prior to said hearing in accordance with requirements established by resolution of the Council.

- J. **Council to announce findings and decision.** City Council shall announce its findings and decision not more than sixty (60) days, following the close of the public hearing, unless good cause is shown for the extension of time and the applicant or opponent, or both, are notified of this extension and the reasons therefor. The findings and decision shall recite the facts and reasons which in the opinion of the City Council make the approval or denial of the conditional use permit necessary to carry out the general purpose of this Title, and shall order that the Conditional Use Permit be granted, denied or modified subject to such conditions or limitations that it may impose. City Council may incorporate by reference all or part of any findings of the commission.

If the City Council does not announce its findings and decision, notice shall be given by mail to the applicant or opponent, or to both if they are different parties, of when the findings and decision will be made so that the applicant or opponent or both may be present at the meeting when said findings and decision are announced.

- K. **Decision of the council shall be final.** The action by the City Council on such matters shall be by a majority vote of the Council, and shall be final and conclusive except:
1. The City Council may approve, modify or disapprove the recommendation of the Planning Commission; provided, that any modification of a proposed Conditional Use Permit by the Council may be referred back to the Planning Commission for report and recommendation, and the Planning Commission shall not be required to hold a public hearing thereon. Failure of the planning commission to report to the city council within forty (40) days after the reference, or such longer period as may be designated by the city council, shall be deemed to be approval of the proposed modification.
 2. Upon return of the matter to the City Council, the City Council may by majority vote, approve, modify or disapprove the final recommendation of the Planning Commission on such matters.
- L. **Notice of Decision of the Council.** Not later than thirty (30) days following the final decision of the City Council that a Conditional Use Permit be granted or denied, notice of such action shall be mailed to the applicant or opponent, or both if they be different parties, and one copy shall be attached to the Planning Commission's file of the case and said file returned to the Planning Commission for permanent filing. Failure to give notice shall not affect the decision rendered in these matters.

17.10.050 Scope of Conditional Use Permit Review

- A. **Criteria for review.** In reviewing any Conditional Use Permit for any use, the following criteria for granting said permit shall be considered:
1. Distance from existing residential uses;

2. The amount of existing or proposed off-street parking facilities, and its distance from the proposed use;
3. Location of and distance to churches, schools, hospitals and public playgrounds;
4. The combination of uses proposed;
5. Site specific operation and design features;
6. The relationship of the proposed business-generated traffic volume and the size of streets serving the area;
7. The proposed exterior signs and decor, and the compatibility thereof with existing establishments in the area;
8. The number of similar establishments or uses within close proximity to the proposed establishment;
9. Noise, odor, dust and/or vibration that may be generated by the proposed use;
10. Impact of the proposed use to the City's infrastructure, and/or services;
11. Will the establishment contribute to a concentration of similar outlets in the area;
12. Other considerations that, in the judgment of the Planning Commission, are necessary to assure compatibility with the surrounding uses, and the as a whole.

17.10.060 Required findings.

The Planning Commission must make all of the following findings to approve a Conditional Use Permit application. The inability to make one or more of the findings is grounds for denial of an application.

- A. The proposed use is allowed within the applicable zone and complies with all other applicable provisions of this Title and all other Titles of the Hermosa Beach Municipal Code;
- B. The proposed use is consistent with the General Plan and any applicable specific plan;
- C. The proposed use will not be averse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
- D. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses and circulation in the vicinity; and
- E. The site is physically suitable for the type of the use being proposed, including access, utilities, and the absence of physical constraints.

17.10.070 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Conditional Use Permit decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Conditional Use Permit approval is effective and may only be extended or revised as provided for in Section TBD, Effective

Dates: Expiration and Extension or the following, whichever the strictest standards apply.

1. A Conditional Use Permit shall expire and become null and void, when any of the following apply:
 - a. **Permit Not Issued.** If the Conditional Use Permit is not used within two (2) years after the granting of the Permit; provided that the Director may grant an extension of the Permit for an additional period as provided in this Title.
 - b. **Discontinuation of Use.** If there is a discontinuation of the Conditional Use Permit after it has been effectuated for a period of 12 months or more the Permit shall be expired. The Community Development Director shall make a written determination of expiration based on evidence of abandonment including documentation of business closure including but not limited to inactive City business license issued in accordance with Title 5 of HBMC.
- C. **Reapplication Upon Denial.** After the denial of a Conditional Use Permit has become final, no further application for the same use shall be filed for the same property for the ensuing 12 months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fee
- D. **Revocation.** The Conditional Use Permit approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.11 Parking Plan

17.11.010 Purpose

The purpose of this section is to allow for an alternative configuration of parking to wholly or partially satisfy the Off-Street Parking Chapter of Title 17.

17.11.020 Applicability

Parking Plans may be requested by a property owner in accordance with the Off-Street Parking Chapter of Title 17.

17.11.030 Review Authority

The Planning Commission shall act as the review authority for all Parking plans.

17.11.040 Procedures

- A. **Application.** Applications for Parking Plans shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications.

The application for a Parking Plan shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.

- B. **Public Notice.** An application for a Parking Plan shall require a public notice prior to the Planning Commission decision, pursuant to Section TBD, Public Notice.
- C. **Public Hearing.** An application for a Parking Plan shall require a public hearing before the Planning Commission pursuant to Section TBD, "Conduct of Public Hearings".

17.11.050 Required Findings

The Planning Commission must make all of the following findings to approve or conditionally approve a Parking Plan application. The inability to make one or more the findings is ground for denial of an application.

- A. The Parking Plan conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;
- B. The Parking Plan is consistent with the purposes of this Title and the specific purpose of the Zone in which the project is located;
- C. The Parking Plan satisfies all the applicable criteria for the Parking Plan configuration requested in accordance with the Off-Street Parking Chapter of Title 17.
- D. The granting of the requested modification would not be detrimental to the public, health, safety or welfare of the public.

17.11.060 Conditions of Approval

In approving a Parking Plan, the review authority may impose reasonable conditions or restrictions and/or require reasonable guarantees and evidence that such conditions are being, or will be, complied with, to achieve the following outcomes:

- A. Ensure that the proposal complies with the general purpose of Title 17 or the specific procedures of the zone in which the project is located;
- B. Achieve the findings for the Parking Plan listed in Section TBD, "Required Findings".
- C. A covenant with the City a party thereto, may be required limiting the use of the property and/or designating the method by which the required parking will be provided at the time that the Planning Commission determines that inadequate parking exists.

17.11.070 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Parking Plan decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Parking Plan approval is effective and may only be extended or revised as provided for in Chapter TBD, Effective Dates: Expiration and Extension.
- C. **Reapplication Upon Denial.** After the denial of a Parking Plan has become final, no further application for the same Parking Plan shall be filed for the same property for the ensuing six months, unless the project is revised to resolve the review

authority's previous objections to the project. Said revision shall require a new application process and payment of fee

- D. **Revocation.** The Parking Plan approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.12 Precise Development Plans

17.12.010 Purpose

This Chapter establishes Precise Development Plan procedures to ensure that new development supports the goals and objectives of the General Plan and other adopted plans and guidelines. The specific purposes of the Precise Development Plan process are to:

- A. Promote excellence in design, layout, and other physical features of development to achieve a reasonable level of quality, compatibility, in harmony with the community's social, economic and environmental objectives;
- B. Ensure that new and altered development will be compatible with the existing and potential development of the surrounding area; and
- C. Supplement other City regulations and standards in order to ensure control of physical features of development that are not otherwise addressed.

17.12.020 Applicability

Precise Development Plan is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to a structure, site, or a parking area except for:

- A. New construction or additions of less than 1,500 square foot addition any zone.
- B. Interior remodel of 3,000 square feet or less in any zone.
- C. Single Family (one unit) residential projects.
- D. New residential projects with two (2) or more dwelling units including a minimum of 20% lower-income units.
- E. Projects including minimum of 20% lower-income units that qualify for a density bonus pursuant to Section 17.42.100.

Items D and E are added exemptions to comply with HCD comments regarding the Housing Element related zoning text amendments.

17.12.030 Review Authority

The Planning Commission shall act as the review authority for all Precise Development Plans.

17.12.040 Procedures

- A. **Application.** Applications for Precise Development Plan shall be filed with the Community Development Department on the forms prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Precise Development Plan shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Notice.** An application for a Precise Develop Plan shall require a public notice prior to the Planning Commission decision, pursuant to Section TBD, Public Notice.
- C. **Reapplication Upon Denial.** After the denial of a Parking Plan has become final, no further application for the same Parking Plan shall be filed for the same property for the ensuing 12 months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fee.
- D. **Public Hearing.** An application for a Precise Development Plan shall require a public hearing before the Planning Commission pursuant to Section TBD, Conduct of Public Hearings.

17.12.050 Scope of Precise Development Plan Review

- A. **Precise Development Plan Review Considerations.** Precise Development Plan review shall be based on consideration of the requirements of this Chapter as they apply to the design of the site plan, structures, landscaping, and other physical features of a proposed project, including:
 - 1. Building proportions, massing, and architectural details;
 - 2. Site design, orientation, location, and architectural design of buildings relative to existing structures on or adjacent to the property, topography, and other physical features of the natural and built environment;
 - 3. Size, location, design, development, and arrangement of on-site parking and other paved areas;
 - 4. Height, materials, and design of fences, walls, and screen plantings;
 - 5. Location and type of landscaping including selection and size of plant materials, and design of hardscape; and
 - 6. Size, location, design, color, lighting, and materials of all signs.

17.12.060 Required Findings

The review authority must make all of the following findings to approve or conditionally approve a Precise Development Plan application. The inability to make one or more of the findings is grounds for denial of an application.

- A. The design, layout, and other physical features of the project complies with all other applicable provisions of this Title and all other Titles of the Hermosa Beach Municipal Code;

- B. The design, layout, and other physical features of the project is consistent with the General Plan, and any applicable specific plan or design guidelines;
- C. The design, layout, and other physical features of the project 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; and
- D. The design, layout, and other physical features of the project are compatible with the desired form and character of the area, as established in the General Plan.

17.12.070 Conditions of Approval

In approving a Precise Development Plan, the review authority may impose reasonable conditions or restrictions and/or require reasonable guarantees and evidence that such conditions are being, or will be, complied with, to achieve the following outcomes:

- A. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;
- B. Achieve the general purposes of this Title or the specific purpose of the zone in which the project is located;
- C. Achieve the findings for a Precise Development Plan listed in Section TBD, Required Findings; and
- D. Mitigate any potentially significant impacts identified because of environmental review conducted in compliance with the California Environmental Quality Act.

17.12.080 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Precise Development Plan decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Precise Development Plan approval is effective and may only be extended or revised as provided for in Section TBD, Effective Dates: Expiration and Extension.
- C. **Reapplication Upon Denial.** After the denial of a Precise Development Plan has become final, no further application for the same Parking Plan shall be filed for the same property for the ensuing six months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fee
- D. **Revocation.** Precise Development Plan approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.13 Variances

17.13.010 Purpose

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

17.13.020 Applicability

Variations may be granted to vary or modify dimensional and performance standards but may not be granted to allow uses or activities that this Title does not authorize for a specific lot or site.

17.13.030 Review Authority

The Planning Commission shall act as the review authority for Variance applications based on consideration of the requirements of this Chapter.

17.13.040 Procedures

- A. **Application.** Applications for a Variance shall be filed with the Community Development Department on the prescribed application forms in accordance with the procedures in Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Variance shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Notice.** An application for a Variance shall require a public notice prior to the Planning Commission decision, pursuant to Section TBD, Public Notice.
- C. **Public Hearing.** An application for a Variance shall require a public hearing before the Planning Commission, pursuant to Section TBD, Conduct of Public Hearings.

17.13.050 Required Findings

After conducting a public hearing, the Planning Commission must make all of the following findings in order to approve or conditionally approve a Variance application. The Commission shall deny an application for a Variance if it is unable to make any of the required findings, in which case it shall state the reasons for that determination.

- A. There are exceptional or extraordinary physical circumstances or conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zone, and that the granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone;
- B. The granting of the Variance is necessary to prevent a physical hardship which is not of the applicant's own actions or the actions of a predecessor in interest;
- C. The granting of the Variance will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare or convenience; and
- D. The granting of the Variance will be consistent with the general purposes and objectives of this Title, any applicable specific plans, and the General Plan.

17.13.060 Conditions of Approval

In approving a Variance, the review authority may impose reasonable conditions or restrictions and/or require reasonable guarantees and evidence that such conditions are being, or will be, complied with, to achieve the following outcomes:

- A. Ensure that the proposal conforms in all significant respects with the General Plan and with any other applicable plans or policies adopted by the City Council;
- B. Achieve the general purposes of this Title or the specific purposes of the zone in which the project is located;
- C. Achieve the findings for a Variance granted; or
- D. Mitigate any potentially significant impacts identified because of review conducted in compliance with the California Environmental Quality Act (CEQA).

17.13.070 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Variance decisions are subject to the appeal provisions of Section TBD, Appeals and Calls for Review.
- B. **Expiration, Extensions and Revisions.** Variance approval is effective and may only be extended or revised as provided for in Chapter TBD, Effective Dates: Expiration and Extension.
- C. **Reapplication Upon Denial.** After the denial of a Variance has become final, no further application for the same Variance shall be filed for the same property for the ensuing 12 months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fee.
- D. **Revocation.** Variance approval may be revoked pursuant to Section TBD, Revocation, if any of the conditions or terms of the approval are violated or if any law or ordinance is violated.

Chapter 17.14 Development Agreements

17.14.010 Purpose

This Chapter establishes procedures and requirements for considering and entering into a voluntary legally binding agreements, with applicants for development projects, as authorized in Government Code Sections 65864-65869.5. The development agreement is intended to provide assurance to the City that a proposed project will proceed to its completion in compliance with the plans submitted and provides assurance to the applicant that the project can proceed to its completion in accordance with the rules and regulations in effect at the time of project approval.

17.14.020 Applicability

A voluntary agreement that may be initiated by a property owner for a complex or multi-phase development project that is consistent with the General Plan.

17.14.030 Review Authority

The Planning Commission shall act as the advisory body for all Development Agreements and provide its recommendation to the City Council. The City Council shall act as the review authority, and after receiving recommendations from the Planning Commission, may adopt, reject, or modify a Development Agreement.

17.14.040 Procedures

- A. **Processing Proposed Development Agreements.** A Development Agreement which may be proposed by the City or any person having a legal or equitable interest in real property shall be processed in the manner of a Zone Change as provided in Article 15 and shall conform to the requirements of Article 2.5 (commencing with Section 65864) Division 1, of the Government Code entitled "Development Agreements."
- B. **Development Agreement Content** All development agreements shall contain the following provisions:
1. Duration of the agreement;
 2. Permitted uses for the subject property;
 3. Density or intensity of the permitted uses;
 4. Approved site plans, elevations, floor plans and sections, including the maximum height and size of proposed buildings;
 5. Provisions, if any, for reservation or dedication of land for public purposes or other contribution to public improvements and amenities of benefit to the City;
 6. Protection from either a future growth control ordinance or a future increase in development impact fees;
 7. Provisions that address the applicable environmental review for the project;
 8. Provisions requiring periodic review of the Development Agreement under Section; TBD
 9. Provisions that would necessitate a reconsideration or amendment of the development agreement if any health and safety issues of compelling public necessity are discovered (i.e., a new environmental health hazard is discovered);
 10. Provisions which are appropriate and acceptable to the City Attorney, that the developer shall commence construction or satisfy other requirements within a specified timeframe; and
 11. Any other terms determined to be appropriate and necessary including provisions for payment to the City.
- C. **Periodic Review Requirement.**
1. The Planning Commission shall review the Development Agreement every 12 months, unless otherwise specified in the Development Agreement, after the approval of the agreement for the life of the project to determine whether the contracting party or the successor has complied in good faith with the terms and conditions of the Development Agreement.
 2. The applicant shall initiate the review by filing a request for review along with the corresponding fee established by City Council within 60 days prior

to the anniversary of the date of approval. The applicant shall submit evidence demonstrating the applicant's good-faith compliance with the Development Agreement.

3. If as a result of this review, the Planning Commission finds and determines time of annual review, on the basis of substantial evidence, that the contracting party or the successor in interest has not complied with, a report shall be made the City Council, and referred to the City Attorney's office for action.

17.14.050 Required Findings

The following findings shall be made before approval of a Development Agreement or amendment:

- A. The Development Agreement is in the best interests of the City, promoting the public interest and welfare through public benefits; and
- B. The Development Agreement is consistent with all applicable provisions of the General Plan, any applicable specific plan, and this Zoning Ordinance.

17.14.060 Appeals; Expiration, Extensions, and Revisions; Revocation

- A. **Appeals.** Development Agreements may not be appealed as the Planning Commission review authority is advisory.
- B. **Expiration, Extensions and Revisions.** A Development Agreement approval is effective and may only be extended or revised as provided for in Chapter TBD, Effective Dates: Expiration and Extension.
- C. **Amendment or Cancellation Procedure.** A Development Agreement may be amended or canceled, in whole or in part, by mutual consent of all parties to the agreement, or their successor-in-interest, in compliance with state law (Government Code Section 65868), or as set forth in the agreement. The requested amendment or cancellation shall be processed in the same manner specified by this chapter for the adoption of a development agreement.

Chapter 17.15 Specific Plans

17.15.010 Purpose

This Chapter establishes procedures for the consideration, adoption, and implementation of specific plans for the purpose of implementing PLAN Hermosa ("General Plan") on an area-specific basis.

17.15.020 Applicability

- A. The procedures in this Chapter shall apply to all proposals to establish a Specific Plan Area, amend or a Specific Plan Area. When changes to the Zoning

Ordinance or zone or boundary line shown on the Zoning Map are required, a Zoning Amendment shall also be required.

- B. **Initiation of Amendment.** A Specific Plan or amendment to a Specific Plan may be initiated by an applicant or by a motion of the City Council or Planning Commission.

17.15.030 Review Authority

The Planning Commission shall act as the advisory body for all proposed Specific Plans and Specific Plan Amendments. The Planning Commission shall provide recommendations to the City Council. The City Council shall act as the final review authority and upon receiving a recommendation from the Planning Commission, may adopt, reject, or modify a Specific Plan.

17.15.040 Procedures

- A. **Application.** Applications for Specific Plans shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD "Application Forms and Fees" and Section TBD Review of Applications. The application for a Specific Plans shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Hearing and Notice.** All Specific Plan and Specific Plan Amendments shall be referred to the Planning Commission, which shall conduct at least one public hearing on any proposed amendment prior to submitting a recommendation report to the City Council. At least ten (10) days before the date of any public hearing, the City shall provide notice as provided for in Section TBD, Public Notice.
- C. **Planning Commission Hearing.** Before submitting a recommendation to the City Council, the Planning Commission shall conduct at least one public hearing.
- D. **Recommendation to City Council.** Following the public hearing, the Planning Commission shall make a recommendation on the Specific Plan to the City Council. Such recommendation shall include the reasons for the recommendation, findings related to General Plan consistency, and a discussion of the relationship of the proposed amendment to other adopted documents. The recommendation shall be transmitted to the City Council with a copy of the approved minutes from the Planning Commission hearing.
 - 1. **Approval.** If the Planning Commission has recommended approval of the proposed amendment, the City Council is required to take final action pursuant to Section TBD, City Council Hearing and Action.
 - 2. **Denial.** If the Planning Commission has recommended against the proposed amendment, the City Council is not required to take any further action unless an appeal is filed in accordance with Section TBD, Appeals and Calls for Review.
- E. **City Council Hearing and Action**
 - 1. **City Council Hearing.** After receiving the recommendation from the Planning Commission, the City Council shall hold a hearing in accordance

with Section TBD, Conduct of Public Hearings. The notice for the hearing shall include a summary of the Planning Commission recommendation.

2. **City Council Action.** After the conclusion of the hearing, the City Council may approve, modify, or deny the proposed Specific Plan or Specific Plan amendment.

17.15.050 Required Findings

The following findings shall be made prior to approval of any specific plan or specific plan amendment:

- A. The specific plan or amendment is consistent with the goals, objectives, and policies of the General Plan;
- B. The specific plan or amendment will not create conditions materially detrimental to the public health, safety, and general welfare;
- C. The specific plan or amendment is compatible with zoning on adjacent properties, and ensures development of desirable character that will be harmonious with surrounding properties;
- D. The specific plan or amendment is suitable and appropriate for the location, access, and topography for the development of the subject property;

Chapter 17.16 Zoning Amendments

17.16.010 Purpose

This Chapter establishes procedures by which changes may be made to the text of this Zoning Ordinance and to the Zoning Map, whenever the public necessity, convenience, general welfare, or good practice justify such amendment, consistent with the General Plan.

17.16.020 Applicability

- A. The procedures in this Chapter shall apply to all proposals to change the text of this Zoning Ordinance or to revise a zone or boundary line shown on the Zoning Map.
- B. Initiation of Amendment. An amendment to the Zoning Ordinance or Zoning Map may be initiated by any applicant or by a motion of the City Council or Planning Commission.

17.16.030 Review Authority

The Planning Commission shall act as the advisory body for all amendments to the Zoning Ordinance and Zoning Map and provide recommendations to the City Council. The City Council shall act as the final review authority and upon receiving a recommendation from the Planning Commission, may adopt, reject, or modify all zoning amendments.

17.16.040 Procedures

- A. **Application.** Applications for Zoning Amendments shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD, Review of Applications. The application for a Zoning Amendment shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Hearing and Notice.** All amendments to the Zoning Ordinance and Zoning Map shall be referred to the Planning Commission, which shall conduct at least one public hearing on any proposed amendment prior to submitting a recommendation report to the City Council. At least 10 days before the date of any public hearing, the City shall provide notice as provided for in Section TBD, Public Notice.
- C. **Planning Commission Hearing and Recommendation**
1. **Planning Commission Hearing.** Before submitting a recommendation to the City Council, the Planning Commission shall conduct at least one public hearing.
 2. **Recommendation to City Council.** Following the public hearing, the Planning Commission shall make a recommendation on the proposed amendment to the City Council. Such recommendation shall include the reasons for the recommendation, findings related to General Plan consistency, and a discussion of the relationship of the proposed amendment to other adopted documents. The recommendation shall be transmitted to the City Council with a copy of the approved minutes from the Planning Commission hearing.
 - a. **Approval.** If the Planning Commission has recommended approval of the proposed amendment, the City Council is required to take final action pursuant to Section TBD, City Council Hearing and Action.
 - b. **Denial.** If the Planning Commission has recommended against the proposed amendment, the City Council is not required to take any further action unless an appeal is filed in accordance with Section TBD, Appeals and Calls for Review.
 - c. **Reapplication Upon Denial.** After the denial of a Zoning Amendment has become final, no further application for the same Zoning Amendment shall be filed for the same property for the ensuing 12 months, unless the project is revised to resolve the review authority's previous objections to the project. Said revision shall require a new application process and payment of fee.
- D. **City Council Hearing and Action**
1. **City Council Hearing.** After receiving the recommendation from the Planning Commission, the City Council shall hold a hearing in accordance with Section TBD, Conduct of Public Hearings. The notice for the hearing shall include a summary of the Planning Commission recommendation.

2. **City Council Action.** After the conclusion of the hearing, the City Council may approve, modify, or deny the proposed amendment. If the Council 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, but the Planning Commission shall not be required to hold a public hearing. The failure of the Planning Commission to report within 45 days after the referral shall be deemed a recommendation for approval and the amendment shall be returned to Council for adoption.

17.16.050 Required Findings

The following findings shall be made prior to approval of any Zoning Amendment:

- A. The amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the City;
- B. The amendment is consistent with the intent of the vision, goals and objectives, and policies of PLAN Hermosa, the city's general plan; and
- C. The amendment is consistent with the purpose of the Zoning Ordinance, Title 17.

Chapter 17.17 General Plan Amendment

17.17.010 Purpose

This chapter establishes procedures for making changes to the General Plan as provided for in State Law when there are necessary reasons to do so as a result of changes in conditions or circumstances unforeseen at the time of adoption or last amendment of the General Plan. These circumstances include, but are not limited to, changes in State or Federal law and problems and opportunities that were unanticipated at the time of adoption or last amendment.

17.17.020 Applicability

The procedures in this Chapter shall apply to all proposals to change the text of the General Plan or to change a general plan designation or boundary line as shown on the General Plan Map.

17.17.030 Initiation of Amendment. An amendment to the General Plan or General Plan map may only be initiated at the direction of the City Council. The City Council is the final review authority for General Plan Amendments.

17.17.040 Review Authority

The Planning Commission shall act as the advisory body for all amendments to City's General Plan and General Plan Map and provide recommendations to the City Council. The City Council shall act as the final review authority and upon receiving a

recommendation from the Planning Commission, may adopt, reject, or modify all general plan or general plan map amendments.

17.17.050 Procedures

- A. **Application.** Applications for General Plan Amendment shall be filed with the Community Development Department on the prescribed application forms pursuant to Section TBD, Application Forms and Fees and Section TBD Review of Applications. The application for a General Plan Amendment shall include data or other evidence in support of the applicable findings required by Section TBD, Required Findings.
- B. **Public Hearing and Notice.** All amendments to the General Plan and General Plan Land Use Map shall be referred to the Planning Commission, which shall conduct at least one public hearing on any proposed amendment prior to submitting a recommendation report to the City Council. At least ten (10) days before the date of any public hearing, the City shall provide notice as provided for in Section TBD, Public Notice.
- C. **Planning Commission Hearing and Recommendation.** Before submitting a recommendation to the City Council, the Planning Commission shall conduct at least one public hearing.
- D. **Recommendation to City Council.** Following the public hearing, the Planning Commission shall make a recommendation on the proposed amendment to the City Council. Such recommendation shall include the reasons for the recommendation, findings related to General Plan consistency, and a discussion of the relationship of the proposed amendment to other adopted documents. The recommendation shall be transmitted to the City Council with a copy of the approved minutes from the Planning Commission hearing.
 1. **Approval.** If the Planning Commission has recommended approval of the proposed amendment, the City Council is required to take final action pursuant to Section TBD, City Council Hearing and Action.
 2. **Denial.** If the Planning Commission has recommended against the proposed amendment, the City Council is not required to take any further action unless an appeal is filed in accordance with Section TBD, Appeals and Calls for Review.
- E. **City Council Hearing and Action.**
 1. **City Council Hearing.** After receiving the recommendation from the Planning Commission, the City Council shall hold a hearing in accordance with Section TBD, Conduct of Public Hearings. The notice for the hearing shall include a summary of the Planning Commission recommendation.
 2. **City Council Action.** After the conclusion of the hearing, the City Council may approve, modify, or deny the proposed amendment. If the Council 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, but the Planning Commission shall not be required to hold a public hearing. The

failure of the Planning Commission to report within 45 days after the referral shall be deemed a recommendation for approval and the amendment shall be returned to Council for adoption.

17.17.060 Required Findings

- A. The proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the city, as specified under Government Code Section 65358(as);
- B. That adoption of the proposed General Plan amendment will not exceed the annual limit on amendments specified under Government Code Section 65358(b); and
- C. The amendment is consistent with the intent of the vision, goals and objectives, and policies of the General Plan and internally consistent.

Chapter 17.18 Coastal Clearance

Coastal Clearance is a new section intended to provide clarity on the current review process for development located in the Coastal Zone

17.18.010 Purpose

The purpose of this section is to ensure all public and private development in the Coastal Zone receives a clearance confirming the development conforms to all provisions of Title 16, Title 17, and any Land Use Plan or Coastal Development Permit.

17.18.020 Applicability

This Section shall apply to all development in the Coastal Zone, as defined by the Coastal Act.

17.18.030 Review Authority

A request for Coastal Clearance may be submitted with another application. The review authority shall be in accordance with the Section TBD, Review Authorities for Decisions and Appeals.

17.18.040 Procedure

- A. **Application.** Applications for a Coastal Clearance shall be filed with the Community Development Department on the prescribed application form in accordance with the procedures in Section TBD, Application Forms and Fees and Section TBD, Review of Applications.
- B. **Conditions of Approval.** Prior to permit issuance of any development within the Coastal Zone the applicant shall demonstrate an approval, wavier or exemption by the California Coastal Commission.

- C. **Post-Approval.** Before permit issuance, the Community Development Director or designee shall review the California Coastal Commission's approval, waiver, or exemption for consistency with the Director's approval in concept.

Chapter 17.19 Definitions

Aggrieved "Aggrieved person" any person who, in person or through a representative, appeared at a public hearing or responded to a public notice, in connection with a city decision or action, or who, by other appropriate means before a hearing, decision or action by the review authority made their concern known or who for good cause was unable to do either.

New Definition