

# APPEAL FORM

You may complete this form if you wish to appeal a decision of the Community Development Director or Planning Commission or you may submit a letter containing information in accordance with Section 17.06.150 of the Foster City Municipal Code.

**Please note: All appeals must be filed within ten (calendar) days after the decision of the Community Development Director or Planning Commission. The appeal must be in writing and must provide information addressing all of the items below to be considered complete. The required appeal fee as adopted by the City Council must accompany an appeal to the Planning Commission of a decision of the Community Development Director (Planning Director) or an appeal to the City Council of a decision of the Planning Commission or it will be considered incomplete. Prior to submitting your appeal, please check with staff regarding the amount of the appeal fee due.**

1. Appellant \_\_\_\_\_

(Your name, phone # \_\_\_\_\_

and address) \_\_\_\_\_

2. Address of project \_\_\_\_\_

3. Brief project description \_\_\_\_\_

(Improvement requested by property owner)

4. Brief description of decision being appealed: \_\_\_\_\_

5. Relief or action sought \_\_\_\_\_

(Reversal of decision or change in conditions of approval, etc.)

6. Basis for the appeal. (A) List all findings made by the Planning Director or Planning Commission in the decision you are appealing. (B) Provide a written statement indicating which findings you contend were made in error and why. You may attach other sheets. Please attach all documentation supporting your request.

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\_\_\_\_\_  
Signature

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Date

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## Chapter 17.06 ADMINISTRATION, CONSTRUCTION AND ENFORCEMENT\*

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\* Planning commission, see Ch. 2.28 of this code. Prior history: prior code §§ 10-410.010 through 10-410.030, §§ 10-411.010 through 10-411.030; Ords. 38 and 190.

### **17.06.010 Scope.**

Except as specifically provided herein, this title shall not be interpreted to repeal, abrogate, annul or in any way affect any existing provision of any law or ordinance or regulations or permits previously adopted or issued relating to the construction, alteration or use of any structure or property; provided, however, in any instances where this title imposes greater restrictions upon the construction, alteration or use of any structure or property than is imposed or required by an existing law, ordinance or regulation, the provisions of this title shall control. (Ord. 212 § 1 (part), 1981)

### **17.06.020 Permissible use determinations.**

It shall be the duty of the planning commission or planning director, as hereinafter provided, to determine whether or not the use of any property or any structure in any district is similar in character to the particular uses allowed in a district; the commission or director shall consider the following factors as criteria for their determination:

- A. Effect upon the public health, safety and general welfare of the neighborhood involved and the city at large;
- B. Effect upon the orderly development of the area in question and the city at large in regard to the Foster City general plan. (Ord. 212 § 1 (part), 1981)

### **17.06.030 Planning director.**

A. The planning director shall have the authority to define and classify any construction, alteration or use of any structure or property; to determine whether a proposal is similar in character to any specified allowable uses and is therefore allowable in any given zoning district; to determine what application(s) are required for a given proposal; to administer architectural review and to approve or deny architectural review applications as provided in Chapter [17.58](#); and to establish submittal and review requirements including provisions for notification of adjacent property owners, and determine the completeness of applications for any actions allowed or required by the provisions of this title.

B. The planning director shall have the authority to administratively approve minor modifications, changes, alteration, deviations, or substitutions to approved permits with respect to colors, materials, architectural elevations, site plans, landscape plans (plant materials, hardscape materials, special features) and other physical changes of a similar nature. Modifications to approved permits shall be minor in nature, and shall not affect the basic character of the architecture, landscape architecture, or site plan of the project; nor shall such changes deviate from the intent of the planning commission as determined by the planning director, or from the requirements of city ordinances.

In order that the planning commission is made aware of changes approved by the planning director, such changes shall be reported to the commission at least once each month by such means as the director shall find appropriate.

C. The planning director shall have the authority to administratively approve temporary construction-related trailers, fences and related temporary construction site requirements on building sites for as long as shall be necessary, subject to such conditions as the planning director shall deem necessary. (Ord. 371 § 8, 1989; Ord. 352 § 1, 1989; Ord. 212 § 1 (part), 1981)

#### **17.06.040 Enforcement officer.**

The planning director or the director's designees shall determine whether the provisions of this title pertaining to the construction, alteration or use of any structure or property, are being complied with. Any permit or license of any type issued by any department or officer of the city that is in conflict with the provisions of this title is null and void, except such permits or licenses issued pursuant to a development agreement approved by the city council.

The planning director or the director's designees shall have the authority to issue citations for violations of this title. (Ord. 311 § 1, 1985; Ord. 212 § 1 (part), 1981)

#### **17.06.045 Applications—Completeness.**

The planning director or his/her designee, within thirty days of the date on which the application was received, shall examine the submittal to determine whether or not it is sufficiently complete for acceptance. If the submittal is not complete, the applicant shall be notified in writing of that fact within thirty days of receipt of the application and shall be advised as to what information or action is necessary to make the application complete. If the written determination is not made within thirty days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete. Upon receipt of any resubmittal of the application, a new thirty-day period shall begin, during which the city shall determine the completeness of the application. The applicant may appeal a determination that an application is incomplete, following the procedures contained in Section [17.06.150](#). (Ord. 371 § 9, 1989)

#### **17.06.047 Applications—Deemed withdrawn after six months.**

If an applicant has been notified in writing that his/her application is incomplete and the reasons why the application has been so deemed, and there is no resubmittal of required information for a period of six months from the date of notification, or no activity has occurred on the application for a period of six months, the community development

director or his/her designee shall deem the application withdrawn and so notify the applicant. The applicant may reapply at any time with a new application and filing fee. (Ord. 542 § 2 Exh. A(1), 2007)

**17.06.050 Use permit—Regulations generally.**

Use permits, revocable, conditional and/or valid for a term period, may be issued as provided in this title for any of the uses or purposes for which such permits are required or permitted by the terms of this title. The planning commission may impose such conditions as it deems necessary to secure the purposes of this title and may require tangible guarantees or evidence that such conditions are being or will be complied with. (Ord. 212 § 1 (part), 1981)

**17.06.060 Use permit—Application.**

Applications for use permits shall be made in writing by the owners of the property, lessee, purchaser in escrow, optionee with the consent of the owners, or by a public utility company or other agency with the powers of eminent domain, on a form prescribed by the planning director. The application shall be accompanied by a fee as set by city council resolution, and plans showing the details of the proposed uses to be made of the land or building. (Ord. 212 § 1 (part), 1981)

**17.06.070 Use permit—Grant or denial.**

Upon receipt of the application for a use permit, the planning commission shall determine whether or not the establishment, maintenance or cooperation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit. (Ord. 212 § 1 (part), 1981)

**17.06.080 Variance—Regulations generally.**

A. Applications for variance from the strict application of the terms of this title may be made and variances granted when the following circumstances are found to apply:

1. That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is situated; and
2. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this title is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.

B. No variance shall be granted which does not conform to the general plan of the city. (Ord. 212 § 1 (part), 1981)

**17.06.090 Variance—Limitations.**

The use of lands or buildings not in conformity with the regulations specified for the district in which such lands or buildings are located shall not be allowed by the granting of a variance from the strict application of the terms of this title. (Ord. 212 § 1 (part), 1981)

**17.06.100 Variance—Application.**

Applications for variance shall be made in writing by the property owner, lessee, purchaser in escrow, optionee with the consent of the owners, or by a public utility company or other agency with the powers of eminent domain, on a form prescribed by the planning director of the city. They shall be accompanied by a fee as set by resolution of the city council, a plan of the details of the variance requested, and evidence showing

that:

- A. The granting of the variance will not be contrary to the intent of this title or to the public safety, health and welfare; and
- B. Due to special conditions or exceptional characteristics of the property, or its location, the strict application of this title would result in practical difficulties and unnecessary hardship. (Ord. 212 § 1 (part), 1981)

#### **17.06.110 Variance—Grant.**

If the planning commission finds that the qualifications under Section [17.06.080](#) apply to the land for which variance is sought, and that such variance is in accordance with the intent of this title, it may grant all or part of the variance sought. (Ord. 212 § 1 (part), 1981)

#### **17.06.120 Hearing—Required.**

The planning commission shall conduct a public hearing on any application for a variance or for a use permit. (Ord. 212 § 1 (part), 1981)

#### **17.06.130 Hearing—Notice.**

The notice of public hearing shall include the time, date, and place of such hearing, the identity of the hearing body, a general description of the matter to be considered and real property that is the subject of the hearing, and shall be given not less than ten days prior to the hearing by the following methods:

- A. Published in at least one newspaper of general circulation within the city or posted in at least three public places within the city, including one public place in the area directly affected by the proceeding;
- B. Mailed or delivered to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant;
- C. Mailed or delivered to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected;
- D. Mailed or delivered to all owners of real property as shown on the latest equalized assessment roll within three hundred feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the city may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (B) is greater than one thousand, the city may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city;
- E. Mailed or delivered to any person who has filed a written request for notice;
- F. In addition to the notice required by this section, the city may give notice of the hearing in any other manner it deems necessary or desirable. (Ord. 371, 1989; Ord. 212 § 1 (part), 1981)

#### **17.06.140 Appeal period—Issuance.**

- A. Use permits, variances, and architectural review approvals shall not be issued until ten calendar days have elapsed from the granting thereof, to allow time for any appeal to be filed, except where such appeal period is waived for an architectural review pursuant to Section [17.58.040\(F\)](#). In case an appeal is filed from the approving body's decision, the variance, use permit, or architectural review approval shall not be issued until a decision is made by the respective appellate body authorized to hear such appeal.
- B. Use permits, variances, or architectural review approvals shall not have any force and effect until the permittee acknowledges receipt thereof and acceptance of any conditions thereto. (Ord. 371 § 11, 1989; Ord. 212 § 1 (part), 1981)

#### **17.06.150 Appeal procedures.**

- A. Decisions of the Planning Director.

1. In case the applicant or any other person is not satisfied with any decision of the planning director, they may, within ten calendar days after the decision of the planning director, appeal in writing to the planning commission, accompanied by a fee as set by resolution of the city council. The appeal letter or completed appeal form shall specify:

- a. The person making the appeal;
- b. The specific item of appeal, and all supporting documentation, written in clear and concise language;
- c. The basis for such appeal; and
- d. The relief or action sought.

The appeal letter shall contain information substantiating the basis for appeal (e.g., failure to comply with the city's general plan, state or local laws; or stating reasons why the approval would adversely affect surrounding property; the neighborhood, and/or the city).

2. Upon receipt of the complete appeal letter and fee, the planning director shall transmit one copy of the appeal letter to the applicant. The planning commission shall review the written findings of the planning director on the matter, and shall consider the written and oral argument of the appellant. Information not presented to the planning director for consideration prior to rendering a decision may not be introduced at the meeting of the planning commission on the appeal. However, where the appeal was filed by a third party appellant, the appellant shall have the right to present evidence in support of the appeal.

**B. Decisions of the Planning Commission.**

1. In case the applicant, or any other person who is not satisfied with any decision of the planning commission, they may, within ten calendar days after the decision of the planning commission, appeal in writing to the city council, accompanied by a fee as set by resolution of the city council. The appeal letter or completed appeal form shall contain the same information as required above for appeals of decisions of the planning director.

2. Upon receipt of the complete appeal letter and fee, the city clerk shall transmit one copy of the appeal letter to the planning director and the applicant. The city shall schedule the appeal before the city council. The city council shall review the written findings of the planning commission on the matter and shall consider the written and oral argument of the appellant. New matter may not be introduced by either party to such appeal. The decision of the city council shall be final.

**C. Appeals by Planning Director, Planning Commissioners and City Councilmembers.** The planning director or any member of the planning commission or city council may, within the ten-calendar-day period described in subsection A or B of this section, appeal any decision by the planning director or planning commission without fee. (Ord 371 12, 1989: Ord. 293 1, 1984: Ord. 212 1 (part), 1981)

**17.06.155 Reconsideration within one year.**

In case an application for a use permit, variance, or architectural review is denied, the application shall not be eligible for reconsideration for one year subsequent to such denial unless a new application affecting or including all or a part of the same property is substantially different in the opinion of the planning director from the application denied. If an application is denied without prejudice, the same application may be eligible for reconsideration at any time following the resubmittal of the application, filing fee and supporting materials. (Ord. 371 13, 1989)

**17.06.160 Violation—Infraction.**

Any person who commits any act declared by any provision of this chapter to be unlawful, or who violates the provisions, or fails to comply with the mandatory requirements of any section or portion of this title, shall be guilty of an infraction, punishable by:

- A. A fine not exceeding one hundred dollars for a first violation;
- B. A fine not exceeding two hundred dollars for a second violation of the same provision within one year;
- C. A fine not exceeding five hundred dollars for one additional violation of the same ordinance provision within one year.

For purposes of this section, each day in which a nonconforming condition continues is a single violation and each subsequent day such nonconforming condition continues is a new and separate offense. (Ord. 371 14, 1989: Ord. 212 1 (part), 1981)

#### **17.06.170 Violation—Nuisance declaration—Abatement.**

In addition to the penalties provided in Section [17.06.160](#) and [17.06.175](#), any use of property or structures, structure, building or improvement operated, constructed, altered, or maintained contrary to the provisions of this title are public nuisances. The city attorney, upon order of the city council or planning director, may commence the necessary action or proceedings for the abatement, removal and enjoinder thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in this title or any other law or ordinance. (Ord. 371 15, 1989: Ord. 212 1 (part), 1981)

#### **17.06.175 Violation—Penalty fees.**

In addition to the penalties provided in Section [17.06.160](#) and [17.06.170](#), any use of property or structures, structure, building or improvement operated, constructed, altered, or maintained contrary to the provisions of this title shall pay a penalty fee, as established by resolution of the city council, for any application necessary pursuant to this title to eliminate any violation, including violations which only require the securing of a permit but otherwise conform to the regulations of this title. Such penalty fees shall not apply to any application necessary to make a legal nonconforming use or building conform to the current regulations. (Ord. 371 16, 1989)

#### **17.06.180 Expiration.**

Any use permit, variance, or architectural review approval granted in accordance with the terms of this title shall, without further action, become null and void if not used within two years from the date of approval thereof, or within any shorter or longer period of time specifically stated in the conditions of approval. However, within one year of the date on which the use permit, variance, or architectural review approval was originally granted and prior to the improvement or structure being constructed, the decision making body may review all conditions of approval attached to the original approval and, if it so determines, attach new conditions of approval which may be necessary due to receipt by the city of new information or changed circumstances affecting the property and/or project. No extensions of use permit, variances, or architectural reviews shall be considered or granted, except that use permits and variances issued in conjunction with a tentative subdivision map for a planned unit development would expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later. (Ord. 371 17, 1989: Ord. 293 2, 1984: Ord. 212 1 (part), 1981)

#### **17.06.190 Revocation—Generally.**

Any use permit, variance or architectural review approval granted in accordance with the terms of this title may be revoked by the city council in the manner hereinafter set forth, if any of the conditions or terms of such permits are violated. (Ord. 371 18, 1989: Ord. 212 1 (part), 1981)

#### **17.06.200 Revocation—Procedure.**

Before the council considers revocation of any permit, the planning commission shall hold a public hearing thereon after giving notice thereof to the permittee at least ten days in advance of such hearing. Within five days, thereafter, the commission shall transmit a

report of its funds and its recommendations on the revocation to the city council. (Ord. 212 1 (part), 1981)

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**This page of the Foster City Municipal Code is current through Ordinance 556, passed March 1, 2010.**

Disclaimer: The City Clerk's Office has the official version of the Foster City Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.fostercity.org/>

City Telephone: 650) 286-3200

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