

## Chapter 20.72 - POST-DECISION PROCEDURES

### Sections:

20.72.010 Purpose

20.72.020 Issuance of Permits

20.72.030 Performance Guarantees

20.72.040 Legislative Action Agreement

20.72.050 Changes to an Approved Project

20.72.060 Time Limits and Extensions

20.72.070 Permit Revocation

20.72.080 Resubmittals

20.72.090 Permits to Run with the Land

### 20.72.010 Purpose

This chapter establishes procedures and requirements that apply following a City decision on a permit or other approval required by the Zoning Ordinance.

### 20.72.020 Issuance of Permits

Permits shall not be issued until the effective date, provided no appeal of the review authority's decision has been filed in compliance with Chapter 20.76 (Appeals).

### 20.72.030 Performance Guarantees

- A. **Security Required.** The Director of Development Services may require an applicant to provide adequate security to guarantee the proper completion of any approved work or compliance with any conditions of approval.
- B. **Form of Security.** The security shall be in the form of cash, a certified or cashier's check, or a performance bond executed by the applicant and a corporate surety authorized to do business in California and approved by the City.
- C. **Amount of Security.** The Director of Development Services shall determine the amount of the security necessary to ensure proper completion of the approved work or compliance with applicable conditions of approval.

- D. Duration of Security.** The security shall remain in effect until all work has been completed and conditions fulfilled to the satisfaction of the Director of Development Services or until a specified warranty period has elapsed.
- E. Release of Security.** The security deposit shall be released upon completion of the approved work or compliance with applicable conditions of approval.
- F. Failure to Comply.**
1. Upon failure to complete any work or comply with conditions, the City may complete the work or fulfill the condition, and may collect from the applicant or surety all costs incurred, including administrative, engineering, legal, and inspection costs.
  2. Any unused portion of the security shall be refunded to the funding source.



#### 20.72.040 Legislative Action Agreement

- A. Agreement Required.** Approval of a General Plan Amendment, Zoning Ordinance Amendment (Text or Map), Conditional Zoning, Annexation/Rezoning, or other legislative action is subject to the applicant entering into a written agreement with the City of Merced known as a Legislative Action Agreement.
- B.** The Legislative Action Agreement shall state the applicant agrees to:
1. Comply with all conditions of the legislative action.

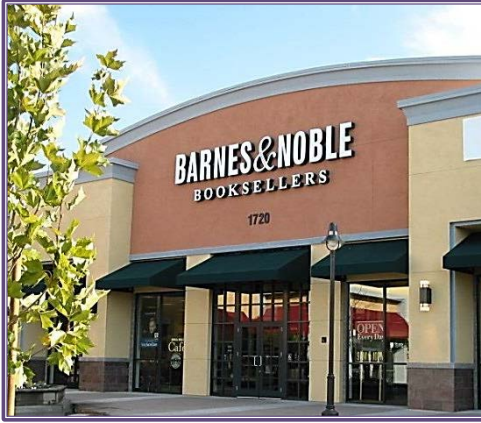


2. Pay all required fees, taxes, and assessments in effect when any subsequent permits or approvals are issued, including, but not limited to, public facilities impact fees, regional traffic impact fees, and Mello-Roos taxes. Payment shall be submitted at the time of building permit issuance for each phase of development unless the City requires payment at a different time.

- C.** The City Council shall approve the Legislative Action Agreement with the applicant at the same meeting at which the related legislative action is approved.

### 20.72.050 Changes to an Approved Project

An approved project shall be established only as approved by the review authority, except when changes to the project are approved in compliance with this section.



#### A. Request for a Change.

1. An applicant shall request desired changes in writing, and shall submit appropriate supporting materials, an explanation of the reasons for the request, and applicable processing fees.

2. Changes may be requested either before or after construction or establishment and operation of the approved use.

**B. Notice and Hearing.** If the matter originally required a noticed public hearing, the review authority shall hold a public hearing for the requested change, except as allowed by Subsection C (Minor Changes) and shall give notice in compliance with Chapter 20.70 (Public Notice and Hearings).

**C. Minor Changes.** The Director of Development Services may authorize minor changes to an approved project if the changes comply with all of the following criteria:

1. The requested changes are consistent with all applicable requirements of the Zoning Ordinance.
2. The requested changes are consistent with the spirit and intent of the original approval.
3. The requested changes do not involve a feature of the project that was a basis for findings in a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report for the project.
4. The requested changes do not involve a feature of the project that was a basis for conditions of approval for the project.
5. The requested changes do not involve a feature of the project that was a specific consideration by the review authority in granting the approval.
6. The requested changes do not involve any expansion or intensification of the use or structure by no more than 10 percent.



### 20.72.060 Time Limits and Extensions

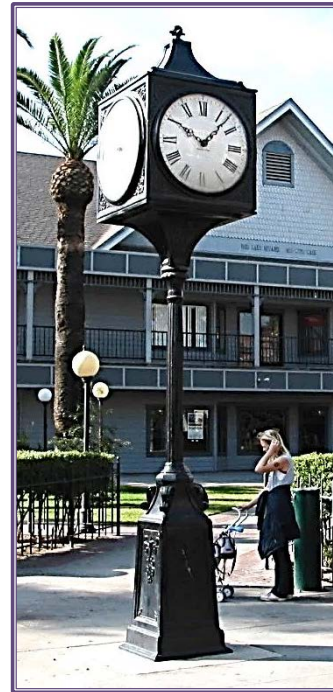
**A. Expiration of Permit.** A permit or approval not exercised within two years after the date of approval shall be eligible for revocation as provided in Section 20.72.070 (Permit Revocation) below, except where an extension of time is approved as allowed by Subsection C (Extension of Time).

**B. Exercised Defined.** A permit or approval shall be considered exercised when:

1. A building permit is issued and construction has commenced; or,
2. A certificate of occupancy is issued; or,
3. A business license is issued; or,
4. The use is established.

**C. Extension of Time.** The Director of Development Services may approve an extension to a permit or approval in the following manner:

1. The applicant shall submit to the Development Services Department a written request for an extension of time no later than 10 days before the expiration of the permit or approval.
2. The Director of Development Services may extend the permit or approval for an additional one year period if the applicant has proceeded in good faith and has exercised due diligence in efforts to exercise the permit or approval in a timely manner.
3. The burden of proof is on the applicant to demonstrate that the permit should be extended.
4. The Director of Development Services may choose to refer any extension of time requests to the Planning Commission for review and final decision.



### 20.72.070 Permit Revocation

Any discretionary permit may be revoked, or conditions of approval modified, as provided for in this section.

**A. Review Authority.**

1. A permit may be revoked or modified by the review authority which originally approved the permit.

2. In instances where the Director of Development Services was the approval authority, the Director of Development Services may choose to refer any action to revoke or modify a permit to the Planning Commission for review and final decision.

**B. Public Notice and Hearing.** Public notice and hearing for any action to revoke or



modify a permit shall be provided in full compliance with Chapter 20.70 (Public Notice and Hearings).

**C. Findings.** The review authority may revoke or modify a permit only if one or more of the following findings can be made:

1. The applicant or property owner has altered the circumstances under which the permit was granted to a degree that one or more of the findings required to grant the original permit can no longer be made. Altered circumstances include, but are not limited to, the modification of the business, a change in scope, emphasis, size, or nature of the business, or the expansion, alteration, reconfiguration, or change of use.
2. Permit issuance was based on misrepresentation by the applicant, either through the omission of a material statement in the application, or in public hearing testimony.
3. One or more conditions of approval have been violated, or have not been complied with or fulfilled.
4. The use or structure for which the permit was granted no longer exists or has been discontinued for a continuous period of at least 12 months.
5. The applicant or property owner has failed or refused to allow inspections for compliance.
6. Improvements authorized by the permit are in violation of the Zoning Ordinance or any law, ordinance, regulation, or statute.
7. The use or structure is being operated or maintained in a manner which constitutes a nuisance.
8. The permit was not exercised within two years after the date of approval.

**D. Effect of Revocation.** The revocation of a permit shall have the effect of terminating the approval and denying the privileges granted by the permit.



**20.72.080 Resubmittals**

- A. Resubmittals Prohibited.** For a period of 12 months following the denial or revocation of a permit, no application for approval of the same or substantially similar project shall be submitted, unless the denial or revocation was made without prejudice, and so stated in the record.



- B. Determination.** The Director of Development Services shall determine whether the new application is for a project which is the same or substantially similar to the previously denied or revoked permit.

- C. Appeal.** The determination of the Director of Development Services may be appealed to the Planning Commission, in compliance with Chapter 20.74 (Appeals).

**20.72.090 Permits to Run with the Land**

Permits and approvals issued in compliance with the Zoning Ordinance remain valid upon change of ownership of the site, structure, or use that was the subject of the permit application, unless revoked by the City in accordance with Section 20.72.070 (Permit Revocation).

