

*In-person participation by the public will be permitted. In addition, remote public participation is available in the following ways:*

- 1. Livestream online at [www.atwater.org](http://www.atwater.org) (Please be advised that there is a broadcasting delay. If you would like to participate in public comment, please use the option below).*
- 2. Submit a written public comment prior to the meeting: Public comments submitted to [planning@atwater.org](mailto:planning@atwater.org) by 4:00 p.m. on the day of the meeting will be distributed to the Planning Commission and made part of the official minutes but will not be read out loud during the meeting.*

*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 812-1031.*

# **CITY OF ATWATER**

## **PLANNING COMMISSION**

### **AGENDA**

Council Chambers  
750 Bellevue Road  
Atwater, CA 95301

**May 21, 2025**

CALL TO ORDER:

INVOCATION:

**Invocation by Police Chaplain**

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

**Conour\_\_\_\_, Kadach\_\_\_\_, Mokha\_\_\_\_, Sanchez-Garcia \_\_\_\_, Borgwardt\_\_\_\_**

SUBSEQUENT NEED ITEMS: (The Planning Secretary shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the Commission present at the meeting.)



**6:00 PM**

**APPROVAL OF AGENDA AS POSTED OR AS AMENDED:** (This is the time for the Commission to remove items from the agenda or to change the order of the agenda.)

**Staff's Recommendation:** Motion to approve agenda as posted or as amended.

**MINUTES:**

1. February 19, 2025 – Regular Meeting

**Staff's Recommendation:** Approval of minutes as listed.

**PETITIONS AND COMMUNICATIONS:**

**None**

**PUBLIC HEARINGS:**

2. **Public Hearing to make a consistency determination that the proposed Five-Year Capital Improvement Program for fiscal years of 2025/26 through 2029/30 conforms to the goals and policies of the City's General Plan, as required by California Government Code Section 65103 (c).**

**Staff's Recommendation:** Open the public hearing and receive any testimony given;

Close the public hearing;

Make the determination that the proposed Five-Year Capital Improvements Program conforms to the goals and policies of the City's General Plan, as required by California Government Code sections 65103 (c).

3. **Public Hearing to make an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNs: 005-120-045 & 005-120-046.**

**Staff's Recommendation:** Open the public hearing and receive any testimony given;

Close the public hearing;

Make a finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and adopt Resolution No. 0269-25 recommending the City Council adopt an Ordinance approving an

Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNs: 005-120-045 & 005-120-046.

- 4. Public Hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code to modernize the parking ordinance and to make it similar to the parking ordinance of the City of Merced.**

**Staff’s Recommendation:** Open the public hearing and receive any testimony given;

Close the public hearing;

Make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3), “Review for Exemption” and adopt Resolution No. 0270-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code.

- 5. Public Hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Section 17.71.085 “Expiration of a Permit” of Chapter 17.71 “Conditional Use Permit” of the Atwater Municipal Code to change the expiration limits for conditional use permits.**

**Staff’s Recommendation:** Open the public hearing and receive any testimony given;

Close the public hearing;

Make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3) and adopt Resolution No. 0271-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.71 “Conditional Use Permit” of the Atwater Municipal Code.

**REPORTS AND PRESENTATION FROM STAFF:**

- 5. City Manager Verbal Updates**

**COMMENTS FROM THE PUBLIC:**

**NOTICE TO THE PUBLIC**

At this time any person may comment on any item which is not on the agenda. You may state your name and address for the record; however, it is not required. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. Please limit comments to a maximum of three (3) minutes.

**COMMISSIONER MATTERS:**

**ADJOURNMENT:**

**CERTIFICATION:**

I, Kayla Rashad, Planning Commission Recording Secretary, do hereby certify that a copy of the foregoing Agenda was posted at City Hall a minimum of 72 hours prior to the meeting.

*Kayla Rashad*

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Kayla Rashad,  
Planning Commission Recording Secretary

**SB 343 NOTICE**

*In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the Community Development Department at City Hall during normal business hours at 750 Bellevue Road.*

*If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.*



*In compliance with the Federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a Planning Commission meeting due to a disability, please contact the Planning Commission Secretary a minimum of three (3) business days in advance of the meeting at [planning@atwater.org](mailto:planning@atwater.org) or (209) 812-1031. You may also send the request by email to*



# CITY OF ATWATER

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## PLANNING COMMISSION

### ACTION MINUTES

**February 19, 2025**

REGULAR SESSION: (Council Chambers)

*The Planning Commission of the City of Atwater met in Regular Session this date at 6:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California;*

INVOCATION:

**None**

PLEDGE OF ALLEGIANCE TO THE FLAG:

*The Pledge of Allegiance was led by Planning Commission Member Borgwardt*

ROLL CALL:

**Present:** *Planning Commission Members Borgwardt, Kadach, Sanchez-Garcia, and Conour*

**Absent:** *Planning Commission Member Mokha*

**Staff Present:** *City Manager Hoem, Public Works Director Vinson, Recording Secretary Rashad*

SUBSEQUENT NEED ITEMS:

**None**

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

**MOTION:** *Planning Commission Member Kadach moved to approve the agenda. The motion was seconded by Planning Commission Member Sanchez-Garcia and the vote was: Ayes: Planning Commission Members Conour, Borgwardt, Kadach, Sanchez-Garcia; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.*

**ORGANIZATION OF THE PLANNING COMMISSION:**

Nomination of a Planning Commission Chair

***Recording Secretary Rashad opened the Nomination of a Chair.***

***Planning Commission Member Kadach moved to nominate Planning Commission Member Borgwardt for Chair.***

***Planning Commission Member Sanchez-Garcia seconded the motion to nominate Planning Commission Member Borgwardt for Chair.***

***The Nomination period was closed.***

**MOTION:** *Planning Commission Member Kadach nominated Planning Commission Member Borgwardt as Chair. The motion was seconded by Planning Commission Member Sanchez-Garcia. The roll call vote was: Ayes: Conour, Kadach, Sanchez-Garcia, Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The nomination passed.*

***Planning Commission Member Mokha arrived at 6:04pm.***

Nomination of a Planning Commission Vice Chair

***Recording Secretary Rashad opened the Nomination of a Vice Chair.***

***Planning Commission Member Kadach moved to nominate Planning Commission Member Sanchez-Garcia for Vice Chair.***

***Planning Commission Member Conour seconded the motion to nominate Planning Commission Member Sanchez-Garcia for Vice Chair***

***The Nomination period was closed.***

**MOTION:** *Planning Commission Member Kadach nominated Planning Commission Member Sanchez-Garcia as Vice Chair. The motion was seconded by Planning Commission Member Conour. The roll call vote was: Ayes: Mokha, Kadach, Sanchez-Garcia, Conour, Borgwardt; Noes: None; Absent: None. The nomination passed.*

APPROVAL OF MINUTES:

a) December 18, 2024 – Regular Meeting

***MOTION: Planning Commission Member Sanchez-Garcia moved to approve the minutes. The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Conour, Borgwardt, Kadach, Sanchez-Garcia, Mokha; Noes: None; Absent: None. The motion passed.***

PETITIONS AND COMMUNICATIONS:

***None***

PUBLIC HEARINGS:

TO BE CONTINUED TO THE NEXT PLANNING COMMISSION MEETING--Public Hearing to consider adopting a resolution approving Tentative Parcel Map No. 23-12-0100 to subdivide one parcel into three parcels, located East of Heather Glen Lane and North of Fruitland Avenue, Atwater (APN: 150-150-025).

(Applicant: Francisco Marquez)

***City Manager Hoem provided background on the continuation for this project.***

***Chair Borgwardt opened the public hearing.***

***No one came forward to speak.***

***Chair Borgwardt closed the public hearing.***

Public Hearing to consider adopting a resolution approving Conditional Use Permit No. 24-32-0100 and Site Plan No. 24-32-0200 for a mobile food trailer located at 972 Broadway Avenue, Atwater (APN: 003-074-029).

(Applicant: Luis Solorzano)

***City Manager Hoem provided background on this project.***

***Chair Borgwardt opened the public hearing.***

***Applicant Luis Solorzano spoke on this project.***

***No one else came forward to speak.***

***Chair Borgwardt closed the public hearing.***

**MOTION: Planning Commission Member Sanchez-Garcia moved to Make a finding that the project is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15311 (c), "Accessory Structures;" and adopt Resolution No. 0262-24, Conditional Use Permit No. 24-32-0100 and Site Plan No. 24-32-0200, for a mobile food trailer located at 972 Broadway Avenue in Atwater (APN: 003-074-029). The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Mokha, Kadach, Conour, Sanchez-Garcia, Borgwardt; Noes: None; Absent: None. The motion passed.**

Public Hearing to consider adopting a resolution approving Variance No. 24-33-0100 for parking, located at 1500-1590 Winton Way, Atwater (APN: 002-152-023).

(Applicant: Mike Chai)

***City Manager Hoem provided background on this project.***

***Chair Borgwardt opened the public hearing.***

***Applicant Mike Chai spoke on this project.***

***Jose Perez spoke on behalf of the applicant.***

***Brad Kessler spoke in favor of the project.***

***No one else came forward to speak.***

***Chair Borgwardt closed the public hearing.***

**MOTION: Planning Commission Member Sanchez-Garcia moved to Make a finding that the project is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15301 (a), "Existing Facilities", and adopt Resolution No. 0263-24 approving Variance No. 24-33-0100 for parking on Site Plan No. 24-33-0200 located at 1500-1590 Winton Way, Atwater (APN: 002-150-023). The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Mokha, Kadach, Conour, Sanchez-Garcia, Borgwardt; Noes: None; Absent: None. The motion passed.**

**REPORTS AND PRESENTATIONS FROM STAFF:**

***City Manager Verbal Updates.***

**COMMENTS FROM THE PUBLIC:**

***Chair Borgwardt opened the Public Comment.***

***Notice to the public was read.***



***No one came forward to speak.***

***Chair Borgwardt closed the public comment.***

**COMMISSIONER MATTERS:**

***Planning Commission Member Mokha expressed his gratitude for new projects that benefit the city.***

***Planning Commission Member expressed his excitement to grow and help the city.***

***Planning Commission Member Kadach welcomed Planning Commission Member Conour.***

***Planning Commission Member Sanchez-Garcia expressed her gratitude to be Vice Chair.***

***Chair Borgwardt welcomed the newest Planning Commission Member Conour.***

**ADJOURNMENT:**

***Chair Borgwardt adjourned the meeting at 6:28 PM.***

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Don Borgwardt, Chair

By: Kayla Rashad  
Recording Secretary



## **PLANNING COMMISSION AGENDA REPORT**

### **PLANNING COMMISSION**

Donald Borgwardt, Chair

Mayra Sanchez-Garcia      Jag Mokha

Harold Kadach              Shawn Conour

**MEETING DATE: May 21, 2025**

**TO:** Chair and Commissioners

**FROM:** Chris Hoem, City Manager

**SUBJECT: Consistency Determination that the proposed Five-Year Capital Improvement Program for fiscal years of 2025/26 through 2029/30 conforms to the goals and policies of the City's General Plan, as required by California Government Code section 65103 (c).**

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### **RECOMMENDED COMMISSION ACTION:**

It is recommended that Planning Commission:

1. Make the determination that the proposed Five-Year Capital Improvements Program conforms to the goals and policies of the City's General Plan, as required by California Government Code sections 65103 (c).

### **I. BACKGROUND:**

The City of Atwater Capital Improvement Plan (CIP) acts as a major policy document similar to the City's annual budget. The CIP outlines the vision for the short- and long-range development, maintenance, improvement, and construction of new infrastructure assets to benefit our residents, businesses, property owners, and visitors of the City. It provides a linkage between the General Plan, our Infrastructure Master Plans and goals set within our budget. It also serves to plan, schedule, and prioritize the implementation of capital projects over the next 5 years. Although the plan is updated annually, it allows the reader to review projects planned over a 5-year timeline and provides an overview to the public and the City Council of their progress. This process allows the city to strategically invest in our inventory of infrastructure assets. Typically, expenditures of less than \$75,000 are not included in the CIP.

The Capital Improvement Plan Provides for a projected schedule of capital improvements to be undertaken in the next budget year and within the following four (4) years. It contains projects that can be accomplished through one year budget allocations as well as those which need to be spread over multiple years.

The attached report lists the proposed coordinated five-year Capital Improvements Program (CIP) for the fiscal years of 2025/26 through 2029/30.

**II. ANALYSIS:**

Government Code Section 65103(c) requires planning agencies to review annually their city capital improvement programs and other local agencies public works projects for consistency with the General Plan.

The projects listed in the 5-year CIP are presented to the Planning Commission during a Public Hearing before the City Council adopts the Plan. The Planning Commission of the City of Atwater reviewed and found consistency of the 5-year Capital Improvement Plan at a Planning Commission Hearing on May 21, 2025.

**III. FISCAL IMPACTS:**

The program report lists the fiscal amounts and funding sources. This item has been reviewed by the Finance Department.

**IV. LEGAL REVIEW:**

This item has been reviewed by the City Attorney's Office

**V. EXISTING POLICY:**

California Government Code 65103 (c): A coordinated program of proposed major public works shall be submitted to the city planning agency for review and report to find conformity with the adopted general plan or part thereof. The City of Atwater Planning Commission is the official planning and land use agency for the City, and therefore must make the determination of conformity with the general plan

**VI. INTERDEPARTMENTAL COORDINATION:**

Public Works, Finance, and the Community Development Departments coordinated to complete the Capital Improvement Program.

**VII. PUBLIC PARTICIPATION:**

The public hearing was adequately noticed and advertised for the Planning Commission hearing. The public will have the opportunity to provide comments on this item prior to Planning Commission action.

**VIII. ENVIRONMENTAL REVIEW:**

The development of the 5-year plan is not a project, as defined under Section 21065 of the California Environmental Quality Act (CEQA) therefore an environmental evaluation and review is not required. Individual projects listed herein may be subject to CEQA and further review conducted at the appropriate time during implementation of those projects.

**IX. STEPS FOLLOWING APPROVAL:**

Coordination with the Finance Director to include findings of consistency in the new proposed budget.

Prepared by: Kayla Rashad, Executive Assistant

Submitted by:

\_\_\_\_\_  
Chris Hoem, City Manager

Attachments:

1. Capital Improvement Program Schedule

## Capital Improvement Program

Description						Funding Source
	2025/26	2026/27	2027/28	2028/29	2029/30	
<b>General Fund Capital (0003)</b>						
*Phase 2 Ped Imp Proj Downtown	1,079,237					0003 General Fund Capital - CMAQ
*Phase 3 Ped Imp Proj Downtown	0					0003 General Fund Capital - CMAQ
*Phase 4 Ped Imp Proj Downtown	0	3,156,621				0003 General Fund Capital - CMAQ
*City Wide Signal Synchronization	1,020,653					0003 General Fund Capital - CMAQ
<b>General Fund Capital (0003) Totals</b>	<b>2,099,890</b>	<b>3,156,621</b>	<b>0</b>		<b>0</b>	
<b>CRP (XXXX) NEED TO CREATE NEW FUND FOR AUDITING PURPOSE</b>						
*Phase 2 Ped Imp Proj Downtown	1,267,749					XXXX CRP Fund (Carbon Reduction Program Fund)
<b>CRP (XXXX) Totals</b>	<b>1,267,749</b>					
<b>Measure V (0007)</b>						
*Fruitland Avenue Road Improvements	200,000					0007 Measure V
*City Wide Signal Synchronization	152,236					0007 Measure V
<b>Measure V (0007) Totals</b>	<b>152,236</b>	<b>0</b>	<b>0</b>		<b>0</b>	
<b>Measure V 20% Alternative Modes (0008)</b>						
*Active Transportation Plan	0					0008 Measure V Alternative Modes
*Phase 2 Ped Imp Proj Downtown	391,796					0008 Measure V Alternative Modes
*Phase 3 Ped Imp Proj Downtown	0					0008 Measure V Alternative Modes
*Phase 4 Ped Imp Proj Downtown	0	408,974				0008 Measure V Alternative Modes
<b>Measure V 20% Alternative Modes (0008) Totals</b>	<b>391,796</b>	<b>408,974</b>	<b>0</b>		<b>0</b>	
<b>Measure V Regional Funds (0010)</b>						
*Bellevue Road Realignment	2,150,000	5,542,000				0010 Measure V Regional Funds
*Buhach Widening	200,000					0010 Measure V Regional Funds
<b>Measure V Regional Funds (0010) Totals</b>	<b>2,350,000</b>	<b>5,542,000</b>	<b>0</b>		<b>0</b>	

## Capital Improvement Program

Description						Funding Source
	2025/26	2026/27	2027/28	2028/29	2029/30	
<b>ARPA-American Rescue Plan Act (1010)</b>						
Police Dept Remodel/Rehab	0					1010 American Rescue Plan Act of 2021
City Bldg - Civic Center #2	0					1010 American Rescue Plan Act of 2021
*Osborn Park Renovation	0					1010 American Rescue Plan Act of 2021
*Fruitland Ave Phase 3	0					1010 American Rescue Plan Act of 2021
<b>ARPA-American Rescue Plan Act (1010) Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>0</b>	
<b>Local Transportation Fund (1013)</b>						
*Fruitland Avenue Road Improvements	0					1013 LTF Fund
*Olive Avenue Overlay	230,370					1013 LTF Fund
<b>Local Transportation Fund (1013) Totals</b>	<b>230,370</b>	<b>0</b>	<b>0</b>		<b>0</b>	
<b>Traffic Circulation Fund (1015)</b>						
*Traffic Signal at Juniper Ave & Bridgewater St.	184,000					1015 Traffic Circulation Fund
<b>Traffic Circulation Fund (1015) Totals</b>	<b>184,000</b>					
<b>Regional Surface Transportation Program-RSTP (1017)</b>						
*Olive Avenue Overlay	200,000					1017 RSTP Fund
*Ace Train Platform	0				219,663	1017 RSTP Fund
<b>Regional Surface Transportation Prog-RSTP (1017) Totals</b>	<b>200,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>219,663</b>	

## Capital Improvement Program

Description						Funding Source
	2025/26	2026/27	2027/28	2028/29	2029/30	
<b>SB1-Road Maintenance &amp; Rehab RMRA (1018)</b>						
Curb, Gutter, and Sidewalk Maintenance, Repair and Replacement	200,000					1018 SB1 Fund
Pavement Markings and Signage Maintenance	160,000					1018 SB1 Fund
Traffic Signals Maintenance and Repairs	20,000					1018 SB1 Fund
Pavement Repairs	192,583					1018 SB1 Fund
*Olive Avenue Overlay	100,000					1018 SB1 Fund
<b>SB1-Road Maintenance &amp; Rehab RMRA (1018) Totals</b>	<b>672,583</b>	<b>0</b>	<b>0</b>		<b>0</b>	
<b>Parks &amp; Recreation (1020)</b>						
*Osborn Park Renovation	400,000	200,000				2018 Parks Bond Act, Per Capita Grant Program
<b>Parks &amp; Recreation (1020) Totals</b>	<b>400,000</b>	<b>200,000</b>	<b>0</b>		<b>0</b>	
<b>Water Capital (6001)</b>						
Hydrant Replacement	0					6001 Water Capital Fund
*Well #20A Rehab	0					6001 Water Capital Fund
Installation-New Water Meters	0					6001 Water Capital Fund
*Property Acq.-Future Well Site		100,000				6001 Water Capital Fund
*Canal Creek Utility Crossing	250,000					6001 Water Capital Fund
<b>Water Capital (6001) Totals</b>	<b>250,000</b>	<b>100,000</b>	<b>0</b>		<b>0</b>	
<b>1,2,3-TCP Fund (6007)</b>						
*Well #20A Rehab	0					6007 TCP Fund
<b>1,2,3-TCP Fund (6007) Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>0</b>	

## Capital Improvement Program

Description						Funding Source
	2025/26	2026/27	2027/28	2028/29	2029/30	
<b>Sewer (6010)</b>						
*Canal Creek Utility Crossing	250,000					6010 Sewer Fund
*Castle Sewer Interceptor	1,950,000					6010 Sewer Fund
*Lower Shaffer Storm Drain Imp	6,000,000					6010 Sewer Fund
*Atwater Blvd Drainage Improvements	0				4,000,000	6010 Sewer Fund
*Eucaluptus and First St Drainage Improvements	0					6010 Sewer Fund
<b>Sewer (6010) Totals</b>	<b>8,200,000</b>	<b>0</b>	<b>0</b>		<b>4,000,000</b>	
<b>Capital Improvement Projects Total</b>	<b>15,130,875</b>	<b>9,407,595</b>	<b>0</b>		<b>4,219,663</b>	

\* Major public works projects such as land, buildings, and public infrastructure. Must conform with the City's General Plan.





## **PLANNING COMMISSION AGENDA REPORT**

### **PLANNING COMMISSION**

Donald Borgwardt      Jagandeep Mokha

Harold Kadach      Shawn Conour

Mayra Sanchez-Garcia

**MEETING DATE: May 21, 2025**

**TO: Chair and Commissioners**

**FROM: Scott Ruffalo, Planning Technician**

**SUBJECT: Public Hearing to consider adopting a resolution making an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.**

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### **RECOMMENDED COMMISSION ACTION:**

It is recommended that Planning Commission:

1. Open the public hearing and receive any testimony from the public;
2. Close the public hearing;
3. Make an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.

### **I. BACKGROUND:**

In 2017, the City Council approved a Development Agreement (DA) by and between the City of Atwater and the Ferrari Ranch Owners. The DA enabled the owners to move forward with applying for development applications and required certain infrastructure to be installed.

In 2022, the City was designated \$3 million in federal funds to improve access to clean drinking water, sanitation services, and water management. The specific area designated was for water, sewer, and storm water infrastructure from Buhach Road to Gurr Road, along Green Sands Avenue. As this area is adjacent to Ferrari Ranch, an amendment to the DA is necessary to clarify the responsible parties of developing such infrastructure.

**II. ANALYSIS:**

Ferrari Ranch is poised for future development, having already been annexed and planned out. Infrastructure is a major component of this future development. The proposed amended DA clarifies that once the federal funding is used for infrastructure, the developer is responsible for their portion.

The proposed amended DA removes certain language related to terms that applied prior to annexation. Since the area has been annexed, that language has become obsolete. There were also minor clerical corrections in the proposed amended DA.

**III. FISCAL IMPACTS:**

No negative fiscal impacts are anticipated with the approval of this project. This item has been reviewed by the Finance Department.

**IV. LEGAL REVIEW:**

This item has been reviewed by the City Attorney.

**V. INTERDEPARTMENTAL COORDINATION:**

An interdepartmental routing sheet was sent to all required departments and affected agencies for review, and their comments and conditions have been incorporated.

**VI. PUBLIC PARTICIPATION:**

The public notice was adequately noticed and advertised. The public will have an opportunity to provide comments on this item prior to Commission action.

**VII. ENVIRONMENTAL REVIEW:**

Pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

**VIII. STEPS FOLLOWING APPROVAL:**

Upon recommendation to move forward, staff will prepare an ordinance to be reviewed by City Council.

Prepared by: Scott Ruffalo, Planning Technician

Submitted by: Chris Hoem, City Manager

**Attachments:**

1. Resolution No. 0269-25
2. Draft Ordinance
3. Development Agreement



## PLANNING COMMISSION OF THE CITY OF ATWATER

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### RESOLUTION NO. 0269-25

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ATWATER MAKING AN ENVIRONMENTAL FINDING THAT THE PROJECT IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) BECAUSE THE PREVIOUS ENVIRONMENTAL IMPACT REPORT (EIR) SUFFICES, AND RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ATWATER AND THE FERRARI RANCH OWNERS, TO CLARIFY THE RESPONSIBLE PARTIES FOR THE CONSTRUCTION OF WATER, SEWER, AND STORM WATER INFRASTRUCTURE FOR THE DEVELOPMENT LOCATED AT APNS: 005-120-045 & 005-120-046.**

**WHEREAS**, at a duly noticed public hearing held on May 21, 2025, the Planning Commission of the City of Atwater reviewed an amendment to the Development Agreement No. 034-17; and,

**WHEREAS**, the proposed amendment to the Development Agreement No. 05-07-0100 would not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have any adverse effect on the community; and,

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred; and,

**WHEREAS**, the Planning Commission finds that the following findings can be made for Resolution No. 0269-25 amendment to the Development Agreement No. 034-17, in accordance with Atwater Municipal Code Section 17.44:

1. The proposed Development Agreement Amendment No. 25-07-0100 is consistent with the Atwater General Plan.
2. Pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final

Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

3. The City and the Owner previously entered into a development agreement (the “**Original Development Agreement**”) for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981.
4. The City has since been awarded federal funds to install water and sewer infrastructure, eliminating portions of the developer’s obligation to construct these facilities at its own expense.
5. The City and the Owner now agree to wholly replace the Original Development Agreement dated May 22, 2017, with this Agreement, to reflect these changes and remove certain obligations that are now obsolete.
6. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.
7. The public hearing for this project has been adequately noticed and advertised.

**NOW THEREFORE BE IT RESOLVED**, that the recitals above are true and correct and hereby incorporated by reference. The Planning Commission of the City of Atwater does hereby recommend that the City Council adopt the Development Agreement Amendment No. 25-07-0100.

The foregoing resolution is hereby adopted this 21st day of May, 2025.

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
**DON BORGWARDT**  
**CHAIR**

**ATTEST:**

\_\_\_\_\_  
**CHRIS HOEM,**  
**CITY MANAGER**



## CITY COUNCIL OF THE CITY OF ATWATER

### ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ATWATER AND THE FERRARI RANCH OWNERS, TO CLARIFY THE RESPONSIBLE PARTIES FOR THE CONSTRUCTION OF WATER, SEWER, AND STORM WATER INFRASTRUCTURE FOR THE DEVELOPMENT LOCATED AT APNS: 005-120-045 & 005-120-046.**

**WHEREAS**, the City of Atwater wishes to amend Development Agreement No. 034-17.; and,

**WHEREAS**, the City and the Owner previously entered into a development agreement (the "Original Development Agreement") for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981; and,

**WHEREAS**, on May 21, 2025, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning this proposed Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

**WHEREAS**, this project is exempt pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.; and,

**WHEREAS**, the proposed amendment to the Development Agreement No. 034-17 would not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have any adverse effect on the community; and,

**WHEREAS**, the City Council finds that the following findings can be made for the amendment to Development Agreement No. 034-17, in accordance with Atwater Municipal Code Section 17.44:

1. The proposed Development Agreement Amendment No. 25-07-0100 is consistent with the Atwater General Plan.
2. Pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.
3. The City and the Owner previously entered into a development agreement (the "Original Development Agreement") for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981.
4. The City has since been awarded federal funds to install water and sewer infrastructure, eliminating portions of the developer's obligation to construct these facilities at its own expense.
5. The City and the Owner now agree to wholly replace the Original Development Agreement dated May 22, 2017, with this Agreement, to reflect these changes and remove certain obligations that are now obsolete.
6. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

The public hearing for this project has been adequately noticed and advertised.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Atwater as follows:

**SECTION 1. Incorporation.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. CEQA.** This project is exempt pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

**SECTION 3. General Plan.** The City Council hereby finds that the adoption of the Ordinance is consistent with the General Plan.

**SECTION 4. Effective Date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California

Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

**SECTION 5. Publication.** The City Clerk is directed to certify to the adoption of this Ordinance and post or publish this Ordinance as required by law.

**SECTION 6. Custodian of Records.** The custodian of records for this Ordinance is the City Clerk and the records comprising the administrative record are located at 1160 Fifth St, Atwater, CA 95301.

**SECTION 7. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

**INTRODUCED:**

**ADOPTED:**

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

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**MIKE NELSON,  
MAYOR**

**ATTEST:**

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**KORY J. BILLINGS,  
CITY CLERK**





**COMMUNITY DEVELOPMENT  
AND RESOURCES  
COMMISSION  
OF THE  
CITY OF ATWATER**

**RESOLUTION NO. 034-17**

**A RESOLUTION OF THE COMMUNITY  
DEVELOPMENT AND RESOURCES  
COMMISSION OF THE CITY OF ATWATER  
RECOMMENDING ADOPTION OF ORDINANCE  
CS 981 FOR THE FERRARI RANCH  
DEVELOPMENT AGREEMENT**

**WHEREAS**, Government Code Section 65864 et seq. permits the City of Atwater to contract with private interests for their mutual benefits in a manner not otherwise available to the contracting parties, and such agreements assure property developers that they may proceed with their projects with the assurance that approvals granted by the City of Atwater will not change during the period of development, and the City of Atwater is equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available at the time development projects are proposed are constructed; and,

**WHEREAS**, the applicant proposes to enter into a Development Agreement for development of a retail/commercial/medical/recreational project within the 159.5-acre Ferrari Ranch property (Assessor Parcel Numbers 005-120-045 and 005-120-046), consistent with the General Plan, as amended, the Housing Element as it has been adopted by the City Council on July 18, 2016, and rezoning; and,

**WHEREAS**, pursuant to the California Environmental Quality Act, the Community Development and Resources Commission adopted Resolution No. 027-17 on \_\_\_\_\_ which found that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 20141011045, incorporated herein by reference; and,

**WHEREAS**, through adoption of Resolution No. 028-17 on \_\_\_\_\_ the Community Development and Resources Commission recommended approval of a General Plan Amendment (GPA 17-01), amending the land use designation for Ferrari Ranch to Business Park; and,

**Community Development and Resources Commission Resolution No. 034-17**

**Page 2**

**WHEREAS**, through adoption of Resolution No. 029-17 on \_\_\_\_\_ the Community Development and Resources Commission recommended adoption of Ordinance CS 980 rezoning Ferrari Ranch as Planned Development (PD) with a Business Park Overlay (Z 17-01); and,

**WHEREAS**, through adoption of Resolution No. 030-17 on \_\_\_\_\_ the Community Development and Resources Commission recommended approval of the initiation of annexation proceedings for a 358.79-acre "Annexation Area" which includes the 159.50-acre Ferrari Ranch Site (ANX 17-01); and,

**WHEREAS**, through adoption of Resolution No. 031-17 on \_\_\_\_\_ the Community Development and Resources Commission recommended approval of the disestablishment of Ferrari Ranch from Merced County Agricultural Preserve; and,

**WHEREAS**, through adoption of Resolution No. 032-17 on \_\_\_\_\_ the Community Development and Resources Commission of the City of Atwater recommended approval of a Planned Development Master Plan (PD 17-01) as submitted by the applicant, for Ferrari Ranch; and,

**WHEREAS**, subject to the mitigation measures and conditions of approval in the Planned Development Master Plan and the Vesting Tentative Map, the use is in conformance with the codes and standards of the City of Atwater;

**NOW THEREFORE BE IT RESOLVED**, that the Community Development and Resources Commission recommends that the City Council find the Development Agreement conforms to the California Government Code section 65864 et seq. (the "Development Agreement Statute").

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Community Development and Resources Commission of the City of Atwater hereby recommends that the City Council approve the Ordinance Adopting the Development Agreement, attached hereto as [Attachment A](#), to which the Ferrari Ranch Development Agreement is incorporated by reference;

The foregoing resolution was introduced at a regular meeting of the Community Development and Resources Commission of the City of Atwater held on the \_\_\_\_ day of \_\_\_\_\_, by City Commissioner \_\_\_\_\_, who moved its adoption, which motion was duly seconded by City Commissioner \_\_\_\_\_, and Resolution No. 034-17 was adopted by the following vote:

AYES:	XXXX
NOES:	XXXX
ABSENT:	XXXX

APPROVED:

ATTEST:

\_\_\_\_\_

**Attachment:**

Attachment A      Ordinance CS 981 Adopting the Ferrari Ranch Development Agreement (including the Ferrari Ranch Development Agreement)



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**FERRARI RANCH DEVELOPMENT  
AGREEMENT RESOLUTION  
ATTACHMENT A**

DEVELOPMENT AGREEMENT ORDINANCE

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# **ORDINANCE CS 981**

## **AN ORDINANCE OF THE CITY OF ATWATER AUTHORIZING THE CITY OF ATWATER TO EXECUTE A DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY RELATIVE TO THE DEVELOPMENT KNOWN AS FERRARI RANCH**

IT IS HEREBY ORDAINED by the City Council of the City of Atwater as follows:

Section 1.

A. The City Council has considered and certified the Ferrari Project Final Program Environmental Impact Report for the development project, and finds that there is no evidence which would require the preparation of a new or updated environmental document pursuant to the California Environmental Quality Act.

B. The Ferrari Ranch project is in compliance with the General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 2. The City Council finds that the draft Development Agreement, attached hereto as [Exhibit A](#) and incorporated by reference herein, is consistent with the City of Atwater General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 3. The City Manager hereby certifies that the developer/applicant has deposited with the City a sum equal to the estimated costs associated with the processing of the Development Agreement.

Section 4. Upon the passage of this Ordinance, the City is authorized to execute the Development Agreement on behalf of the City. Within ten (10) days of the execution, but no earlier than 30 days after passage of this Ordinance, the City Clerk shall cause the Development Agreement to be recorded in the Office of the County Recorder as provided for by Government Code §65868.5. The Development Agreement shall not take effect for thirty (30) days following passage and adoption of this Ordinance and shall not become operative until the completion of annexation proceedings.

Introduced by Council Member \_\_\_\_\_ seconded by Council Member \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2017.

Passed on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Mayor-City of Atwater

ATTEST:

\_\_\_\_\_  
City Clerk-City of Atwater



**RECORDING REQUESTED BY:**  
**CITY OF ATWATER**

When Recorded Mail To:  
City Clerk  
City of Atwater  
750 Bellevue Road  
Atwater, CA 95301

*Fee Waived per Govt. Code section 27383*

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Space above this line for Recorder's use

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF ATWATER**

**AND**

**THE FERRARI RANCH OWNERS**

**RELATING TO THE**

**FERRARI RANCH PROJECT**

\_\_\_\_\_, 2017

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF ATWATER  
AND FERRARI RANCH LLC  
RELATING TO THE FERRARI RANCH PROJECT**

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2017, by and between the City of Atwater, a municipal corporation ("**City**"), and (a) John P. Ferrari and Jeani Ferrari as Co-Trustees of the Second Restatement dated April 8, 1994 of the John P. Ferrari and Jeani Ferrari Family Trust Dated June 24, 1982, as first restated July 25, 1990 and (b) Maggie Hooks as Trustee of the Justin Ferrari Family Trust dated May 24, 2012 ((a) and (b) together, "**Owner**") pursuant to the authority of California Government Code Section 65864 et seq. (City and Owner each are also referred to individually as a "**Party**" and together as the "**Parties**.")

**RECITALS**

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted California Government Code section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City has not adopted local regulations or procedures for consideration of development agreements, but instead relies on and follows the Development Agreement Statute and the Atwater Municipal Code as applicable.

B. Owner is the legal owner of that certain approximately 171-5-acre real property located in unincorporated Merced County, California commonly known as Ferrari Ranch and identified as Assessor Parcel Nos. 005-120-045 and 005-120-046, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. Owner proposes that City authorize use and development of the Property consisting of up to 1,574,990 square feet of commercial uses on 102.5 acres, a medical complex with up to 666,100 square feet of hospital and medical office space on 30.1 acres, a storm water detention area on 6.5 acres, and associated infrastructure to serve the Property and the immediate vicinity, with 20.4 acres set aside for a potential regional sports center, all as further described in the Ferrari Ranch Planned Development Master Plan described below (the "**Project**").

D. The Property is part of a larger area of unincorporated land adjacent to the City of Atwater, as shown on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Annexation Area**"). The Annexation Area consists of the Property plus an additional approximately 199.3 acres also designated for development but not subject to this Development Agreement.

E. City and Owner's representative entered into a reimbursement agreement dated March 11, 2013, which set forth terms and conditions upon which City would be reimbursed for

processing Owner's applications for various discretionary approvals, but without committing City to approve any such applications (the "**Processing Agreement**").

F. On \_\_\_\_\_, 2017, the Atwater City Council held a duly noticed public hearing and took the following actions requested by Owner (collectively, the "**Initial Approvals**", and together with approval of this Agreement, the "**Project Approvals**");

(1) **Environmental Impact Report.** Adopted Resolution No. \_\_\_\_\_ (a) certifying the Ferrari Project Final Program Environmental Impact Report (SCH No. 2014101045) (the "**EIR**") as adequate under the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*, hereinafter "**CEQA**") to consider approval of the other Initial Approvals and this Agreement, (b) adopting mitigation measures and a mitigation monitoring and reporting program ("**Mitigation Program**") in connection therewith to be applied to development of the Property and the overall Annexation Area, and (c) adopting findings as required by CEQA supporting certification of the EIR and approval of the Initial Approvals and this Agreement;

(2) **General Plan Amendment.** Adopted Resolution No. \_\_\_\_\_ amending the City of Atwater General Plan (the "**General Plan**") to allow the uses proposed by Owner on the Property and the overall Annexation Area (the "**General Plan Amendment**");

(3) **Prezoning.** Adopted Ordinance No. \_\_\_\_\_ rezoning the Property and the overall Annexation Area to allow the uses proposed by Owner, conditioned and effective upon annexation of the Annexation Area to the City (the "**Prezoning**");

(4) **Agricultural Designation Removal.** Adopted Resolution No. \_\_\_\_\_ removing the "Agricultural Preserve" designation applied by Merced County from the Annexation Area, conditioned and effective upon annexation of the Annexation Area to the City;

(5) **Master Plan.** Adopted Resolution No. \_\_\_\_\_ approving The Ferrari Ranch Planned Development Master Plan designating specified uses and criteria to be applied to the Property to allow development of the Project (the "**Ferrari Ranch Planned Development Master Plan**" or "**Master Plan**");

(6) **Vesting Tentative Map.** Adopted Resolution No. \_\_\_\_\_ approving Vesting Tentative Map No. \_\_\_\_\_ subdividing the Property into parcels for development of the Project (the "**Ferrari Ranch Vesting Tentative Map**" or "**Tentative Map**"); and

(7) **Annexation.** Adopted Resolution No. \_\_\_\_\_ authorizing submission of an application to the Merced County Local Agency Formation Commission ("**LAFCO**") requesting approval to annex the Annexation Area to the City of Atwater (the "**Annexation**").

G. On \_\_\_\_\_, 2017 (the “**Approval Date**”), the Atwater City Council held a duly noticed public hearing, considered the certified EIR as it applied to this Agreement, and adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing its execution (the “**Approving Ordinance**”). As part of the Approving Ordinance, the City Council has made the findings required by the Atwater Municipal Code and the Development Agreement Statute with respect to this Agreement. As required by Government Code section 65867.5, the City Council has found that, among other attributes, this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and it has been reviewed and evaluated in accordance with the Development Agreement Statute. As required by Government Code section 65865.5, the City Council has adopted findings and imposed conditions on this Agreement that will provide the required flood protection for the Property.

H. The Parties acknowledge that pursuant to Government Code section 65865(b), this Agreement shall not become operative unless the Property is annexed to the City on or before December 31, 2017 (the “**Annexation Deadline**”), and that this Agreement shall be null and void if annexation proceedings annexing the Property to the City are not completed by that date unless City in its discretion agrees to extend the Annexation Deadline. To avoid uncertainty, the Parties acknowledge that the action which must occur to complete annexation by the Annexation Deadline is issuance of the Certificate of Completion by LAFCO, and the date of such issuance shall be the “**Operative Date**”.

I. City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and the Property and imposes appropriate standards and requirements with respect to development of the Property as to maintain and improve the overall quality of life and of the environment within and around City. As part of the process of approving the Project and the Project Approvals, the City has in accordance with CEQA undertaken the required analyses of potential environmental effects that could be caused by the Project, and City as part of the Project Approvals has imposed mitigation measures to address anticipated adverse effects.

J. Development of the Property is subject to other future discretionary and non-discretionary City approvals and permits (collectively, the “**Subsequent Approvals**”) including but not limited to additional subdivision maps and site development review approvals, which if granted by City in accordance with this Agreement shall automatically become part of the Project Approvals for purposes of this Agreement.

K. By entering into this Agreement, in exchange for the benefits it will provide Owner as described herein, City will recognize substantial benefits, including but not limited to the following:

- (1) Ensure the productive use of property and foster orderly growth and quality development in City;
- (2) Ensure that development will proceed in accordance with the goals and policies set forth in the General Plan and will implement City's stated General Plan policies;

- (3) Receive substantially increased property tax revenues;
- (4) Benefit from increased employment opportunities for residents that are created by the Project and from continued diversification of City's economic base;
- (5) Benefit from availability of high-quality medical services and sports recreation facilities to be developed in the Project for City's residents;
- (6) Enhance the image, appearance and identity of City and its primary gateway;
- (7) Ensure coordination and consistency in subsequent construction on the Property, in terms of land use, architecture, landscaping, site engineering and design, infrastructure and other elements of development;
- (8) Ensure construction of required public facilities, improvements and services as and when expected; and
- (9) Induce Owner to incur substantial financial and other commitments to provide public infrastructure and amenities by giving Owner the certainty and predictability in the development process provided by this Agreement.

L. By entering into this Agreement, in exchange for providing the benefits to City described herein, Owner will obtain sufficient certainty and predictability in the development process to justify the substantial investments required to plan and develop a Project that will take many years to fully construct, and will be able to proceed with development of the Project in accordance with the Applicable Law (as defined herein) and the Project Approvals, subject to the terms, conditions and exceptions contained herein. This Agreement will promote and encourage development of the Project by providing Owner and any future owners and lenders a greater degree of certainty of the ability to expeditiously and economically complete the development effort.

M. City and Owner have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project subject to conditions set forth herein. This Agreement is intended to be and should be construed as a development agreement within the meaning of the Development Agreement Statute. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute. The consideration to be received by City and the rights secured to Owner pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of City and Owner herein.

N. City, by electing to enter into this Agreement, acknowledges that the obligations of City herein shall survive beyond the term or terms of the present City Council members and that such action will serve to bind City and future City Councils to the obligations undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental

powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both City and its City Council and have been found to be fair, just and reasonable, and City has concluded that the pursuit of the Project will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation.

## **AGREEMENT**

NOW, THEREFORE, with reference to the Recitals above, and in consideration of the mutual promises, obligations and covenants herein contained and other considerations, the value and adequacy of which are hereby acknowledged, City and Owner agree as follows:

**1. Definition of Terms.** The following capitalized terms are defined where indicated below, which shall apply when the capitalized terms are used in this Agreement:

**Administrative Agreement Amendment:** See Section 9.1.4.

**Administrative Project Amendment:** See Section 9.2.1.

**Agreement:** See Introductory paragraph.

**Annexation Deadline:** see Recital H.

**Annexation:** See Recital F.

**Annexation Area:** See Recital D.

**Applicable Law:** See Section 5.1.

**Approval Date:** See Recital G.

**Approving Ordinance:** See Recital G.

**Benefitted Properties:** See Section 7.2.1.

**Benefitting Approvals:** See Section 7.2.2.

**Benefitting Improvements:** See Section 7.2.2 and **Exhibit C**.

**Benefitting Labor Costs:** See Section 7.2.2.

**CEQA:** See Recital F.

**City:** See Introductory paragraph.

**Construction Codes:** See Section 5.4.1.

**Cure Period:** See Section 11.1.

**Development Agreement:** See Introductory Paragraph.

**Development Agreement Statute:** See Recital A.

**Development Fees:** See Section 5.3.1.

**Development Restrictions:** See Section 5.7.

**Director:** See Section 9.1.4.

**Effective Date:** See Section 4.1.

**EIR:** See Recital F.

**Enforced Delay:** See Section 15.9.

**Enhanced Infrastructure Financing District or EIF:** See Section 7.1.1.

**Event of Default:** See Section 11.1.

**Ferrari Ranch Planned Development Master Plan:** See Recital F.

**Ferrari Ranch Vesting Tentative Map:** See Recital F.

**Financing Mechanism:** See Section 7.1.1.

**General Plan:** See Recital F.

**General Plan Amendment:** See Recital F.

**Initial Approvals:** See Recital F.

**LAFCO:** See Recital F.

**Local Traffic Improvements:** See Section 7.2.5.

**Master Plan:** See Recital F.

**Mitigation Program:** See Recital F.

**Mortgage:** See Section 13.1.

**Mortgagee:** See Section 13.1.

**New Rules:** See Section 5.5.1.

**Notice of Default:** See Section 11.1.

**Notice of Intent to Terminate:** See Section 12.2.

**Notice of Non-Compliance:** See Section 10.4.

**Notice of Termination:** See Section 12.2.

**Offsite Land:** See Section 5.12.

**Operative Date:** See Recital H.

**Owner:** See Introductory paragraph.

**Party and Parties:** See Introductory paragraph.

**PDMP:** See Recital F.

**Portion:** See Section 9.1.3.

**Prezoning:** See Recital F.

**Processing Agreement:** See Recital E.

**Processing Fees:** See Section 5.3.2.

**Project:** See Recital C.

**Project Approvals:** See Recital F.

**Project-Related Infrastructure:** See Section 8.1.

**Property:** See Recital B.

**Regional Traffic Improvements:** See Section 7.2.5.

**Regional Transportation Impact Fee or RTIF:** See Section 5.3.1.

**Reimbursable Expenses:** See Section 7.2.2.

**Release from Obligations:** See Section 12.3.



**Sewer Facilities:** See Section 8.1.

**Storm Drainage Facilities:** See Section 8.1.

**Subsequent Approvals:** See Recital J.

**Tentative Map:** See Recital F.

**Term:** See Section 5.2.1.

**Transportation Facilities:** See Section 8.1.

**Transportation Improvement Plan or TIP:** See Section 7.2.5 and **Exhibit D**.

**Water Facilities:** See Section 8.1.

**2. Property and Owner.**

2.1. Property. The Property which is the subject of this Development Agreement is described in Recital B.

2.2. Interest of Owner. Owner has a legal or equitable interest in the Property in that it owns the Property in fee simple. Accordingly, this Agreement once executed and effective shall be fully binding and enforceable by the Parties.

**3. Relationship of City and Owner.**

This Agreement has been negotiated and voluntarily entered into by City and Owner. Owner is not an agent of City, and City is not an agent of Owner. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.

**4. Effective Date and Term.**

4.1 Effective Date. The effective date of this Agreement (“**Effective Date**”) shall be \_\_\_\_\_, 2017, which is thirty (30) days after the Approval Date as defined in Recital G. Said date shall function as the Effective Date for purposes of this Agreement even if annexation making this Agreement operative as described in Recital H occurs later.

4.2 Term of Agreement.

The following provisions were established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of

the Project. City finds that such time and provisions are reasonably necessary to assure City of realization of the public benefits of the Project.

4.2.1 Term. The term of this Development Agreement (the “**Term**”) shall commence on the Effective Date and shall continue for twenty (20) years from the Effective Date, unless otherwise modified, extended or terminated as provided in this Agreement.

4.2.2 Tolling of Term. The Term shall not begin or continue to run during any time that there is litigation or other action challenging this Agreement or any other Project Approval, or challenging or preventing Owner’s efforts to implement the Project, or challenging or preventing City or any service provider from taking the actions necessary to develop or occupy the Project, including associated environmental analyses and determinations. The Term shall be extended for the period of time from the date such litigation or other action is commenced until its final conclusion so as to eliminate the challenge or remove the obstacle. By way of illustration but not limitation, in the case of litigation the tolling and extension period shall start upon filing of such litigation and continue until its dismissal or final entry of judgment. Filing of litigation shall not delay or stop the development, construction or occupancy of the Project or processing and approval of any Subsequent Approval unless enjoined by a court of competent jurisdiction, and City shall not stipulate to the issuance of any such order.

4.3 Term of Project Approvals. Pursuant to the Subdivision Map Act (Government Code section 66410 *et seq.*), and in particular, Government Code section 66452.6(a), the term of any tentative or vesting tentative map, parcel map or vesting parcel map, and subdivision improvement agreement for the Property or any Portion thereof, shall be the longer of (i) the Term of this Agreement (as it may be extended) or (ii) the term of such map otherwise allowed under the Subdivision Map Act and the Municipal Code (as may be extended by changes to such laws during the life of the map). Pursuant to Government Code section 65863.9, the term of any use permit or other entitlement for development for the Property or any Portion thereof shall be the longer of (i) the Term of this Agreement (as it may be extended), (ii) the term of such permit or entitlement, or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or entitlement.

## **5. Vested Rights/Use of the Property/Applicable Law/Processing.**

5.1 Right to Develop. Owner shall have the vested right to develop the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the General Plan, the Atwater Municipal Code, and the Master Plan, shall be those that are in force and effect on the Approval Date (collectively, the “**Applicable Law**”). In exercising its discretion when acting upon Subsequent Approvals,

City shall apply the Applicable Law as the controlling body of law. Notwithstanding the foregoing, Owner in its sole discretion may elect to comply with or receive the benefits of changes in Applicable Law by providing written notice to City of said election. Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of the Vesting Map or any other vesting tentative tract map or vesting tentative parcel map for the Project.

5.2 Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in the Project Approvals and this Agreement.

5.3 Applicable Fees, Exactions and Dedications.

5.3.1 Development Impact Fees. City may levy those fees, charges, exactions and dedication requirements relative to development of the Property which are in force and effect as of the Approval Date (collectively, the “**Development Fees**”). Unless otherwise set forth in this Agreement, no increase in the amount of Development Fees and no new Development Fees shall be imposed. Notwithstanding the above:

(a) Adjustments to the Regional Transportation Impact Fee (“**RTIF**”) may be allowed if and when adopted by the City Council or if already specified or authorized in applicable City codes and regulations, so long as the fee as adjusted is applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance. If City elects to withdraw from the RTIF program and adopt a new local transportation impact fee, the amount of such fee equal to the “return to source” funds the City then was receiving from the RTIF may be levied on future applications for the Project from the time the new fee takes effect, and the entirety of such new City fee may be imposed starting in year eleven (11) of the Term.

(b) No increase to any other Development Fee shall be allowed during the first ten (10) years of the Term, even if already specified or authorized in applicable City codes and regulations; provided, City may adjust the amount of its different Development Fees from time to time so long as the total of all City Development Fees does not exceed the total in effect as of the Approval Date (e.g., reducing one fee and increasing another fee by the same amount). Beginning in year eleven (11) of the Term, new increases to Development Fees and any new Development Fees adopted since the Approval Date may be applied from time to time during the remainder of the Term so long as the fees as adjusted are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

(c) This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

(d) Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.3.2 Processing Fees. City may levy those fees and charges adopted for the purpose of defraying City's actual costs incurred for the processing and administration of the Subsequent Approvals and any form of regulatory permit, license, land use entitlement, financing district or mechanism, or other approval related to development, use or occupancy of the Property, or to defray the costs of periodically updating City's plans, policies and procedures, including without limitation the fees and charges referred to in Government Code section 66014 (collectively, the "**Processing Fees**") which are in force and effect as of the Approval Date, so long as and to the extent that such fees are applied uniformly to all similar development on a City-wide basis. City may levy new or increased Processing Fees adopted after the Approval Date so long as (a) such fees are applied uniformly to all similar development on a City-wide basis, (b) the application of such fees is prospective, and (c) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development of the Project in accordance with this Agreement. By so agreeing, Owner does not waive its rights to challenge the legality or amount of any such new or increased Processing Fee. To avoid uncertainty, the Parties agree that if not terminated earlier the Reimbursement Agreement shall expire as of the Operative Date, and thereafter the Processing Fees shall apply as to any applications and permits for the Project.

#### 5.4 Construction Codes.

5.4.1 Uniform Codes Applicable. Notwithstanding the provisions of Section 5.1 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the "**Construction Codes**"), the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.4.2 Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of

execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

## 5.5 New Rules and Regulations.

5.5.1 During the term of this Agreement, City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the Approval Date (“**New Rules**”), so long as the New Rules are applied uniformly to similar development on a City-wide basis; provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project or conflict with any of the vested rights granted by this Agreement, the Applicable Law, or the Project Approvals. In addition to any other conflicts that may occur, each of the following New Rules shall be deemed to conflict and may not be applied if it would:

(a) Cause or impose a substantial financial burden on, or materially delay development of the Property as otherwise contemplated by this Agreement or the Project Approvals;

(b) Frustrate in a more than insignificant way the intent or purpose of the Project Approvals or preclude compliance therewith including, without limitation, by preventing or imposing limits or controls in the rate, timing, phasing or sequencing of development of the Project;

(c) Prevent or limit the processing or procuring of Subsequent Approvals;

(d) Reduce the density or intensity of use of the Property as a whole, or otherwise require any reduction in the square footage of, or total number of, proposed improvements;

(e) Restrict the types of uses permitted, in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement and the Master Plan; and/or

(f) If any of such ordinances, resolutions, rules, regulations or official policies do not have general (City-wide) applicability.

5.5.2 Notwithstanding Section 5.5.1, City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statute;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

5.6 Flood Protection. In conjunction with filing the initial application for a detailed development plan approval pursuant to Section 17.44.110 of the Atwater Municipal Code, Owner shall prepare and submit a detailed flood study confirming that areas subject to flooding within the Project outside of the Canal Creek channel itself will meet federal, state and local flood control protection standards as of the Approval Date.

5.7 Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop the Project (collectively, "**Development Restrictions**"), City agrees that such Development Restriction shall not apply to the Project, the Property, this Agreement or the Project Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Development Restriction applies.

5.8 New Taxes and Assessments. No new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied during the first ten (10) years of the Term, even if an increase already is specified or authorized in applicable City codes and regulations. Thereafter, new increases to those taxes, assessments and other charges in force and effect as of the Approval Date may be applied during the remainder of the Term so long as the adjustments are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

5.9 Development of the Project; Phasing; Timing.

5.9.1 No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any

phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.9 affect the term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2 No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

#### 5.10 Processing and City Discretion.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals.

(b) Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

5.12 Eminent Domain. The Parties acknowledge and agree that development of the Project-Related Infrastructure (as defined in Section 8.1) is a critical component of the Project and also will result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its best efforts to acquire any and all such land ("**Offsite Land**"), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. In the event Owner is not successful in acquiring the Offsite Land, City and Owner shall meet and confer to determine: (a) whether the need for the Offsite Land is such that City should consider informally intervening to facilitate said acquisition; (b) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (c) whether it would be appropriate for City to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that City determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 5.12 nor any other provision of this Agreement is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that City determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

## **6. Obligations of City.**

The Parties acknowledge and agree that Owner's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Owner's decision to annex the Property to the City and process siting of the Project in the City, is material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth in this Agreement.

6.1 Processing of Annexation. City shall promptly, in cooperation with Owner, process all documents necessary to achieve annexation of the Annexation Area, and at a minimum annexation of the Property, to the City.



## 6.2 Cooperation in Subsequent Approvals.

6.2.1 Owner's Application for Subsequent Approvals. Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 6.2.1 apply to those approvals that are under City's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). City shall cooperate with Owner in its efforts to obtain such approvals from other agencies and shall at the request of Owner use its best efforts to ensure the timely availability of such approvals.

6.2.2 City's Processing of Subsequent Approvals. City shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that City and Owner mutually determine that additional personnel or outside consultants need to be retained to assist City to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of City. City shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the Master Plan and this Agreement.

## 6.3 Availability of Public Services.

6.3.1 Sewage Capacity. To the extent permitted by law, City shall reserve or provide such capacity for sewage transmission and treatment as may be necessary to serve the Project. Owner will consult and cooperate with City from time to time in determining the anticipated timing, sequence and amount of development in the Project so as to give City sufficient advance notice to ensure that adequate capacity is available when needed, so as to avoid delaying development or occupancy of any portion of the Project.

6.3.2 Water System. To the extent required to ensure adequate domestic and firefighting water capacity and redundancy for the Project, City shall cooperate in connecting the Project's water supply system with the City's. City acknowledges that such connection also benefits City by providing similar redundancy from the Project's water well.

6.3.3 Construction Water. Until the Project's own water supply infrastructure is installed and operating, City agrees to make construction water available to the Project by permitting the Project to connect with the existing City water supply infrastructure at one or more locations Owner may from time to time request, subject to City approval in its reasonable discretion, at Owner's cost and on those terms and conditions and charges customarily applied by City to similar requests consistent with City standards. City also shall permit Owner to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to various portions of the Property for Owner's use in any and all Project grading and construction operations.

6.4 Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, or other causes. Any such renovation or rebuilding shall comply with the terms of this Agreement and shall be subject to CEQA as may be required under applicable law.

7. **Financing Mechanisms and Owner Funding.**

7.1. Assessment Districts or Other Funding Mechanisms. The Parties acknowledge that each of them requires financial assistance to build the infrastructure and improvements required to support the Project and serve the Annexation Area, and that City's assurances to cooperate in arranging such assistance is a material consideration for Owner agreeing to proceed with development of the Project. City also acknowledges that development of the Project will provide material benefits, including but limited to employment opportunities for City's residents and tax revenues to support City operations, constituting consideration for City to enter into this Agreement and to provide the assurances in this Section 7.

(a) City shall cooperate in the formation of, or annexation to, one or more assessment districts, geologic hazard abatement districts, landscaping and lighting districts, community facilities districts, utility authority, lease leasebacks, project-specific tax reimbursement tax-exempt financing mechanisms, or other funding mechanisms related to public safety, traffic, sewer, water, fire, storm water, recreation or other infrastructure or public service needs (collectively, "**Funding Mechanisms**") that include the Property and to the extent permitted by law include other properties within or outside the City, to the extent such Funding Mechanism and its provisions are permitted under applicable law, that Owner requests to help fund infrastructure improvements and to ensure the orderly development of the Project.

(b) City shall diligently and expeditiously process applications by Owner necessary to establish such Funding Mechanisms, as long as (i) the application complies with law, (ii) is consistent with City standards, and (iii) will result in no commitment of City general funds. Notwithstanding the foregoing, while City agrees to cooperate in the process of formation of Funding Mechanisms, the final determination as to City's participation in any Funding Mechanism, including an EIFD as defined below (either by pledging property tax increment or otherwise) or any other financing district shall be made by the City Council in its sole and absolute discretion.. City shall cooperate in good faith with Owner's efforts to obtain the participation of Merced County or other public agencies as needed to establish and implement such Funding Mechanisms. Without limiting the foregoing, among the Financing Mechanisms Owner may request, City acknowledges that Owner initially proposes utilizing one or more Enhanced Infrastructure Financing Districts ("**EIFD**") pursuant to Government Code section 53398.50 et seq. with participation by Merced County to fund infrastructure of regional significance within and outside the City.

(c) City shall diligently seek to sell any bonds to be issued and secured by such Funding Mechanisms upon the best terms reasonably available in the marketplace.

(d) Notwithstanding the foregoing, Owner retains all its rights to oppose the formation or proposed assessments of new Funding Mechanisms, or any new or increased assessment under a Funding Mechanism, or to request or pursue assessment credits or reductions, unless otherwise provided for herein. Notwithstanding any terms to the contrary, nothing contained in this Agreement shall be construed as waiving City's discretion to the extent required under applicable law in deciding whether and in what form to establish a Funding Mechanism, impose and collect assessments, issue and sell bonds, or undertake any other discretionary action related thereto. Any and all costs associated with forming or joining and then implementing Funding Mechanisms under this Section 7.1 shall be shared equally by City (50%) and Owner and other benefitting property owners (50%).

## 7.2. Owner Reimbursement by Benefitting Properties.

7.2.1 Reimbursement Obligation. City acknowledges that Owner has expended and will expend considerable funds for approvals and improvements which may benefit properties within the Annexation Area but outside the Property (collectively, the **"Benefitted Properties"**) by facilitating their development and use. To the extent that the owner of a Benefitted Property either (i) applies for and is approved to develop the Benefitted Property relying on the Benefitting Approvals (as defined below), or (ii) makes use of a Benefitting Improvement (as defined below) to support either the current use on the Benefitted Property or some new development or use on the Benefitted Property, Owner shall be entitled to reimbursement based on a pro rata, fair share apportionment of the Reimbursable Expenses (as defined below), such reimbursement to come directly from the owner of the Benefitted Property unless Owner agrees to reimbursement via a Financing Mechanism. Notwithstanding the foregoing, Owner agrees that residential development will not be required to provide any payment, and the Reimbursable Expenses will be shared by development on the Property and non-residential development on the Benefitted Properties.

7.2.2 Reimbursable Expenses. City agrees that expenditures by Owner for the following items will qualify for fair share reimbursement by the Benefitted Properties pursuant to the terms of this Section 7.2 (collectively, the **"Reimbursable Expenses"**):

(a) Preparation, processing and approval of the EIR, General Plan Amendment, Rezoning, Master Plan, Agricultural Designation Removal, Annexation, and General Plan Housing Element update, including related consultant studies and work (collectively, the **"Benefitting Approvals"**);

(b) Those portions of Project-Related Infrastructure (as defined in Section 8.1) to be built or funded by Owner as part of developing the Project, that either are (i) oversized to accommodate use by the Benefitted Properties or (ii) extend services that as of the Effective Date are not available to the Benefitted Properties, including related consultant studies and work (collectively, the **"Benefitting Improvements"**);

(c) Consultant and legal fees to manage and implement the planning, design, approval and implementation effort, payments to subsidize or reimburse City

approval processing and other expenses, and expenses to determine the appropriate water service entity and other utility service providers (collectively, the “**Benefitting Labor Costs**”)

#### 7.2.3 Reimbursement Procedure.

(a) If Owner seeks reimbursement from time to time under this Section 7.2, City shall negotiate in good faith with Owner to enter into one or more reimbursement agreements with Owner, in which among other things City will (i) identify the improvements qualifying as Benefitting Improvements, (ii) identify the properties qualifying as Benefitted Properties as to each Benefitting Approval or Benefitting Improvement, (iii) determine the Owner costs qualifying as Reimbursable Expenses, (iv) establish the allocation of Reimbursable Expenses to each Benefitted Property, and (v) establish the timing and method of reimbursement to Owner.

(b) City thereafter shall use its best efforts, to the extent permitted under applicable law, (i) to require as a condition to approval of development or use on the Benefitted Property that Owner be reimbursed by the owner of the Benefitted Property at the earliest opportunity, and (ii) to form, consistent with all applicable federal, state, and local laws and regulations (including without limitation Proposition 218), a local benefit district for the purpose of facilitating the reimbursement of Owner, to the extent such reimbursement is not otherwise provided. Owner shall pay all of City's costs associated therewith and shall indemnify and hold City harmless from and against all claims in connection therewith. Notwithstanding the foregoing, Owner agrees that City's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and City shall have no obligation to reimburse Owner.

7.2.4 Reimbursement by Financing Mechanisms. To the extent not reimbursed by the Benefitted Properties, Owner shall be entitled to reimbursement from the Financing Mechanisms for Owner's actual costs to install improvements that are included in the Financing Mechanisms beyond Owner's fair share for such improvements, including but not limited to a share of the costs to plan and design such improvements. The details of such reimbursement shall be included as part of establishing each Financing Mechanism.

#### 7.2.5 Credit Against Traffic Fees.

(a) In return for Owner's obligation to install any of the “City Fee Program” facilities listed in Table 9 of the Transportation Improvement Plan (“**TIP**”), such Table 9 attached hereto as **Exhibit C** (the “**Local Traffic Improvements**”), Owner shall be entitled to credit its costs against City's Traffic Circulation Fee that otherwise would be payable for development of the Project.

(b) In return for Owner's obligation to install any of the “Regional Fee Program” facilities (or portions thereof) listed in Table 9 of the TIP, as shown in **Exhibit C** (the “**Regional Traffic Improvements**”), Owner shall be entitled to credit its costs against the RTIF that otherwise would be payable for development of the Project.

(c) City agrees that credit against City's Traffic Circulation Fee and against the RTIF is justified by the many traffic improvements beyond CEQA-required mitigation measures that Owner will provide, in addition to the substantial employment, tax and other benefits that the Project will provide City, the County and their residents.

## **8. Owner Obligations.**

8.1 **Project-Related Infrastructure.** As part of developing the Project, Owner shall build or cause to be built the following public improvements (collectively, the "**Project-Related Infrastructure**");

(a) The water storage, transmission and distribution facilities shown in Figure 20 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Water Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(b) The sanitary sewer facilities shown in Figure 23 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Sewer Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(c) The storm drainage facilities shown in Figure 26 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Storm Drainage Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them; and

(d) The traffic, roadway and transportation facilities shown in Figures 14 and 15(a) of the Master Plan, in Sheet 2 of the Vesting Map, and in the TIP attached hereto as **Exhibit D** (collectively, the "**Transportation Facilities**"); provided, the TIP shall govern if there is any inconsistency between them.

The precise phasing of each aspect of the Project-Related Infrastructure will be determined at the time of Subsequent Approvals. Notwithstanding the above, Owner may be eligible for reimbursement by the Benefitted Properties, funding or reimbursement by the Financing Mechanisms, and/or credit against Development Fees, to the extent authorized by this Agreement as to qualifying portions of the Project-Related Infrastructure.

## **9. Amendment or Cancellation.**

### **9.1 Amendment of Agreement.**

9.1.1 **Modification Because of Conflict with State or Federal Laws.** If state or federal laws or regulations enacted after the Approval Date or an action of any state or federal agency prevents or precludes compliance with one or more provisions of this Agreement or the Project Approvals or require changes in plans, maps or permits approved by City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state laws or regulations or with the actions of state or federal

agencies in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Any such amendment of this Agreement shall be consented to by Owner and considered by the City Council. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans. During the interim until this Agreement is so amended, or for the remainder of the Term if this Agreement is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.1.2 Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

9.1.3 Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property ("**Portion**") seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement.

9.1.4 Administrative Agreement Amendments. Notwithstanding the provisions of Section 9.1.2, City's Community Development Director or designee ("**Director**") may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) provisions for significant reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Owner as provided in this Agreement ("**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall determine whether a reservation or dedication is "significant", and shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

9.1.5 Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be

deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

9.1.6 Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

9.2 Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

9.2.1 Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 9.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the EIR or mitigated by conditions to any Project Approval, it shall be determined to be an “**Administrative Project Amendment**” and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or access points, changes in pedestrian path alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

9.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 9.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

## **10. Annual Review.**

10.1 Initiation of Review. The annual review date for this Agreement shall be during the thirty (30) days following each anniversary of the Effective Date during the Term. The Director shall initiate the annual review, as required under Government Code section 65865.1, by giving Owner at least thirty (30) days' written notice that the City intends to undertake such review. At least ten (10) days prior to any annual review, City shall deposit in

the mail and transmit by electronic mail to Owner a copy of all staff reports and related exhibits concerning contract performance that City will rely on in its annual review.

10.2 Good Faith Compliance. Owner shall provide evidence to the Director demonstrating Owner's good faith efforts to comply with the provisions of this Agreement. Owner shall be permitted an opportunity to respond to City's documentation and City's evaluation of Owner's performance.

10.3 Procedure. Director shall review Owner's good faith compliance with the terms of this Agreement, after considering any evidence and responses provided by Owner, and shall make written findings and determinations on the basis of substantial evidence as to whether or not Owner has complied in good faith with this Agreement. Director's decision may be appealed to the City Council, which shall hold a duly noticed hearing on the appeal and thereafter uphold or reverse the Director's decision.

10.4 Notice of Non-Compliance. If on the basis of the annual review, the Director, or on appeal the City Council, finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, or if the City determines that Owner has failed to cure a default in accordance with Section 11.2, City may commence proceedings to enforce, modify or terminate this Agreement as follows. City shall give Owner a written "**Notice of Non-Compliance**" and thereafter Owner shall have forty-five (45) days, or such longer period as City and Owner may agree in writing, to respond in writing to such finding by specifying either how Owner's non-compliance has been cured (or is diligently being cured) or the grounds upon which it believes that it is complying with this Agreement. If Owner's response to the Notice of Non-Compliance has not been received by City within the prescribed forty-five (45) days, or such additional period of time as mutually agreed, the Notice of Non-Compliance shall be conclusively presumed to be valid, and the City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5. If Owner responds within the time period provided, the Parties agree to meet in good faith at reasonable times and from time to time for a period of at least sixty (60) days to arrive at a mutually acceptable resolution of the matters asserted in the Notice of Non-Compliance and disputed in the response. If after sixty (60) days, or any extension of time as mutually agreed to by the Parties, the Parties have failed to arrive at a mutually acceptable resolution of such matter(s), City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5.

10.5 Modification or Termination. If City determines to proceed with modification or termination of this Agreement after following the procedure under Section 10.4, City shall give notice to Owner or successor in interest thereto of its intention to do so in accordance with the procedures for such notice set forth in Government Code section 65868. Nothing in this Section 10 shall prevent or restrict Owner from providing additional evidence as to Owner's compliance with the terms of this Agreement.

10.6 Costs. Costs reasonably incurred by City in connection with the annual review shall be paid by Owner in accordance with the City's schedule of fees in effect at the time



of review; provided, Owner shall not be liable for City's costs incurred to terminate this Agreement.

10.7 Written Notice of Compliance. Within thirty (30) days of a written request by Owner, City shall provide Owner with written notice of compliance, in recordable form, duly executed and acknowledged by City. Owner shall have the right in its sole discretion to record such notice of compliance.

10.8 Failure to Conduct Annual Review. If City fails to initiate or complete its annual review in any year, then after thirty (30) days of Owner's notice regarding such failure Owner shall be deemed in compliance with the terms of this Agreement for the year in question.

## **11. Default.**

11.1 Notice and Cure. Failure or unreasonable delay by a Party to perform any material provision herein shall constitute a default of this Agreement. The Party alleging a default shall serve written notice ("**Notice of Default**") upon the defaulting Party, specifying the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. If the default is not cured by the defaulting Party within thirty (30) days after actual receipt of the Notice of Default by the defaulting Party or such longer period of time that may be specified in the Notice of Default (the "**Cure Period**"), such uncured default shall be treated as an "**Event of Default**"; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within the Cure Period, no Event of Default shall be deemed to have occurred if the defaulting Party (a) begins to cure the default within the Cure Period, (b) gives the nondefaulting Party notice before the end of the Cure Period that the cure cannot practicably be completed in the Cure Period, together with an explanation and estimated cure time needed, and (c) diligently pursues such cure to completion. Failure to give notice of an alleged default shall not constitute a waiver of any default.

11.2 Right to Challenge Notice. After receiving a Notice of Default, during the Cure Period a defaulting Party may provide evidence establishing it was never in fact in breach of this Agreement, and may initiate mediation proceedings. Unless curing the alleged default in the interim is reasonably necessary to protect the public health and safety, the defaulting Party need not initiate cure efforts specified in the Notice of Default during mediation and the Cure Period shall not begin to run until mediation either concludes or is terminated by a Party.

11.3 Remedies and Damages. Following expiration of any applicable Cure Period resulting in an uncured Event of Default, the nondefaulting Party may institute legal proceedings to enforce the terms of this Agreement, or in the event of a material Event of Default (as defined in Section 12.2) may terminate this Agreement pursuant to the provisions of Section 12.2, subject to the defaulting Party's ability to require mediation. In no event shall either Party be liable in damages for any default or upon termination of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude

actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay reasonable attorneys' fees and obligations to advance monies or reimburse monies.

11.4 Default as to a Portion of the Property. When an Event of Default applies only to a Portion of the Property owned by a successor to Owner, and does not affect or involve the rights or obligations under this Agreement regarding the remainder of the Property or the separate Owner(s) of such remainder, the proceedings under this Section 11 and the remedies available to City shall be applied to and enforced against only said Portion and the Owner thereof, and this Agreement shall remain in full force and effect as to such remainder and separate Owner(s).

## **12. Termination of Agreement.**

12.1 Termination Generally. This Agreement shall terminate (a) upon the expiration of the Term (plus any extensions mutually agreed), or (b) when the Project has been fully developed and (i) all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by City and (ii) the Project and Property have no further need for the rights and protections provided by this Agreement as reasonably determined by Owner. This Agreement may be terminated by mutual consent of the Parties.

### **12.2 Termination Due to Default.**

#### **12.2.1 Default by Owner.**

(a) After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by Owner or it is not being diligently cured in the manner set forth above, then in the case of an Event of Default that is alleged to be material, City may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute ("**Notice of Intent to Terminate**"). As used herein, City's finding of materiality allowing termination shall be based on the effect of the default in relation to the size and scope of the Project.

(b) The City Council shall hold a duly noticed and conducted public hearing within thirty (30) days after sending Owner the Notice of Intent to Terminate, in compliance with the requirements of the Development Agreement Statute. Owner shall have the right to offer written and oral evidence prior to or at the public hearing.

(c) Following consideration of the evidence presented in said hearing, if the City Council determines that a material Event of Default has occurred and is continuing, and elects to terminate this Agreement, City shall give Owner written notice of termination of this Agreement by certified mail ("**Notice of Termination**"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by Owner; provided, if Owner files an action to challenge City's termination of this Agreement

within such sixty- (60-) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.2.2 Default by City. After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by City or it is not being diligently cured in the manner set forth above, then in the case of a material Event of Default, Owner may, at its option, give City a Notice of Termination terminating this Agreement”), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by City; provided, if City files an action to challenge Owner’s termination of this Agreement within such sixty (60) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). As used herein, Owner’s treatment of an Event of Default as material allowing termination shall be based on the effect of the default on Owner’s rights and obligations under this Agreement, Owner’s ability to develop the Project, or financial commitments and requirements to develop the Project.

12.2.3 Remaining Rights and Obligations. Notwithstanding the foregoing, a Notice of Termination given under this Section 12.2 is effective to terminate the obligations of the nondefaulting Party under this Agreement only if an Event of Default has occurred and such Event of Default, as a matter of law, authorizes the nondefaulting Party to terminate its obligations under this Agreement. In the event the nondefaulting Party is not so authorized to terminate, the nondefaulting Party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a Party alleging an Event of Default has given a Notice of Termination, mediation proceedings may be instituted to attempt to resolve the dispute and determine the respective termination rights and obligations of the Parties under this Agreement. Where an Event of Default only involves a Portion pursuant to Section 11.4, termination of this Agreement shall only apply as to that Portion.

12.3 Release from Obligations with Respect to Individual Parcels. The Owner of a Portion may request that City provide certification in recordable form that said Owner and Portion have no further obligations under this Agreement (the “**Release from Obligations**”), which City in its reasonable discretion shall provide and the Owner may record. Thereafter the assignment provisions of Section 14 shall not apply, and the obligations of this Agreement shall terminate with respect to the Portion and the Owner of such Portion. Notwithstanding the above, the rights provided and protected by this Agreement shall remain in effect as to such Portion and its Owner (and successors) for the remainder of the Term, including without limitation the uses permitted and type and intensity of development.

12.4 Recordation of Termination. Upon termination of this Agreement as to all or part of the Property, City upon request by Owner shall cause a notice of termination to be duly recorded in the official records of Merced County.

### **13. Mortgagee Protection; Certain Rights of Cure.**

13.1 Mortgagee Protection. This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement or as may be otherwise authorized by City.

13.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has defaulted or committed an Event of Default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed set forth in the City's notice. City, through the Director, may extend the cure periods provided in Section 11 for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

### **14. Transfers and Assignments.**

14.1 Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including but not limited to Civil Code section 1468. Each covenant to do, or refrain from doing, some act on all or any part of the Property, (a) is a burden upon such property, (b) is for the benefit of each other portion of the Property, (c) runs with such

properties, and (d) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties. The provisions of this Section 15.1 are subject and subordinate to the provisions of Section 9.1 which permit amendment of this Agreement.

14.2 Owner's Right to Assign. All of Owner's rights, interests and obligations hereunder (or any portion of such rights which Owner wishes to transfer) may be transferred, sold or assigned in conjunction with the transfer, sale, or assignment of the Property, or any Portion thereof, at any time during the Term, provided that no transfer, sale or assignment of Owner's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the Director, which approval shall not be unreasonably withheld or delayed and shall not be conditioned. The Director shall consider and decide the matter within twenty (20) business days after Owner's notice provided and receipt by the Director of all necessary documents, certifications and other information required by the Director to decide the matter. In considering the request, the Director shall base the decision upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out development of the Property to completion. The Director's approval shall be for the purposes of: a) providing notice to City; b) assuring that all obligations of Owner are allocated as between Owner and the proposed purchaser, transferee or assignee as provided by this Agreement; and c) assuring City that the proposed purchaser, transferee or assignee is financially capable of performing the Owner's obligations hereunder not withheld by Owner.

14.3 Release Upon Transfer. Upon the transfer, sale, or assignment of Owner's rights, interests and obligations hereunder, Owner shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee to the extent that such obligations are expressly assumed by the transferee, purchaser, or assignee. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee, and shall provide all necessary documents, certifications and other necessary information prior to Director approval if required by the provisions of this Agreement. The allocation of rights and responsibilities between the transferor and transferee shall be set forth in the assignment agreement executed by such parties.

14.4 Owner's Right to Retain Specified Rights or Obligations. Owner may withhold from a sale, transfer or assignment of this Agreement or any Portion of the Property transferred, certain rights, interests and/or obligations which Owner wishes to retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to this Agreement and recorded with the Merced County Recorder prior to the sale, transfer or assignment of the Property. Owner's purchaser, transferee or assignee shall then have no interest or obligations for such rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.

## **15. Miscellaneous.**

15.1. Estoppel Certificate. Any Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, or such longer period as may reasonably be agreed to in writing by the Parties. The Director shall be authorized to execute any certificate requested by Owner. The certificate shall be addressed to and may be relied upon by the requesting Party.

15.2. Severability; Conflict. The unenforceability, invalidity or illegality (collectively, "illegality" or "illegal") of any provision, covenant, condition or term of this Agreement (collectively, "provision(s)") shall not render the other provisions of this Agreement illegal, and shall be considered "severed" from this Agreement. In the event of a conflict between this Agreement or any provision hereof and the Project Approvals or any provision thereof, this Agreement shall control.

### **15.3. Attorneys' Fees and Costs.**

15.3.1 Prevailing Party. If City or Owner initiates any action at law or in equity to enforce or to interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

15.3.2 Third Party Challenge. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action, including but not limited to City's costs for outside counsel.

15.4. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

15.5. Indemnification. Owner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no obligation under this Section 15.5 with respect to negligence or wrongful conduct of City, its contractors,

subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been delivered or dedicated to and accepted by City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action for which Owner has a duty to defend or indemnify City then City will cooperate with Owner, will appear in such action and will not unreasonably withhold approval of a settlement otherwise acceptable to Owner. Notwithstanding anything to the contrary set forth in this Section 15.5 or elsewhere in this Agreement, it is understood that each Party or successor or transferee of Owner is providing the indemnities described in this Section 15.5 as to its respective development on its respective Portion only.

#### 15.6. Insurance.

15.6.1 Public Liability and Property Damage Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than one million dollars (\$1,000,000.00) and a deductible of not more than ten thousand dollars (\$10,000.00) per claim. The policy so maintained by Owner shall name City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

15.6.2 Workers' Compensation Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain Workers' Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Owner agrees to indemnify City for any damage resulting from Owner's failure to maintain any such insurance.

15.6.3 Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Owner shall furnish City satisfactory evidence of the insurance required in this Section 15.6 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy.

15.7 Notices. All notices required or provided for under this Agreement shall be in writing. A Party may change address by giving notice in writing to the other Party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following business day. Notices may also be given by facsimile transmission which shall be deemed given upon verification of receipt if received during normal business hours, otherwise on the next business day.

Notices required to be given to City shall be addressed as follows:

City Manager  
City of Atwater  
750 Bellevue Road  
Atwater, CA 95301  
Fax: \_\_\_\_\_

With copies to:

Thomas H. Terpstra  
The Law Office of Thomas H. Terpstra  
City of Atwater City Attorney  
578 N. Wilma Avenue, Suite A  
Ripon, CA 95366  
Fax: (209) 599-5008

Notices required to be given to Owner shall be addressed as follows:

Ferrari Ranch Owners  
c/o John P. Ferrari  
By Mail: P.O. Box 55  
Ballico, CA 95303  
By Delivery: 11016 North Ballico Avenue  
Ballico, CA 95303  
Fax: (209) 667-1013

With copies to:

David Dolter  
3068 Oakraider Drive  
Alamo, CA 94507  
Fax: (925) 718-8532

15.8 Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject of this Agreement.

15.9 Enforced Delay; Extension of Time of Performance. No Party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, terrorism, inability or delay in obtaining funding through Financing Mechanisms, inability or delay in obtaining use of Offsite Land, unforeseen adverse economic circumstances, or by any other severe and unforeseeable occurrence that is beyond the control of that



Party (collectively, “**Enforced Delay**”). Performance by a Party of its obligations shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

#### 15.10 Dispute Resolution.

15.10.1 Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement, City and Owner shall first attempt to resolve it through informal discussions. In the event a dispute cannot be resolved in this manner within twenty-one (21) days, City and Owner shall endeavor to settle the dispute by non-binding mediation using the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) or other mutually acceptable mediator. Either City or Owner may commence mediation by providing the other Party a written request for mediation setting forth the subject of the dispute and the relief requested. City and Owner shall cooperate in selecting a mediator (either from JAMS’ panel of neutrals or otherwise) and in scheduling the mediation proceedings. If the Parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set the mediation date. City and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts and attorneys, and by the mediator and any mediator employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending completion of the mediation process. Each Party shall bear its own expenses of mediation, and shall share the mediator fees and other costs of mediation.

15.10.2 Litigation. By agreeing to the mediation process in Section 15.10.1, neither City nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Except for an action for equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after completion of the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after commencement of a civil action, if the Parties agree in writing. Nothing in this Agreement shall prevent the Parties from submitting a dispute to binding or non-binding arbitration if mutually acceptable.

15.11 Further Documents. Each Party shall execute and deliver to the other Party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other Party the rights and privileges granted by this Agreement.

15.12 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

15.13 Recordation of Agreement. Within ten (10) days of the Effective Date, City shall cause this Agreement to be duly recorded in the official records of Merced County.

15.14. Recitals; Exhibits. The foregoing Recitals are true and correct and are made a part hereof. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

- Exhibit A**      Legal Description of the Property
- Exhibit B**      Map of Annexation Area and Property
- Exhibit C:**     Local and Regional Traffic Improvements
- Exhibit D:**     Transportation Improvement Plan (“TIP”)

15.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original.

***[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]***

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF ATWATER

OWNER

Attest:

\_\_\_\_\_, City Clerk

Approved as to form

\_\_\_\_\_, City Attorney





## **PLANNING COMMISSION AGENDA REPORT**

### **PLANNING COMMISSION**

Donald Borgwardt      Jagandeep Mokha

Harold Kadach      Shawn Conour

Mayra Sanchez-Garcia

**MEETING DATE: May 21, 2025**

**TO: Chair and Commissioners**

**FROM: Scott Ruffalo, Planning Technician**

**SUBJECT: Public Hearing to consider adopting a resolution making an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.**

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### **RECOMMENDED COMMISSION ACTION:**

It is recommended that Planning Commission:

1. Open the public hearing and receive any testimony from the public;
2. Close the public hearing;
3. Make an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.

### **I. BACKGROUND:**

In 2017, the City Council approved a Development Agreement (DA) by and between the City of Atwater and the Ferrari Ranch Owners. The DA enabled the owners to move forward with applying for development applications and required certain infrastructure to be installed.

In 2022, the City was designated \$3 million in federal funds to improve access to clean drinking water, sanitation services, and water management. The specific area designated was for water, sewer, and storm water infrastructure from Buhach Road to Gurr Road, along Green Sands Avenue. As this area is adjacent to Ferrari Ranch, an amendment to the DA is necessary to clarify the responsible parties of developing such infrastructure.

**II. ANALYSIS:**

Ferrari Ranch is poised for future development, having already been annexed and planned out. Infrastructure is a major component of this future development. The proposed amended DA clarifies that once the federal funding is used for infrastructure, the developer is responsible for their portion.

The proposed amended DA removes certain language related to terms that applied prior to annexation. Since the area has been annexed, that language has become obsolete. There were also minor clerical corrections in the proposed amended DA.

**III. FISCAL IMPACTS:**

No negative fiscal impacts are anticipated with the approval of this project. This item has been reviewed by the Finance Department.

**IV. LEGAL REVIEW:**

This item has been reviewed by the City Attorney.

**V. INTERDEPARTMENTAL COORDINATION:**

An interdepartmental routing sheet was sent to all required departments and affected agencies for review, and their comments and conditions have been incorporated.

**VI. PUBLIC PARTICIPATION:**

The public notice was adequately noticed and advertised. The public will have an opportunity to provide comments on this item prior to Commission action.

**VII. ENVIRONMENTAL REVIEW:**

Pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

**VIII. STEPS FOLLOWING APPROVAL:**

Upon recommendation to move forward, staff will prepare an ordinance to be reviewed by City Council.

Prepared by: Scott Ruffalo, Planning Technician

Submitted by: Chris Hoem, City Manager

**Attachments:**

1. Resolution No. 0269-25
2. Draft Ordinance
3. Development Agreement



## **PLANNING COMMISSION AGENDA REPORT**

### **PLANNING COMMISSION**

Donald Borgwardt, Chair  
Mayra Sanchez-Garcia      Jag Mokha  
Harold Kadach              Shawn Conour

**MEETING DATE: May 21, 2025**

**TO:** Chair and Commissioners

**FROM:** Chris Hoem, City Manager

**SUBJECT:**      **Public hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code to modernize the parking ordinance and to make it similar to the parking ordinance of the City of Merced.**

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### **RECOMMENDED COMMISSION ACTION:**

It is recommended that Planning Commission:

1.      Open the public hearing and take any testimony from the public;
2.      Close the public hearing;
3.      Make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3), “Review for Exemption” and adopt Resolution No. 0270-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code.

### **I. BACKGROUND:**

The regulations for parking requirements were first adopted in 1979 and only partially revised in 1985 and 2023. While other nearby cities have modernized their corresponding regulations, the City of Atwater is in need of an update in this matter.

The City of Merced has a modern and comprehensive parking ordinance, which has been reviewed by staff and is used as the foundation of the proposed amendment.

### **II. ANALYSIS:**



The proposed code reflects current best practices in urban planning and land use regulation. It moves away from a one-size-fits-all parking mandate and instead provides a toolkit that allows parking requirements to be tailored to context, such as location and land use. This flexibility enables the City to promote walkability, mixed-use development, and more efficient land use.

Peer jurisdictions throughout the region are updating their parking requirements in response to changing mobility patterns and state housing mandates. By adopting this updated ordinance, the City positions itself as a forward-thinking community, competitive for investment and grant funding, and aligned with statewide objectives around housing and transportation.

### **III. FISCAL IMPACTS:**

No negative fiscal impacts are anticipated with the approval of this project. This item has been reviewed by the Finance Department.

### **IV. LEGAL REVIEW:**

This item has been reviewed by the City Attorney's Office.

### **V. EXISTING POLICY:**

The ordinance will amend Chapter 17.63, "Parking Requirements,".

The draft ordinance does not conflict with any policies of the General Plan or other City policies or guidelines.

### **VI. PUBLIC PARTICIPATION:**

The public hearing was noticed and advertised for the regularly scheduled Planning Commission hearing. The public can provide comments on this item prior to Planning Commission action.

### **VII. ENVIRONMENTAL REVIEW:**

Pursuant to the California Environmental Quality Act (CEQA), the draft ordinance is categorically exempt under section 15061, (b)(3). This exemption states that the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the activity is not subject to CEQA.

### **VIII. STEPS FOLLOWING APPROVAL:**

Following adoption of Resolution No. 0270-25, the recommendation will be forwarded to the City Council for consideration.

Submitted by:

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Chris Hoem, City Manager

Attachments:

1. Resolution No. 0270-25
2. Draft Ordinance
3. Exhibit A (Current Ordinance for Ch. 17.63)
4. Exhibit B (Redlined Version of Ch. 17.63)
5. Exhibit C (Proposed Ordinance for Ch. 17.63)



## PLANNING COMMISSION OF THE CITY OF ATWATER

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### RESOLUTION NO. 0270-25

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ATWATER RECOMMENDING THE CITY COUNCIL ADOPT ZONING ORDINANCE TEXT AMENDMENT NO. 25-08-0100 AMENDING CHAPTER 17.63: "PARKING REQUIREMENTS" OF THE ATWATER MUNICIPAL CODE TO MODERNIZE THE PARKING ORDINANCE AND TO MAKE IT SIMILAR TO THE PARKING ORDINANCE OF THE CITY OF MERCED.**

**WHEREAS**, the City of Atwater wishes to modernize its parking ordinance; and,

**WHEREAS**, Chapter 17.63 "Parking Requirements" of the City of Atwater Municipal Code was initially adopted in 1979 and only partially revised in 1985 and 2023; and,

**WHEREAS**, the Planning Commission held a duly noticed public hearing as required by law on May 21, 2025; and,

**WHEREAS**, this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), "Review for Exemption". This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.; and,

**WHEREAS**, the ZOTA will not have a detrimental effect on the health, safety, and welfare of the neighborhood, nor will it have any adverse effect on the community; and,

**WHEREAS**, the Planning Commission finds that the following findings can be made for ZOTA No. 25-08-0100:

1. The proposed ordinance is consistent with the Atwater General Plan.
2. Adoption of the resolution recommending the City Council adopt the proposed ordinance is exempt from CEQA review under CEQA guideline section 15061(b)(3).
3. The public hearing for this project has been adequately noticed and advertised.

4. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

**NOW THEREFORE BE IT RESOLVED**, that the recitals above are true and correct and hereby incorporated by reference. The Planning Commission of the City of Atwater does hereby recommend that the City Council adopt ZOTA No. 25-08-0100.

The foregoing resolution is hereby adopted this 21<sup>st</sup> day of May, 2025.

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
**DON BORGWARDT,**  
**CHAIR**

**ATTEST:**

\_\_\_\_\_  
**CHRIS HOEM,**  
**CITY MANAGER**



## CITY COUNCIL OF THE CITY OF ATWATER

### ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER ADOPTING ZONING ORDINANCE TEXT AMENDMENT NO. 25-08-0100 AMENDING CHAPTER 17.63: "PARKING REQUIREMENTS" OF THE ATWATER MUNICIPAL CODE TO MODERNIZE THE PARKING ORDINANCE AND TO MAKE IT SIMILAR TO THE PARKING ORDINANCE OF THE CITY OF MERCED.**

**WHEREAS**, the City of Atwater wishes to enact programs, policies, and regulations in support of housing and commercial development; and,

**WHEREAS**, the City of Atwater wishes to modernize its parking ordinance; and,

**WHEREAS**, Chapter 17.63 "Parking Requirements" of the City of Atwater Municipal Code was initially adopted in 1979 and only partially revised in 1985 and 2023; and,

**WHEREAS**, on May 21, 2025, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning this proposed Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

**WHEREAS**, this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), "Review for Exemption". This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.; and,

**WHEREAS**, the ZOTA will not have a detrimental effect on the health, safety, and welfare of the neighborhood, nor have any adverse effect on the community; and,

**WHEREAS**, the City Council finds that the following findings can be made for ZOTA No. 25-08-0100:

1. The proposed ordinance is consistent with the Atwater General Plan.
2. Adoption of the ordinance is exempt from CEQA review under CEQA guideline section 15061(b)(3).
3. The public hearing for this project has been adequately noticed and advertised.
4. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Atwater as follows:

**SECTION 1. Incorporation.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. CEQA.** this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), "Review for Exemption". This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.

**SECTION 3. General Plan.** The City Council hereby finds that the adoption of the Ordinance is consistent with the General Plan.

**SECTION 4. Code Amendment.** Chapter 17.63: "Parking Requirements," of the Atwater Municipal Code is hereby amended and restated to read in its entirety as provided in "Exhibit A," attached hereto and incorporated herein by reference.

**SECTION 5. Effective Date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

**SECTION 7. Publication.** The City Clerk is directed to certify to the adoption of this Ordinance and post or publish this Ordinance as required by law.

**SECTION 8. Custodian of Records.** The custodian of records for this Ordinance is the City Clerk and the records comprising the administrative record are located at 1160 Fifth St, Atwater, CA 95301.

**SECTION 9. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

**INTRODUCED:**

**ADOPTED:**

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

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**MIKE NELSON,  
MAYOR**

**ATTEST:**

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**KORY J. BILLINGS,  
CITY CLERK**

## **CHAPTER 17.63 PARKING REQUIREMENTS**

### **17.63.010 Definitions.**

- A. "Employee" means any person employed on the premises after working part or full time and for the purposes of this chapter shall reflect those individuals anticipated to be employed in the conduct of the business.
- B. "Floor area" for the purposes of this chapter means the net floor area. In the case of offices, merchandising or service types of uses, it shall not include areas principally for nonpublic purposes such as incidental repair, processing or packaging of merchandise, for show windows, for toilets or restrooms, for utilities, for dressing rooms, fitting rooms or alteration rooms.
- C. "Seating facilities." In places of public assembly in which spectators or patrons occupy benches, pews or other similar seating facilities, each 24 inches of such seating facilities shall be counted as one seat for the purposes of determining off-street parking facilities.
- D. "Vehicles" for the purposes of this chapter include any auto, truck, bus, van or other similarly described conveyance.

(Prior Code § 10-3.1809; Ord. CS 407, § 1, 1979)

### **17.63.020 General requirements.**

Off-street parking requirements in all districts and for all uses shall be stated in this chapter and shall be provided for every building or portion of building hereafter erected. To accommodate the vehicles used by the occupants, visitors, customers, clientele and employees of such buildings, all off-street parking facilities shall be permanently available and shall be permanently maintained for off-street parking purposes in accordance with the standards as adopted by the Planning Commission and City Council.

(Prior Code § 10-3.1801; Ord. CS 407, § 1, 1979)

### **17.63.030 Residential uses.**

Parking requirements for residential uses shall be as follows:

- A. Single-family residential dwellings: two spaces per unit not located in any required front or side yard except on lots with less than 60-foot frontage which are not located on culs-de-sac.



- 
- B. Multifamily residential: two spaces per unit not located in any required front or side yard setback. In complexes of five or more units the required off street parking may be reduced to one and one-half spaces per unit provided that one-half space per unit is designated and made available for guest parking.
  - C. Senior citizen housing and studio apartments: two spaces per unit not located in any front or side yard, but 0.5 spaces (twenty-five percent) of them may be landscaped at the discretion of the Planning Commission until the need arises for additional parking.
  - D. Single family dwelling which are financed under Farmers Home Administration: one off street parking space per unit not located in any required front or side yard setback.
  - E. Access drives to required off street parking spaces for multifamily uses may be permitted to encroach into required side yard setbacks, provided an area equal to the amount of paving that encroaches is provided as additional on site landscaping.

(Prior Code § 10-3.1802; Ord. CS 407, § 1, 1979; Ord. CS 598, 1985)

#### **17.63.040 Commercial uses.**

Parking requirements for commercial uses shall be as follows:

- A. Retail stores, personal services, professional and business offices, banks and post offices: one space for each 250 square feet of floor area; except, uses not generating much traffic, e.g., furniture stores, may convert part of the required parking into landscaping at the discretion of the Planning Commission; this landscaped area is to be converted to parking if the need arises, or the land use changes.
- B. Restaurants: For cafes, restaurants and other businesses in the sale and consumption of food or beverages, one space for each three seats or one space per 35 square feet of floor area, whichever is greater.
- C. Hotels and motels: One space per room, and one space for each employee.
- D. Mortuary and funeral homes: One space for each five permanent seats, or one space per 35 square feet of floor area where moveable seats can be placed.
- E. For parking requirements for the Downtown Business District (D-BD) refer to Section 17.43.060 of this Title 17.

(Prior Code § 10-3.1803; Ord. CS 407, § 1, 1979; Ord. CS 1065, § 1(Exh. A), 8-14-2023)

#### **17.63.050 Industrial uses.**

- A. Warehouse and Storage: One space per 800 square feet of floor area or one space per employee for the largest shift and one space for each vehicle used in the conduct of the business, which ever is greater.

- 
- B. Light Manufacturing: One space per 400 square feet of floor area or one space per employee for the largest shift and one space for each vehicle used in the conduct of the business, whichever is greater.
  - C. Heavy manufacturing: One space per 250 square feet of floor area or one space per employee for the largest shift and one space for each vehicle used in the conduct of the business, whichever is greater.
  - D. Industrial uses containing commercial activities as a part of the business shall provide additional off street parking as specified in Section 17.63.040.

(Prior Code § 10-3.1804; Ord. CS 407, § 1, 1979; Ord. CS 598, 1985)

#### **17.63.060 Health related uses.**

Parking requirements for health related uses shall be as follows:

- A. Medical Offices and Clinics: for medical, dental, and optometrists offices, one space per 100 square feet of floor area and one per doctor.
- B. Hospitals: One space per three patient beds plus one space per employee, including nurses and staff doctors, on the largest shift.
- C. Rest Homes: for convalescent and nursing homes and similar uses, one space per each 250 square feet of floor area; Planning Commission may approve landscaping for part of the parking if it is not needed.

(Prior Code § 10-3.1805; Ord. CS 407, § 1, 1979)

#### **17.63.070 Public assembly uses.**

Parking requirements for assembly uses shall be as follows:

- A. Auditoriums: for auditoriums, sports arenas, stadiums, and theaters, one space for each four seats or one space per square feet of floor area where moveable seats can be placed.
- B. Bowling alleys: four spaces for each alley.
- C. Dance hall: one space per 35 square feet of floor area.
- D. Churches: one space for each four seats.
- E. Clubs and lodges: one space per 50 square feet of floor area for clubs and lodges with no sleeping facilities.

#### **17.63.080 Educational uses.**

Parking requirements for educational uses shall be as follows:

- 
- A. Libraries and museums: one space per 500 square feet of floor area.
  - B. Elementary and junior high school: one and one-half spaces per classroom plus one space for each two employees, including faculty.
  - C. High school: one space for each five students plus one space for each two employees, including faculty.

(Prior Code § 10-3.1807; Ord. CS 407, § 1, 1979)

**17.63.090 Reserved.**

Ord. CS 1065, § 1(Exh. A), adopted August 14, 2023, repealed § 17.63.090, which pertained to uses not specified and mixed uses and derived from prior Code § 10-3.1808; Ord. CS 407, § 1, 1979; Ord. CS 1059, § 1, adopted March 27, 2023. The user's attention is directed to § 17.43.060.

**17.63.100 Compact spaces.**

Where off street parking is required according to this chapter up to one-quarter of the required spaces may be compact car spaces.

(Ord. CS 598, 1985)

**17.63.110 Parking areas.**

Where off street parking is required according to this chapter all parking areas shall be graded, surfaced and drained in accordance with City standards; and where applicable parking stalls, lanes and directional guides shall be marked in accordance with City standards.

(Ord. CS 598, 1985)

~~Chapter 20.38 PARKING AND LOADING~~ CHAPTER 17.63 PARKING REQUIREMENTS

~~20.38~~ 17.63.010 Purpose.

This chapter establishes off-street parking requirements in order to:

- A. Provide a sufficient number of off-street parking spaces for all land uses;
- B. Provide for functional off-street parking areas that are safe for vehicles and pedestrians;
- C. Ensure that parking areas are well-designed and contribute to high-quality design environment within ~~Merced~~ Atwater;
- D. Allow for flexibility in off-street parking requirements to support a multi-modal transportation system and sustainable development pattern; and,
- E. Ensure that off-street parking areas do not adversely impact land uses on neighboring properties.

(~~Ord. No. 2465, § 2 (Exhs. A., B.), 9-19-2016~~)

~~20.38~~ 17.63.020 Applicability.

- A. New Structures and Uses. All new structures and uses shall comply with the standards in this chapter, including the amount of required off-street parking as specified in Table ~~20.38~~ 17.63-1 (Off-Street Parking Requirements).
- B. Changes in Existing Structures and Uses.
  - 1. Additional parking shall be required for a change in use or any modification to an existing structure that results in an increase in the unit of measurement used to determine the amount of required off-street parking as specified in Table ~~20.38~~ 17.63-1 (Off-Street Parking Requirements).
  - 2. Additional off-street parking shall be required only to accommodate the incremental change or expansion of the structure or use. Additional parking shall not be required to remedy parking deficiencies existing prior to the change to an existing structure or use.
  - 3. Additional parking for nonresidential uses is not required if the parking needed to accommodate the change is either:
    - a. Two (2) or fewer parking spaces; or,

- b. Ten (10) percent or less of the total required off-street parking spaces for the use.

Table <del>20.38</del> 17.63 -1 Off-Street Parking Requirements	
Land Uses	Number of Required Parking Spaces
<b>RESIDENTIAL LAND USES</b>	
Caretaker's Home	1 per unit
Duplexes	1 per unit unless <del>the exceptions in MMC 20.08.020(2) are met</del> <u>an exception is met in Note 1, below.</u>
Group Homes and Facilities	1 per unit plus 1 per 300 sq. ft. of office and other nonresidential areas
Group Housing	1 per unit
Live/Work Units	1.75 per unit
Mobile Home Parks	1 per unit and 1 per office or employee
Multiple Family Dwellings/Condominiums	1.75 spaces per unit of 2 bedrooms or less up to 30 units and 1.5 spaces per unit thereafter, plus 0.5 spaces per additional bedroom over 2 in each unit and 1.0 spaces per additional full or partial bathroom over 3 in each unit
Residential Care Facilities, Small	1 per unit
Residential Care Facilities, Large (Includes Convalescent/Nursing Homes)	1 per 4 beds; plus 1 per 300 sq. ft. of office or 1 per employee, whichever is greater
Accessory Dwelling Units	One or more bedrooms: 1 per unit, unless <u>an exception in AMC 17.28.010 F.7. is met</u> <del>exceptions in MMC 20.42.030(H) are met.</del>
Single Family Dwellings	<u>±2 per unit, however, if the lot is not located on a cul-de-sac and has less than 60-feet of frontage, then only 1 space is required</u>
Single-Room Occupancy	1 per unit
Transitional/Supportive Housing	1 per 4 beds plus 1 per 300 sq. ft. of office and other nonresidential areas
<b>PUBLIC AND QUASI-PUBLIC LAND USES</b>	
Cemeteries, Mausoleums, Funeral Parlors, and Mortuaries	1 per 5 fixed seats, or 1 per 35 sq. ft. of largest assembly area without fixed seats
Colleges and Trade Schools	1 per 100 sq. ft. of classroom area or 1 per employee, whichever is greater
Community Assembly	1 per 3.5 fixed seats, or 1 per 60 sq. ft. of
Cultural Institutions	assembly area for uses without fixed seats

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Day Care Centers	1 per 400 sq. ft. of floor area used for daycare and 1 per employee
Day Care Home Facilities, Small (1-8 children)	1 per unit
Day Care Home Facilities, Large (9-14 children)	1 per unit plus 1 per employee
Drug Rehabilitation Center	1 per 6 beds plus 1 per 300 sq. ft. of office or other nonresidential floor area
Emergency Shelters	1 per 10 beds plus 1 per 300 sq. ft. of office or other nonresidential floor area
Government Offices	1 per 300 sq. ft. of floor area
Hospitals	1 per bed up to 100 beds; 1 per 2 beds for up to next 100 beds; 1 per 4 beds thereafter
Medical Offices and Clinics	1 per 200 sq. ft. of floor area
Public Safety Facilities	1 per 1,000 sq. ft. and 2 additional parking spaces for station vehicles
Schools, Public or Private	2 per classroom or 1 per employee, whichever is greater
Social Assistance Services	1 space per 300 square feet of floor area
<b>COMMERCIAL LAND USES</b>	
Adult Entertainment Businesses	1 per 300 sq. ft. of floor area
Alcoholic Beverage Sales, Retail	1 per 250 sq. ft. of floor area
Animal Sales and Services	1 per 300 sq. ft. of floor area
Banks, Retail	1 per 250 sq. ft. of floor area or 1 per employee, whichever is greater
Bars and Nightclubs	1 per 100 sq. ft. of floor area or 1 per 50 sq. ft. of floor area used for dancing or 1 per 2.5 seats, whichever is greater
Bed and Breakfast	1 per bedroom plus 2 for owner plus 1 for each employee on largest shift
Building Supplies and Home Improvement Stores	1 per 400 sq. ft. of floor area
Business Support Services	1 per 500 sq. ft. of floor area
Card rooms/Gaming Establishments	1 per 2.5 seats
Check Cashing Establishments	1 per 250 sq. ft. of floor area
Drive-Through and Drive-Up Sales	1 per 350 sq. ft. of floor area
Equipment Sales and Rental	1 per 400 sq. ft. of floor area plus 1 per vehicle for sale or rent
Flea Market	1 per 300 sq. ft. of display/sales area or 1 per booth, whichever is greater
Food and Beverage Sales	1 per 250 sq. ft. of floor area

Furniture and Appliance Stores	1 per 600 sq. ft. of floor area plus 1 per vehicle used in the conduct of business
Gas and Service Stations	3 spaces plus 1 per 250 sq. ft. of retail sales area
Hotels and Motels	1 per sleeping unit or suite up to 100 units, 1 per each 2 units for each unit thereafter
Mobile Home Sales	1 per 400 sq. ft. of floor area, but in no case less than 6 spaces, plus 1 for each mobile home for sale
Mobile Vending	2 per motorized coach, none required for pushcarts
Office, Professional	1 per 250 sq. ft. of floor area
Pawn Shops	1 per 300 sq. ft. of floor area
Personal Services	1 per 250 sq. ft. of floor area or 1 per employee, whichever is greater
Restaurant, Full Service	1 per 100 sq. ft. of floor seating area or 1 for each 2.5 seats, whichever is greater
Restaurant, Limited Service	
Retail, General	1 per 300 sq. ft. of floor area
Vehicle Sales and Rental	1 per 400 sq. ft. of floor area; for outdoor vehicle sales lots, 3 per lot
Vehicle Parts and Accessories Sales	
Vehicle Repair and Maintenance	
INDUSTRIAL LAND USES	
Contractors' Facilities	1 per 500 sq. ft. of floor area
Maintenance and Repair Services	1 per 1,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater; and 1 per vehicle used in the conduct of business
Manufacturing and Processing, General	
Manufacturing and Processing, Heavy	
Manufacturing and Processing, Light	
Public/Mini Storage	1 per 50 storage units or 5 spaces, whichever is greater
Recycling Collection or Processing Facilities	1 per 1,000 sq. ft. of floor area
Research and Development	1 per 1,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater; and 1 per vehicle used in the conduct of business
Warehousing, Wholesaling and Distribution	1 per 2,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater
RECREATIONAL LAND USES	

Commercial Recreation, Indoor	1 per 3.5 fixed seats or 1 per 300 sq. ft. of floor area used by customers, whichever is greater
Commercial Recreation, Outdoor	1 per 3.5 fixed seats or 1 per 400 sq. ft. of floor area used by customers, whichever is greater
Golf Courses	3 per hole plus 1 per 300 sq. ft. of office or other retail area
Parks and Recreational Facilities	25 per ball field plus 5 spaces per acre of active recreational area
Sports Stadium or Arenas or Theaters	1 per 4 seats or 1 per 50 sq. ft. of floor area if no fixed seats
AGRICULTURE AND NATURAL RESOURCES LAND USE	
Agricultural Processing, On-Site	1 per 1,000 sq. ft. of floor area for all habitable buildings associated with the use, or 1 per each 2 employees on the largest shift, whichever greater
Animal Processing, On-Site	
TRANSPORTATION, COMMUNICATIONS, AND UTILITIES LAND USES	
Airports and Heliports	1 per 500 sq. ft. of floor area of enclosed passenger terminal area
Freight Terminals	1 per 2,000 sq. ft. of floor area
Parking Facilities	1 per 300 sq. ft. of floor area used by employees or 1 per employee whichever is greater
Utilities, Major	1 per 300 sq. ft. of office area, plus 1 per vehicle required to service each facility
Utilities, Minor	
Wireless Communications Facilities	1 per 300 sq. ft. of floor area for habitable buildings

Note 1: For duplexes, no parking may be required if either of the following is true:

- a. The parcel is located within one-half (½) mile walking distance of either a high-quality transit corridor as defined in Subsection (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code; or
- b. There is a car share vehicle located within one (1) block of the parcel.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016; Ord. No. 2502, § 5, 8-19-19; Ord. No. 2543, §§ 60, 61, 9-6-2022)

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**20-3817.63.030 Required parking spaces.**

- A. Number of Spaces. All land uses shall provide a minimum number of off-street parking spaces as specified in Table 20-3817.63-1 (Off-Street Parking Requirements), except as provided in Section 20-3817.63.050 (Parking Reductions).
- B. Unlisted Uses.
1. The ~~director of development services~~Community Development Director shall determine the minimum number of required off-street parking spaces for land uses not listed in Table 20-3817.63-1 based on the requirements for the most comparable use in this chapter or an analysis of parking requirements for similar uses in other jurisdictions or state or national standards.
  2. Off-street parking requirements for unlisted land uses shall be based on the parking requirements of similar uses in Table 20-3817.63-1.
  3. The ~~director of development services~~Community Development Director may require the preparation of a parking demand study at the expense of the applicant to determine the parking requirement for unlisted uses.
- C. Mixed or Multiple Uses. When more than one (1) land use is conducted on a parcel, the minimum number of required off-street parking spaces shall be the sum of the number of parking spaces required for each individual use.
- D. Unknown Uses.
1. The ~~Community Development Director~~~~director of development services~~ shall determine the minimum number of required off-street parking spaces for nonresidential "shell" structures with no identified tenants.
  2. Off-street parking requirements for nonresidential "shell" structures shall be based on anticipated tenants for the structures, as determined by the ~~Community Development Director~~director.
- E. Units of Measurement.
1. For the purpose of this chapter, "floor area," in the case of offices, merchandising or service types of uses, means the gross floor area used or intended to be used by tenants, or for service to the public as customers, patrons, clients, or patients, including areas occupied by fixtures and equipment used for display or sale or merchandise. It shall not include areas used principally for nonpublic purposes such as incidental repair, processing or packaging of merchandise, for show windows, for restrooms, for utilities, or for dressing rooms, fitting rooms, or alteration rooms. Unless additional information is provided by the applicant, these "non-public areas" will be assumed to be fifteen (15) percent of the total gross floor area and will not be used in calculating floor area for parking purposes.

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2. In indoor or outdoor places of assembly in which spectators or patrons occupy benches, pews, or other similar seating facilities, each twenty (20) inches of such seating facilities shall be counted as one (1) seat for the purpose of determining off-street parking facilities.
  3. When units of measurements determining the number of required parking spaces result in requirements of a fractional space, fractions of spaces over one-half (½) shall be rounded up to the next whole number.
- F. Conforming Status. Structures or uses established prior to the effective date of the zoning ordinance shall not be deemed nonconforming by reason of providing fewer off-street parking spaces than required by Table [20-3817.63-1](#). However, no such structure or use may further reduce the number of provided off-street parking spaces below the requirements of this chapter.
- G. Additional Required Parking. The planning commission may require more off-street parking than required by Table [20-3817.63-1](#) if the commission determines that additional parking is needed to serve the proposed use and to minimize adverse impacts on neighboring properties.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **[20-3817.63.040](#) General requirements.**

- A. Availability and Use of Spaces.
1. Required parking spaces shall be permanently available and maintained for parking purposes for the use they are intended to serve.
  2. Owners, lessees, tenants, or persons having control of the operation of a use for which parking spaces are required shall not prevent or restrict authorized persons from using these spaces.
  3. Required parking spaces shall be used exclusively for the temporary parking of vehicles and shall not be used for the sale, lease, display, repair, advertising, or storage of vehicles, trailers, boats, campers, mobile homes, merchandise, or equipment, or for any other use not authorized by the zoning ordinance.
- B. Location of Parking.
1. Required parking spaces shall be located on the same lot as the use they are intended to serve, except as allowed by subsection C below.
  2. When the required off-street parking for a one-family or two-family structure in any [Residential zone district](#) is not to be provided in a covered garage or carport, each required car space shall be so located that it may later be covered by a garage or carport structure in accordance with the provisions of this chapter.

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C. Off-Site Parking.

1. For multi-family housing and nonresidential uses, the [site plan review committee review authority](#) may approve off-site parking if it finds that practical difficulties prevent the parking from being located on the same lot it is intended to serve.
2. Off-site parking shall be located within four hundred (400) feet of the use it is intended to serve or another reasonable distance as determined by the [site plan review committee review authority](#).
3. If off-site parking is approved, a covenant record, approved by the city attorney, shall be filed with the county recorder. The covenant record shall require the owner of the property where the off-site parking is located to continue to maintain the parking space so long as the building, structure, or improvement is maintained within the city. This covenant shall stipulate that the title and right to use the spaces shall not be subject to multiple covenants or contracts for use, or termination, without prior written consent of the city.

D. Parking for Persons with Disabilities.

1. Parking spaces for persons with disabilities shall be provided in compliance with California Code of Regulations Title 24.
2. Parking spaces required for the disabled shall count toward compliance with the number of parking spaces required by Table [20-3817.63-1](#).

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

**[20-3817.63.050](#) Parking reductions.**

The minimum number of required off-street parking spaces as specified in Table [20-3817.63-1](#) may be reduced as described below. [The various reductions in this Section \(17.63.050\) are mutually exclusive and may not be combined. Projects eligible for multiple reduction types may only apply the single, greater reduction.](#)

- A. Shared Parking. Multiple land uses on a single parcel or development site may use shared parking facilities when operations for the land uses are not normally conducted during the same hours, or when hours of peak use differ. Requests for the use of shared parking may be approved if:
1. A parking demand study approved by the [Community Development Director](#) ~~director of development services~~ demonstrates that there will be no substantial conflicts between the land uses' principal hours of operation and periods of peak parking demand;
  2. The total number of parking spaces required for the land uses does not exceed the number of parking spaces anticipated at periods of maximum use;

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3. The proposed shared parking facility is located no further than four hundred (400) feet from the primary entrance of the land use which it serves; and,
  4. A covenant record as described in Section ~~20.38~~17.63.040.C.3 shall be recorded.
- B. Common Parking Facilities. Common parking facilities, public or private, may be provided in lieu of the individual requirements contained in this chapter, provided, the total of such off-street parking facilities, when used together, shall not be less than the sum of the various uses computed separately. Such common facilities shall be approved by the planning commission with a conditional use permit, and the planning commission may grant a reduction in the total required parking for the uses by no more than fifteen (15) percent.
- C. Low Demand. The number of parking spaces may be reduced if the land use will not utilize the required number of spaces due to the nature of the specific use, as demonstrated by a parking demand study approved by the Community Development Director~~director of development services~~.
- D. Transportation Demand Management Plan. The number of parking spaces may be reduced by the Community Development Director~~director of development services~~ up to twenty (20) percent if the project applicant prepares a transportation demand management plan which demonstrates a reduction in the demand for off-street parking spaces by encouraging the use of transit, ridesharing, biking, walking, or travel outside of peak hours.
- E. Bus Stop/Transportation Facility Credit. The number of parking spaces may be reduced by up to five (5) percent for commercial or multiple-family development projects within four hundred (400) feet of a City-approved bus stop. Alternatively, if~~if~~ a commercial or multiple-family development project is located within four hundred (400) feet of a transit center, the project may reduce parking spaces by up to ten (10) percent.
- F. Mixed-Use Projects. A mixed-use project with commercial and residential units may reduce parking requirements by up to thirty (30) percent as demonstrated by a parking demand analysis approved by the Community Development Director~~director of development services~~.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### ~~20.38~~17.63.060 Parking assessment districts.

If a parking assessment district has been established, a fee may be paid to the city in lieu of providing required off-street parking within the district.

- A. Exception for Parking Districts. Property located within a district in which special assessments have been or are to be levied for providing public off-street parking shall not be required to provide off-street parking facilities for the ground floor of any such structure.

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B. Special Assessment Financing.

1. In any special assessment proceedings for financing the cost of public off-street parking facilities, any improved property shall be granted a credit against the assessment to be levied, in such ratio as the eCity Council shall determine, for any improved customer, owner, tenant or employee parking spaces or reasonable access areas.
2. In determining the amount of assessment credit, the area of credit shall be improved in accordance with this code. If not so improved at the time of granting the credit, the owner shall cause the area to be so improved within sixty (60) days thereafter, or otherwise the credit shall be removed. A parking space is defined as an area of eight and one-half (8½) by twenty (20) feet in dimension. The determination of the eCity eCouncil as to the amount of "reasonable access" shall be final.
3. Areas used for parking of delivery vehicles or other commercial or industrial vehicles, and open areas used for storage or otherwise in the operation of the business, shall not be included in any area of credit. Any area for which a credit for parking is granted shall remain subject to the requirements of this chapter for providing off-street parking.

C. In-lieu Parking Fee. In lieu of providing off-street parking within a special assessment parking district, an owner may pay to the city a sum equal to one thousand two hundred dollars (\$1,200.00) per parking space, which money shall be deposited in a special fund and used for providing, improving or maintaining off-street parking facilities in said district.

D. Additions to Parking Districts.

1. Each owner of a property not included within a district in which special assessments are levied for providing public off-street parking, but within four hundred (400) feet of a public parking lot located within such a district, may pay a participation fee to defray the cost of providing required off-street public parking facilities, in exchange for the benefits and the responsibilities of inclusion in said district. Upon payment of the participation fee as provided in Section ~~20-3817.63~~ 20-3817.63.060.D.2 and continuing payment of assessments imposed by the district, the owner of the subject property shall not be required to provide off-street parking facilities for the ground floor of any structure on the property, and may also pay in-lieu parking fees as provided in Section ~~20-3817.63~~ 20-3817.63.060.C.
2. The participation fee shall be deposited in a special fund and used for providing, improving, or maintaining off-street parking facilities in said district. The amount of participation fee shall be computed as follows:
  - a. Participation fee = (Basic Charge + Cost Index)
  - b. "Basic charge" is ninety (90) cents per square foot of the subject property, and two hundred forty-five dollars (\$245.00) per front foot of the subject property,

measured as the subject property's frontage along the public right-of-way with the highest traffic volume.

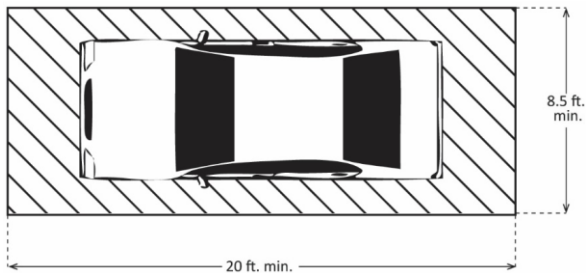
- c. "Cost index" is the most current cost index (calculated on an annual basis based on the previous year's Consumer Price Index, All Urban Consumers, published by the U.S. Department of Labor), multiplied by the total square foot and front foot of the subject property. In the event of discontinuation of such index, the index most closely resembling said index.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **20.3817.63.070 Parking design and development standards.**

- A. Dimensions. The minimum required dimensions for off-street parking spaces shall conform to the latest edition of the city's Standard Designs of Common Engineering Structures.  
~~However, all parking spaces shall be a minimum of nine (9) feet in width.~~
- B. Compact Spaces.
  1. A maximum of twenty-five (25) percent of required off-street parking spaces may be compact spaces.
  2. All parking spaces for compact cars shall be clearly marked with the word "Compact" either on the wheel stop or curb, or on the pavement at the opening of the space.
- C. Parking Access. The required dimensions for driveways providing access to off-street parking spaces shall conform to the latest edition of the city's Standard Designs of Common Engineering Structures.

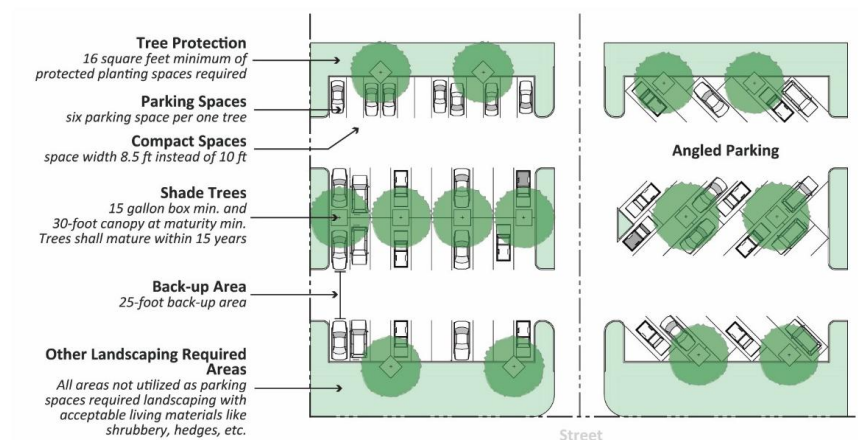
**Figure 20.3817.63-1 Example of 90-Degree Parking Space Dimensions**



- D. Surfacing.

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1. All permanent parking spaces and drive aisles shall be paved with asphalt, concrete or other all-weather surface per the latest edition of the city's Standard Designs of Common Engineering Structures.
  2. Permeable paving materials, such as porous concrete/asphalt, open-jointed pavers, and turf grids, are a permitted surface material, subject to approval by the city engineer.
- E. Tandem Parking Spaces. Tandem parking spaces may be permitted for all residential land uses, provided that they comply with the following standards:
1. Parking spaces in a tandem configuration shall be reserved for and assigned to a single dwelling unit.
  2. All required guest parking shall be provided as single, non-tandem parking spaces.
  3. Tandem parking spaces shall not block the use of the drive aisle to access other parking spaces located within the parking area.
  4. Tandem parking spaces shall be used to accommodate passenger vehicles only.
- F. Landscaping.
1. General Standards. All landscaping within parking areas shall comply with the requirements of Chapter ~~20-368.34~~ (Landscape Maintenance) in addition to the standards within this section.
  2. Landscaping Defined. Except as otherwise specified in this section, landscaping and landscaped areas shall consist of drought-tolerant plant materials, including any combination of trees, shrubs, and ground cover.
  3. Parking Lot Standards. As illustrated in Figure ~~20-3817.63~~-2 (Parking Lot Landscaping Standards), the following landscaping standards, as well as the standards in the city's Standard Designs of Common Engineering Structures, shall apply to parking lots containing six (6) or more parking spaces. All landscape areas shall have an irrigation system.

Figure 20.3817.63-2 Parking Lot Landscaping Standards



- a. Interior Landscaping. All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped with plantings with drought-tolerant, non-invasive species.
- b. Shade Trees.
  - (1) One (1) shade tree shall be provided for every six (6) parking spaces, or portion thereof, in a parking lot in addition to street trees.
  - (2) Shade trees shall be a minimum fifteen (15) gallon box in size and shall provide a minimum thirty (30)-foot canopy at maturity.
  - (3) Shade trees shall be of a type that can reach maturity within fifteen (15) years of planting and shall be selected from a city-approved list of canopy tree species suitable for the valley climate.
  - (4) Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty (30)-foot canopy) on August 21. The arrangement should approximate nearly fifty (50) percent shade coverage at noon on August 21 within fifteen (15) years of planting.
  - (5) The above standards may be modified [at the discretion of the review authority](#) ~~with a minor use permit~~ if alternative shade structures (including solar carports) are provided. Design standards for such shade structures shall be [subject to approval by the review authority](#) ~~approved as part of the minor use permit process as well.~~

#### 4. Concrete Curbs



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- a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a raised concrete curb. Raised concrete curbs shall be a minimum of six (6) inches high by six (6) inches deep.
  - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory storm water drainage standards.
  5. Parking Space Landscaping. A maximum of two (2) feet at the front end of a parking space may be landscaped in lieu of paving surface.
  6. Timing. Landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot, unless otherwise approved by the [Community Development Director](#)~~director of development services~~.

G. Lighting.

1. A parking area with six (6) or more parking spaces shall include outdoor lighting that provides a minimum illumination of 1.0 foot candles over the entire parking area or as otherwise required by the building code.
2. Outdoor lighting as required by Subsection G.1 above shall be provided during nighttime business hours.
3. All parking space area lighting shall be energy efficient and designed so that any glare or spillage is directed away from residential properties.
4. All fixtures shall be hooded.

H. Pedestrian Access. Parking lots shall include pedestrian walkways in compliance with American with Disabilities Act (ADA) requirements and the California Building Code.

I. Screening. Parking lots of six (6) spaces or more shall comply with the following screening standards, unless otherwise approved ~~with a minor use permit~~ [by the review authority](#).

1. Location. Screening with a minimum width of five (5) feet shall be provided along the perimeter of parking lots fronting a public or private street or abutting a residential zone.
2. Height.
  - a. Screening adjacent to streets shall have a minimum height of two and one-half (2½) feet.
  - b. Screening abutting a residential zoning district shall have a minimum height of six (6) feet, except in required setback areas, where the minimum height shall be four (4) feet.
  - c. Commercial parking lots abutting residential zoning districts shall have a solid wall with a minimum height of six (6) feet.

3. Materials. Required screening may consist of one (1) or more of the following materials:
  - a. Low-profile walls constructed of brick, stone, stucco or other durable material with graffiti-proof coating materials or landscaping/vines.
  - b. Evergreen plants that form an opaque screen.
  - c. An open fence combined with landscaping to form an opaque screen.
  - d. A berm landscaped with ground cover, shrubs, or trees.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **20.3817.63.080 Bicycle parking.**

- A. Applicability. All multi-family and nonresidential land uses shall provide bicycle parking as specified in this section and in accordance with Sections 20.3817.63.020 (Applicability) and 20.3817.63.030 (Required Parking Spaces), except for the following uses:
  1. Gas and service stations
  2. Maintenance and repair services
  3. Vehicle repair
  4. Vehicle sales and rental
  5. Wholesaling
  6. Construction and material yards
  7. Warehousing and distribution
  8. Other similar uses as determined by the Community Development Director~~director of development services~~.
- B. Types of Bicycle Parking.
  1. Short-Term/Class II Bicycle Parking. Short-term/Class II bicycle parking provides shoppers, customers, and other visitors who generally park for two (2) hours or less a convenient and readily accessible place to park bicycles.
  2. Long-Term/Class I Bicycle Parking. Long-term/Class I bicycle parking provides employees, residents, visitors and others who generally stay at a site for several hours a secure and weather-protected place to park bicycles.
- C. Bicycle Parking Spaces Required. The number of required bicycle parking spaces shall be as specified in Table 20.3817.63-4 (Required Bicycle Parking Spaces).

Table 20.3817.63-4 Required Bicycle Parking Spaces  
Required Bicycle Parking Spaces

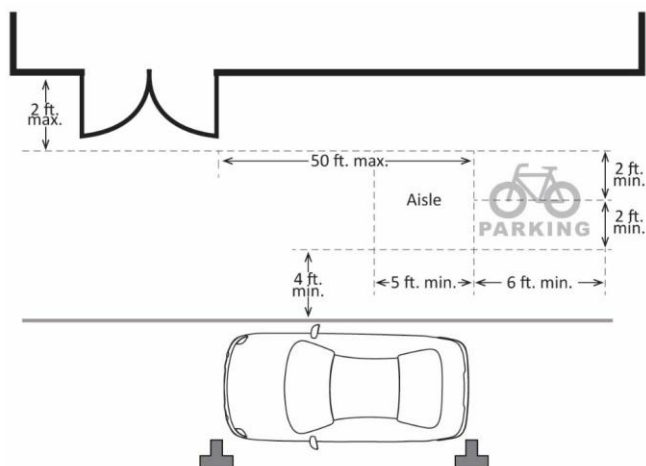
Land Use	Short-Term Spaces	Long-Term Spaces
Multi-Family Dwellings of 6 units or more, Group Housing, and Single Room Occupancy	10% of required automobile parking spaces; minimum of 2 spaces	<u>For uses 10 units or greater:</u> 1 per 10 units; minimum of 2 spaces
Non-Residential Uses	8% of required automobile spaces, minimum of 2 spaces	<u>For uses 20,000 sq. ft. or greater:</u> 85% of required automobile spaces, <u>for uses 10,000 sq. ft. or greater;</u> minimum of 2 spaces

- D. Short-Term/Class II Bicycle Parking Standards. Short-term bicycle parking shall be located within one hundred (100) feet of the primary entrance of the structure or use it is intended to serve, and be readily visible to passers-by, and at least twenty five (25) percent of required short-term bicycle parking spaces shall be covered.
- E. Long-Term Bicycle Parking Standards. The following standards shall be recommended, but not required, for long-term bicycle parking:
1. Location. Long-term bicycle parking shall be located in highly visible, well-lighted areas that are convenient to the street and users.
  2. Cover. A minimum of seventy-five (75) percent of required long-term bicycle parking spaces shall be covered.
  3. Parking Facilities. Long-term bicycle parking spaces must be secure and may include:
    - a. Covered, lockable enclosures with permanently anchored racks for bicycles; or,
    - b. Lockable bicycle rooms or areas with permanently anchored racks; or,
    - c. Lockable, permanently anchored bicycle lockers.
- F. Parking Space Dimensions.
1. Minimum dimensions of two (2) feet by six (6) feet shall be provided for each bicycle parking space (illustrated in Figure 20-3817.63-3).
  2. An aisle of at least five (5) feet shall be provided behind all bicycle parking to allow room for maneuvering.
  3. Two (2) feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
  4. Four (4) feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- G. Rack Design. Bicycle racks must be capable of locking both the wheels (one (1) wheel with a U-type lock), providing at least two (2) points of contact with the frame of the bicycle,

and supporting bicycles in an upright position. "Inverted U" bicycle racks are highly recommended.

- H. Cover. Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from sun and rainfall, and be at least seven (7) feet above the floor or ground.

**Figure 20.3817.63-3 Short-Term/Class II Bicycle Parking Dimensions**



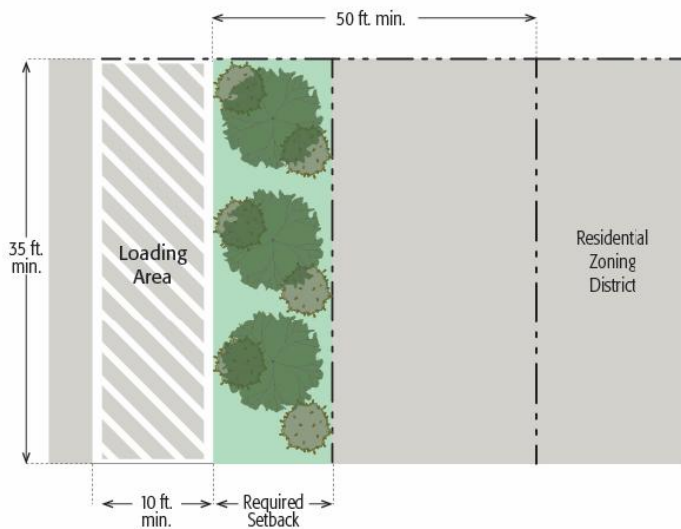
(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### 20.3817.63.090 Off-street loading.

- A. Applicability. All retail, restaurant, hotel, warehousing, manufacturing, hospitals, laundry, and similar uses that involve the frequent receipt or delivery of materials or merchandise shall provide off-street loading spaces consistent with the requirements of this section.
- B. Number of Loading Spaces. The minimum number of required loading spaces shall be as specified in Table 20.2817.63-5 (Required Loading Spaces).

Table 20.3817.63-5 Required Loading Spaces	
Total Gross Floor Area	Required Loading Spaces
Less than 5,000 sq. ft.	None
5,000 to 25,000 sq. ft.	1
Greater than 25,000 sq. ft.	2 plus 1 per each additional 20,000 sq. ft.

Figure 20.3817.63-4 Off-Street Loading



C. Location.

1. Required loading spaces shall be located on the same lot as the use they are intended to serve.
2. A formal agreement among property owners shall be required and recorded if an immediately adjacent lot is used as required loading spaces.
3. No loading space shall be located closer than fifty (50) feet to a residential zone, unless the loading space is wholly enclosed within a building or screened by a solid wall not less than eight (8) feet in height.

D. Dimensions.

1. Each loading space shall have minimum dimensions of ten (10) feet wide, thirty-five (35) feet long, and fourteen (14) feet in vertical clearance.
2. Deviations from the minimum dimensions standards may be approved by the [Community Development Director](#) ~~director of development services~~ if the spatial needs are less than the minimum required due to the truck size and type that will be utilized in the operation of a specific business.

E. Design and Configuration.

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1. Loading spaces shall be configured to ensure that loading and unloading takes place on-site and not within adjacent public rights-of-way.
  2. Sufficient maneuvering area shall be provided for loading spaces so that vehicles may enter and exit an abutting street in a forward direction.
  3. Loading spaces and their associated maneuvering areas shall not encroach into required employee or visitor parking areas or other on-site areas required for vehicle circulation.
  4. Loading spaces shall be striped and clearly identified as for loading purposes only.

(~~Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016~~)

## **CHAPTER 17.63 PARKING REQUIREMENTS**

### **17.63.010 Purpose.**

This chapter establishes off-street parking requirements in order to:

- A. Provide a sufficient number of off-street parking spaces for all land uses;
- B. Provide for functional off-street parking areas that are safe for vehicles and pedestrians;
- C. Ensure that parking areas are well-designed and contribute to high-quality design environment within Atwater;
- D. Allow for flexibility in off-street parking requirements to support a multi-modal transportation system and sustainable development pattern; and,
- E. Ensure that off-street parking areas do not adversely impact land uses on neighboring properties.

### **17.63.020 Applicability.**

- A. New Structures and Uses. All new structures and uses shall comply with the standards in this chapter, including the amount of required off-street parking as specified in Table 17.63-1 (Off-Street Parking Requirements).
- B. Changes in Existing Structures and Uses.
  - 1. Additional parking shall be required for a change in use or any modification to an existing structure that results in an increase in the unit of measurement used to determine the amount of required off-street parking as specified in Table 17.63-1 (Off-Street Parking Requirements).
  - 2. Additional off-street parking shall be required only to accommodate the incremental change or expansion of the structure or use. Additional parking shall not be required to remedy parking deficiencies existing prior to the change to an existing structure or use.
  - 3. Additional parking for nonresidential uses is not required if the parking needed to accommodate the change is either:
    - a. Two (2) or fewer parking spaces; or,
    - b. Ten (10) percent or less of the total required off-street parking spaces for the use.

**Table 17.63 -1 Off-Street Parking Requirements**

Land Uses	Number of Required Parking Spaces
<b>RESIDENTIAL LAND USES</b>	
Caretaker's Home	1 per unit
Duplexes	1 per unit unless an exception is met in Note 1, below.
Group Homes and Facilities	1 per unit plus 1 per 300 sq. ft. of office and other nonresidential areas
Group Housing	1 per unit
Live/Work Units	1.75 per unit
Mobile Home Parks	1 per unit and 1 per office or employee
Multiple Family Dwellings/Condominiums	1.75 spaces per unit of 2 bedrooms or less up to 30 units and 1.5 spaces per unit thereafter, plus 0.5 spaces per additional bedroom over 2 in each unit and 1.0 spaces per additional full or partial bathroom over 3 in each unit
Residential Care Facilities, Small	1 per unit
Residential Care Facilities, Large (Includes Convalescent/Nursing Homes)	1 per 4 beds; plus 1 per 300 sq. ft. of office or 1 per employee, whichever is greater
Accessory Dwelling Units	One or more bedrooms: 1 per unit, unless an exception in AMC 17.28.010 F.7. is met.
Single Family Dwellings	2 per unit, however, if the lot is not located on a cul-de-sac and has less than 60-feet of frontage, then only 1 space is required
Single-Room Occupancy	1 per unit
Transitional/Supportive Housing	1 per 4 beds plus 1 per 300 sq. ft. of office and other nonresidential areas
<b>PUBLIC AND QUASI-PUBLIC LAND USES</b>	
Cemeteries, Mausoleums, Funeral Parlors, and Mortuaries	1 per 5 fixed seats, or 1 per 35 sq. ft. of largest assembly area without fixed seats
Colleges and Trade Schools	1 per 100 sq. ft. of classroom area or 1 per employee, whichever is greater
Community Assembly	1 per 3.5 fixed seats, or 1 per 60 sq. ft. of assembly area for uses without fixed seats
Cultural Institutions	
Day Care Centers	1 per 400 sq. ft. of floor area used for daycare and 1 per employee
Day Care Home Facilities, Small (1-8 children)	1 per unit
Day Care Home Facilities, Large (9-14 children)	1 per unit plus 1 per employee



Drug Rehabilitation Center	1 per 6 beds plus 1 per 300 sq. ft. of office or other nonresidential floor area
Emergency Shelters	1 per 10 beds plus 1 per 300 sq. ft. of office or other nonresidential floor area
Government Offices	1 per 300 sq. ft. of floor area
Hospitals	1 per bed up to 100 beds; 1 per 2 beds for up to next 100 beds; 1 per 4 beds thereafter
Medical Offices and Clinics	1 per 200 sq. ft. of floor area
Public Safety Facilities	1 per 1,000 sq. ft. and 2 additional parking spaces for station vehicles
Schools, Public or Private	2 per classroom or 1 per employee, whichever is greater
Social Assistance Services	1 space per 300 square feet of floor area
<b>COMMERCIAL LAND USES</b>	
Adult Entertainment Businesses	1 per 300 sq. ft. of floor area
Alcoholic Beverage Sales, Retail	1 per 250 sq. ft. of floor area
Animal Sales and Services	1 per 300 sq. ft. of floor area
Banks, Retail	1 per 250 sq. ft. of floor area or 1 per employee, whichever is greater
Bars and Nightclubs	1 per 100 sq. ft. of floor area or 1 per 50 sq. ft. of floor area used for dancing or 1 per 2.5 seats, whichever is greater
Bed and Breakfast	1 per bedroom plus 2 for owner plus 1 for each employee on largest shift
Building Supplies and Home Improvement Stores	1 per 400 sq. ft. of floor area
Business Support Services	1 per 500 sq. ft. of floor area
Card rooms/Gaming Establishments	1 per 2.5 seats
Check Cashing Establishments	1 per 250 sq. ft. of floor area
Drive-Through and Drive-Up Sales	1 per 350 sq. ft. of floor area
Equipment Sales and Rental	1 per 400 sq. ft. of floor area plus 1 per vehicle for sale or rent
Flea Market	1 per 300 sq. ft. of display/sales area or 1 per booth, whichever is greater
Food and Beverage Sales	1 per 250 sq. ft. of floor area
Furniture and Appliance Stores	1 per 600 sq. ft. of floor area plus 1 per vehicle used in the conduct of business
Gas and Service Stations	3 spaces plus 1 per 250 sq. ft. of retail sales area

Hotels and Motels	1 per sleeping unit or suite up to 100 units, 1 per each 2 units for each unit thereafter
Mobile Home Sales	1 per 400 sq. ft. of floor area, but in no case less than 6 spaces, plus 1 for each mobile home for sale
Mobile Vending	2 per motorized coach, none required for pushcarts
Office, Professional	1 per 250 sq. ft. of floor area
Pawn Shops	1 per 300 sq. ft. of floor area
Personal Services	1 per 250 sq. ft. of floor area or 1 per employee, whichever is greater
Restaurant, Full Service	1 per 100 sq. ft. of floor seating area or 1 for each 2.5 seats, whichever is greater
Restaurant, Limited Service	
Retail, General	1 per 300 sq. ft. of floor area
Vehicle Sales and Rental	1 per 400 sq. ft. of floor area; for outdoor vehicle sales lots, 3 per lot
Vehicle Parts and Accessories Sales	
Vehicle Repair and Maintenance	
INDUSTRIAL LAND USES	
Contractors' Facilities	1 per 500 sq. ft. of floor area
Maintenance and Repair Services	1 per 1,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater; and 1 per vehicle used in the conduct of business
Manufacturing and Processing, General	
Manufacturing and Processing, Heavy	
Manufacturing and Processing, Light	
Public/Mini Storage	1 per 50 storage units or 5 spaces, whichever is greater
Recycling Collection or Processing Facilities	1 per 1,000 sq. ft. of floor area
Research and Development	1 per 1,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater; and 1 per vehicle used in the conduct of business
Warehousing, Wholesaling and Distribution	1 per 2,000 sq. ft. of floor area or 1 per 2 employees on the largest shift, whichever is greater
RECREATIONAL LAND USES	
Commercial Recreation, Indoor	1 per 3.5 fixed seats or 1 per 300 sq. ft. of floor area used by customers, whichever is greater
Commercial Recreation, Outdoor	1 per 3.5 fixed seats or 1 per 400 sq. ft. of floor area used by customers, whichever is greater

Golf Courses	3 per hole plus 1 per 300 sq. ft. of office or other retail area
Parks and Recreational Facilities	25 per ball field plus 5 spaces per acre of active recreational area
Sports Stadium or Arenas or Theaters	1 per 4 seats or 1 per 50 sq. ft. of floor area if no fixed seats
AGRICULTURE AND NATURAL RESOURCES LAND USE	
Agricultural Processing, On-Site	1 per 1,000 sq. ft. of floor area for all habitable buildings associated with the use, or 1 per each 2 employees on the largest shift, whichever greater
Animal Processing, On-Site	
TRANSPORTATION, COMMUNICATIONS, AND UTILITIES LAND USES	
Airports and Heliports	1 per 500 sq. ft. of floor area of enclosed passenger terminal area
Freight Terminals	1 per 2,000 sq. ft. of floor area
Parking Facilities	1 per 300 sq. ft. of floor area used by employees or 1 per employee whichever is greater
Utilities, Major	1 per 300 sq. ft. of office area, plus 1 per vehicle required to service each facility
Utilities, Minor	
Wireless Communications Facilities	1 per 300 sq. ft. of floor area for habitable buildings

Note 1: For duplexes, no parking may be required if either of the following is true:

- a. The parcel is located within one-half (½) mile walking distance of either a high-quality transit corridor as defined in Subsection (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code; or
- b. There is a car share vehicle located within one (1) block of the parcel.

#### **17.63.030 Required parking spaces.**

- A. Number of Spaces. All land uses shall provide a minimum number of off-street parking spaces as specified in Table 17.63-1 (Off-Street Parking Requirements), except as provided in Section 17.63.050 (Parking Reductions).
- B. Unlisted Uses.
  1. The Community Development Director shall determine the minimum number of required off-street parking spaces for land uses not listed in Table 17.63-1 based on the requirements for the most comparable use in this chapter or an analysis of

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- parking requirements for similar uses in other jurisdictions or state or national standards.
2. Off-street parking requirements for unlisted land uses shall be based on the parking requirements of similar uses in Table 17.63-1.
  3. The Community Development Director may require the preparation of a parking demand study at the expense of the applicant to determine the parking requirement for unlisted uses.
- C. Mixed or Multiple Uses. When more than one (1) land use is conducted on a parcel, the minimum number of required off-street parking spaces shall be the sum of the number of parking spaces required for each individual use.
- D. Unknown Uses.
1. The Community Development Director shall determine the minimum number of required off-street parking spaces for nonresidential "shell" structures with no identified tenants.
  2. Off-street parking requirements for nonresidential "shell" structures shall be based on anticipated tenants for the structures, as determined by the Community Development Director.
- E. Units of Measurement.
1. For the purpose of this chapter, "floor area," in the case of offices, merchandising or service types of uses, means the gross floor area used or intended to be used by tenants, or for service to the public as customers, patrons, clients, or patients, including areas occupied by fixtures and equipment used for display or sale or merchandise. It shall not include areas used principally for nonpublic purposes such as incidental repair, processing or packaging of merchandise, for show windows, for restrooms, for utilities, or for dressing rooms, fitting rooms, or alteration rooms. Unless additional information is provided by the applicant, these "non-public areas" will be assumed to be fifteen (15) percent of the total gross floor area and will not be used in calculating floor area for parking purposes.
  2. In indoor or outdoor places of assembly in which spectators or patrons occupy benches, pews, or other similar seating facilities, each twenty (20) inches of such seating facilities shall be counted as one (1) seat for the purpose of determining off-street parking facilities.
  3. When units of measurements determining the number of required parking spaces result in requirements of a fractional space, fractions of spaces over one-half ( $\frac{1}{2}$ ) shall be rounded up to the next whole number.
- F. Conforming Status. Structures or uses established prior to the effective date of the zoning ordinance shall not be deemed nonconforming by reason of providing fewer off-street

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parking spaces than required by Table 17.63-1. However, no such structure or use may further reduce the number of provided off-street parking spaces below the requirements of this chapter.

- G. Additional Required Parking. The planning commission may require more off-street parking than required by Table 17.63-1 if the commission determines that additional parking is needed to serve the proposed use and to minimize adverse impacts on neighboring properties.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **17.63.040 General requirements.**

A. Availability and Use of Spaces.

1. Required parking spaces shall be permanently available and maintained for parking purposes for the use they are intended to serve.
2. Owners, lessees, tenants, or persons having control of the operation of a use for which parking spaces are required shall not prevent or restrict authorized persons from using these spaces.
3. Required parking spaces shall be used exclusively for the temporary parking of vehicles and shall not be used for the sale, lease, display, repair, advertising, or storage of vehicles, trailers, boats, campers, mobile homes, merchandise, or equipment, or for any other use not authorized by the zoning ordinance.

B. Location of Parking.

1. Required parking spaces shall be located on the same lot as the use they are intended to serve, except as allowed by subsection C below.
2. When the required off-street parking for a one-family or two-family structure in any residential zone is not to be provided in a covered garage or carport, each required car space shall be so located that it may later be covered by a garage or carport structure in accordance with the provisions of this chapter.

C. Off-Site Parking.

1. For multi-family housing and nonresidential uses, the review authority may approve off-site parking if it finds that practical difficulties prevent the parking from being located on the same lot it is intended to serve.
2. Off-site parking shall be located within four hundred (400) feet of the use it is intended to serve or another reasonable distance as determined by the review authority.
3. If off-site parking is approved, a covenant record, approved by the city attorney, shall be filed with the county recorder. The covenant record shall require the owner of the

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property where the off-site parking is located to continue to maintain the parking space so long as the building, structure, or improvement is maintained within the city. This covenant shall stipulate that the title and right to use the spaces shall not be subject to multiple covenants or contracts for use, or termination, without prior written consent of the city.

D. Parking for Persons with Disabilities.

1. Parking spaces for persons with disabilities shall be provided in compliance with California Code of Regulations Title 24.
2. Parking spaces required for the disabled shall count toward compliance with the number of parking spaces required by Table 17.63-1.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

**17.63.050 Parking reductions.**

The minimum number of required off-street parking spaces as specified in Table 17.63-1 may be reduced as described below. The various reductions in this Section (17.63.050) are mutually exclusive and may not be combined. Projects eligible for multiple reduction types may only apply the single, greater reduction.

- A. Shared Parking. Multiple land uses on a single parcel or development site may use shared parking facilities when operations for the land uses are not normally conducted during the same hours, or when hours of peak use differ. Requests for the use of shared parking may be approved if:
1. A parking demand study approved by the Community Development Director demonstrates that there will be no substantial conflicts between the land uses' principal hours of operation and periods of peak parking demand;
  2. The total number of parking spaces required for the land uses does not exceed the number of parking spaces anticipated at periods of maximum use;
  3. The proposed shared parking facility is located no further than four hundred (400) feet from the primary entrance of the land use which it serves; and,
  4. A covenant record as described in Section 17.63.040.C.3 shall be recorded.
- B. Common Parking Facilities. Common parking facilities, public or private, may be provided in lieu of the individual requirements contained in this chapter, provided, the total of such off-street parking facilities, when used together, shall not be less than the sum of the various uses computed separately. Such common facilities shall be approved by the planning commission with a conditional use permit, and the planning commission may grant a reduction in the total required parking for the uses by no more than fifteen (15) percent.

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- C. Low Demand. The number of parking spaces may be reduced if the land use will not utilize the required number of spaces due to the nature of the specific use, as demonstrated by a parking demand study approved by the Community Development Director.
  - D. Transportation Demand Management Plan. The number of parking spaces may be reduced by the Community Development Director up to twenty (20) percent if the project applicant prepares a transportation demand management plan which demonstrates a reduction in the demand for off-street parking spaces by encouraging the use of transit, ridesharing, biking, walking, or travel outside of peak hours.
  - E. Bus Stop/Transportation Facility Credit. The number of parking spaces may be reduced by up to five (5) percent for commercial or multiple-family development projects within four hundred (400) feet of a City-approved bus stop. Alternatively, if a commercial or multiple-family development project is located within four hundred (400) feet of a transit center, the project may reduce parking spaces by up to ten (10) percent.
  - F. Mixed-Use Projects. A mixed-use project with commercial and residential units may reduce parking requirements by up to thirty (30) percent as demonstrated by a parking demand analysis approved by the Community Development Director.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **17.63.060 Parking assessment districts.**

If a parking assessment district has been established, a fee may be paid to the city in lieu of providing required off-street parking within the district.

- A. Exception for Parking Districts. Property located within a district in which special assessments have been or are to be levied for providing public off-street parking shall not be required to provide off-street parking facilities for the ground floor of any such structure.
- B. Special Assessment Financing.
  - 1. In any special assessment proceedings for financing the cost of public off-street parking facilities, any improved property shall be granted a credit against the assessment to be levied, in such ratio as the City Council shall determine, for any improved customer, owner, tenant or employee parking spaces or reasonable access areas.
  - 2. In determining the amount of assessment credit, the area of credit shall be improved in accordance with this code. If not so improved at the time of granting the credit, the owner shall cause the area to be so improved within sixty (60) days thereafter, or otherwise the credit shall be removed. A parking space is defined as an area of eight and one-half (8½) by twenty (20) feet in dimension. The determination of the City Council as to the amount of "reasonable access" shall be final.

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3. Areas used for parking of delivery vehicles or other commercial or industrial vehicles, and open areas used for storage or otherwise in the operation of the business, shall not be included in any area of credit. Any area for which a credit for parking is granted shall remain subject to the requirements of this chapter for providing off-street parking.
- C. In-lieu Parking Fee. In lieu of providing off-street parking within a special assessment parking district, an owner may pay to the city a sum equal to one thousand two hundred dollars (\$1,200.00) per parking space, which money shall be deposited in a special fund and used for providing, improving or maintaining off-street parking facilities in said district.
  - D. Additions to Parking Districts.
    1. Each owner of a property not included within a district in which special assessments are levied for providing public off-street parking, but within four hundred (400) feet of a public parking lot located within such a district, may pay a participation fee to defray the cost of providing required off-street public parking facilities, in exchange for the benefits and the responsibilities of inclusion in said district. Upon payment of the participation fee as provided in Section 17.63.060.D.2 and continuing payment of assessments imposed by the district, the owner of the subject property shall not be required to provide off-street parking facilities for the ground floor of any structure on the property, and may also pay in-lieu parking fees as provided in Section 17.63.060.C.
    2. The participation fee shall be deposited in a special fund and used for providing, improving, or maintaining off-street parking facilities in said district. The amount of participation fee shall be computed as follows:
      - a. Participation fee = (Basic Charge + Cost Index)
      - b. "Basic charge" is ninety (90) cents per square foot of the subject property, and two hundred forty-five dollars (\$245.00) per front foot of the subject property, measured as the subject property's frontage along the public right-of-way with the highest traffic volume.
      - c. "Cost index" is the most current cost index (calculated on an annual basis based on the previous year's Consumer Price Index, All Urban Consumers, published by the U.S. Department of Labor), multiplied by the total square foot and front foot of the subject property. In the event of discontinuation of such index, the index most closely resembling said index.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **17.63.070 Parking design and development standards.**

- A. Dimensions. The minimum required dimensions for off-street parking spaces shall conform to the latest edition of the city's Standard Designs of Common Engineering Structures.



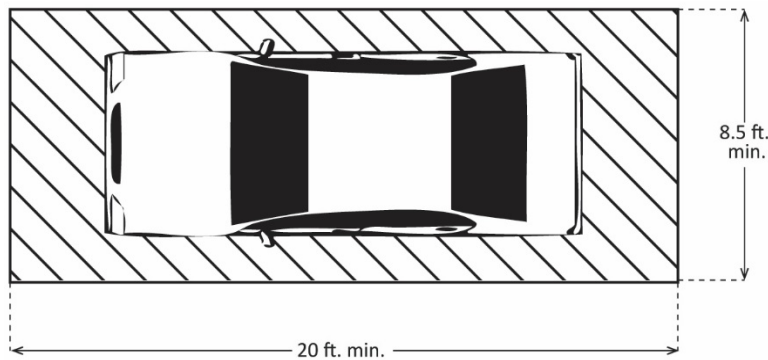
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B. Compact Spaces.

1. A maximum of twenty-five (25) percent of required off-street parking spaces may be compact spaces.
2. All parking spaces for compact cars shall be clearly marked with the word "Compact" either on the wheel stop or curb, or on the pavement at the opening of the space.

C. Parking Access. The required dimensions for driveways providing access to off-street parking spaces shall conform to the latest edition of the city's Standard Designs of Common Engineering Structures.

**Figure 17.63-1 Example of 90-Degree Parking Space Dimensions**



D. Surfacing.

1. All permanent parking spaces and drive aisles shall be paved with asphalt, concrete or other all-weather surface per the latest edition of the city's Standard Designs of Common Engineering Structures.
2. Permeable paving materials, such as porous concrete/asphalt, open-jointed pavers, and turf grids, are a permitted surface material, subject to approval by the city engineer.

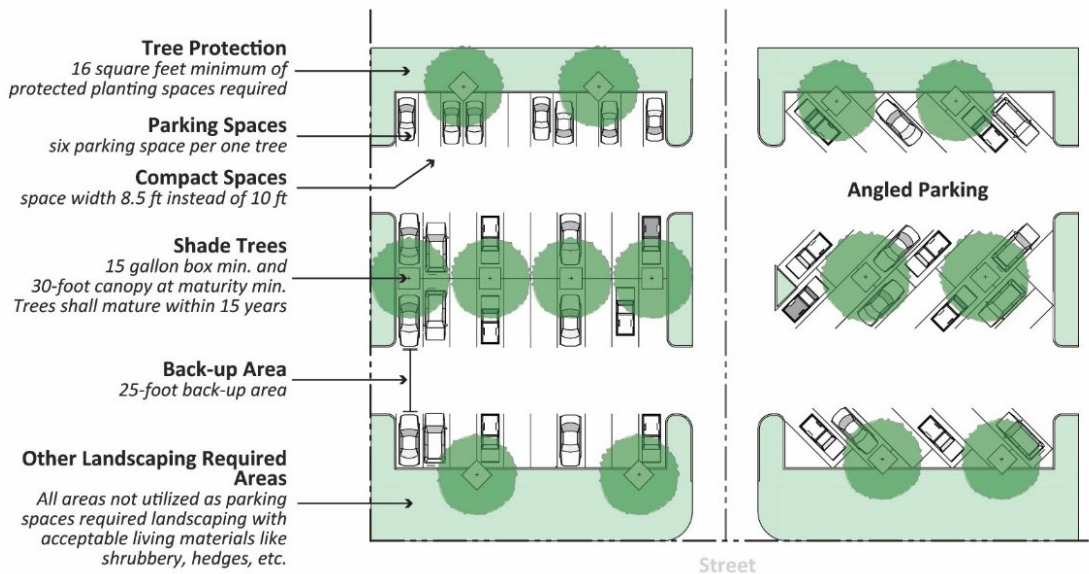
E. Tandem Parking Spaces. Tandem parking spaces may be permitted for all residential land uses, provided that they comply with the following standards:

1. Parking spaces in a tandem configuration shall be reserved for and assigned to a single dwelling unit.
2. All required guest parking shall be provided as single, non-tandem parking spaces.
3. Tandem parking spaces shall not block the use of the drive aisle to access other parking spaces located within the parking area.
4. Tandem parking spaces shall be used to accommodate passenger vehicles only.

F. Landscaping.

1. **General Standards.** All landscaping within parking areas shall comply with the requirements of Chapter 8.34 (Landscape Maintenance) in addition to the standards within this section.
2. **Landscaping Defined.** Except as otherwise specified in this section, landscaping and landscaped areas shall consist of drought-tolerant plant materials, including any combination of trees, shrubs, and ground cover.
3. **Parking Lot Standards.** As illustrated in Figure 17.63-2 (Parking Lot Landscaping Standards), the following landscaping standards, as well as the standards in the city's Standard Designs of Common Engineering Structures, shall apply to parking lots containing six (6) or more parking spaces. All landscape areas shall have an irrigation system.

**Figure 17.63-2 Parking Lot Landscaping Standards**



- a. **Interior Landscaping.** All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped with plantings with drought-tolerant, non-invasive species.
- b. **Shade Trees.**
  - (1) One (1) shade tree shall be provided for every six (6) parking spaces, or portion thereof, in a parking lot in addition to street trees.
  - (2) Shade trees shall be a minimum fifteen (15) gallon box in size and shall provide a minimum thirty (30)-foot canopy at maturity.

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- (3) Shade trees shall be of a type that can reach maturity within fifteen (15) years of planting and shall be selected from a city-approved list of canopy tree species suitable for the valley climate.
  - (4) Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty (30)-foot canopy) on August 21. The arrangement should approximate nearly fifty (50) percent shade coverage at noon on August 21 within fifteen (15) years of planting.
  - (5) The above standards may be modified at the discretion of the review authority if alternative shade structures (including solar carports) are provided. Design standards for such shade structures shall be subject to approval by the review authority.
4. Concrete Curbs
    - a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a raised concrete curb. Raised concrete curbs shall be a minimum of six (6) inches high by six (6) inches deep.
    - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory storm water drainage standards.
  5. Parking Space Landscaping. A maximum of two (2) feet at the front end of a parking space may be landscaped in lieu of paving surface.
  6. Timing. Landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot, unless otherwise approved by the Community Development Director.
- G. Lighting.
1. A parking area with six (6) or more parking spaces shall include outdoor lighting that provides a minimum illumination of 1.0 foot candles over the entire parking area or as otherwise required by the building code.
  2. Outdoor lighting as required by Subsection G.1 above shall be provided during nighttime business hours.
  3. All parking space area lighting shall be energy efficient and designed so that any glare or spillage is directed away from residential properties.
  4. All fixtures shall be hooded.
- H. Pedestrian Access. Parking lots shall include pedestrian walkways in compliance with American with Disabilities Act (ADA) requirements and the California Building Code.
- I. Screening. Parking lots of six (6) spaces or more shall comply with the following screening standards, unless otherwise approved by the review authority.

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1. Location. Screening with a minimum width of five (5) feet shall be provided along the perimeter of parking lots fronting a public or private street or abutting a residential zone.
  2. Height.
    - a. Screening adjacent to streets shall have a minimum height of two and one-half (2½) feet.
    - b. Screening abutting a residential zoning district shall have a minimum height of six (6) feet, except in required setback areas, where the minimum height shall be four (4) feet.
    - c. Commercial parking lots abutting residential zoning districts shall have a solid wall with a minimum height of six (6) feet.
  3. Materials. Required screening may consist of one (1) or more of the following materials:
    - a. Low-profile walls constructed of brick, stone, stucco or other durable material with graffiti-proof coating materials or landscaping/vines.
    - b. Evergreen plants that form an opaque screen.
    - c. An open fence combined with landscaping to form an opaque screen.
    - d. A berm landscaped with ground cover, shrubs, or trees.

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

#### **17.63.080 Bicycle parking.**

- A. Applicability. All multi-family and nonresidential land uses shall provide bicycle parking as specified in this section and in accordance with Sections 17.63.020 (Applicability) and 17.63.030 (Required Parking Spaces), except for the following uses:
  1. Gas and service stations
  2. Maintenance and repair services
  3. Vehicle repair
  4. Vehicle sales and rental
  5. Wholesaling
  6. Construction and material yards
  7. Warehousing and distribution
  8. Other similar uses as determined by the Community Development Director.
- B. Types of Bicycle Parking.

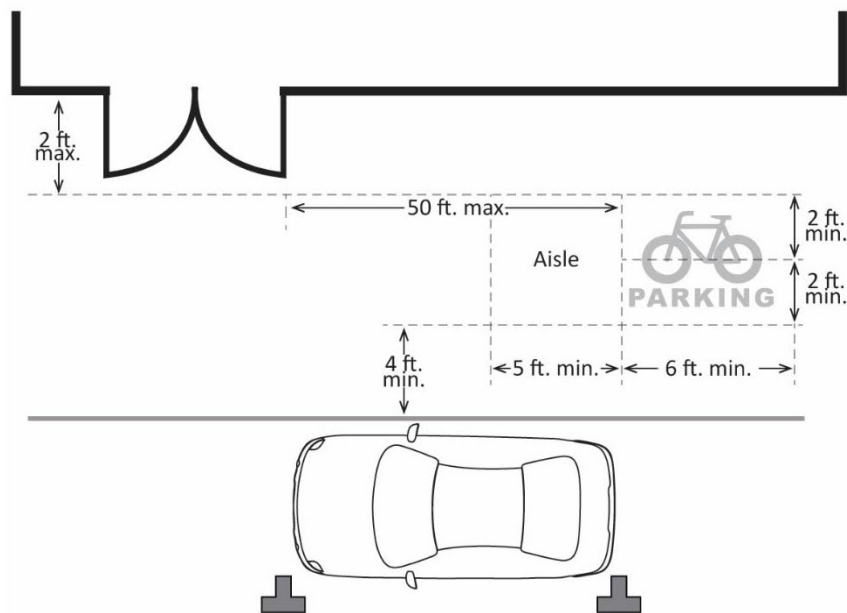
1. Short-Term/Class II Bicycle Parking. Short-term/Class II bicycle parking provides shoppers, customers, and other visitors who generally park for two (2) hours or less a convenient and readily accessible place to park bicycles.
  2. Long-Term/Class I Bicycle Parking. Long-term/Class I bicycle parking provides employees, residents, visitors and others who generally stay at a site for several hours a secure and weather-protected place to park bicycles.
- C. Bicycle Parking Spaces Required. The number of required bicycle parking spaces shall be as specified in Table 17.63-4 (Required Bicycle Parking Spaces).

Table 17.63-4 Required Bicycle Parking Spaces		
Required Bicycle Parking Spaces		
Land Use	Short-Term Spaces	Long-Term Spaces
Multi-Family Dwellings of 6 units or more, Group Housing, and Single Room Occupancy	10% of required automobile parking spaces; minimum of 2 spaces	For uses 10 units or greater: 1 per 10 units, minimum of 2 spaces
Non-Residential Uses	8% of required automobile spaces, minimum of 2 spaces	For uses 20,000 sq. ft. or greater: 5% of required automobile spaces, minimum of 2 spaces

- D. Short-Term/Class II Bicycle Parking Standards. Short-term bicycle parking shall be located within one hundred (100) feet of the primary entrance of the structure or use it is intended to serve and be readily visible to passers-by.
- E. Long-Term Bicycle Parking Standards. The following standards shall be recommended, but not required, for long-term bicycle parking:
1. Location. Long-term bicycle parking shall be located in highly visible, well-lighted areas that are convenient to the street and users.
  2. Cover. A minimum of seventy-five (75) percent of required long-term bicycle parking spaces shall be covered.
  3. Parking Facilities. Long-term bicycle parking spaces must be secure and may include:
    - a. Covered, lockable enclosures with permanently anchored racks for bicycles; or,
    - b. Lockable bicycle rooms or areas with permanently anchored racks; or,
    - c. Lockable, permanently anchored bicycle lockers.
- F. Parking Space Dimensions.
1. Minimum dimensions of two (2) feet by six (6) feet shall be provided for each bicycle parking space (illustrated in Figure 17.63-3).

2. An aisle of at least five (5) feet shall be provided behind all bicycle parking to allow room for maneuvering.
  3. Two (2) feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
  4. Four (4) feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- G. Rack Design. Bicycle racks must be capable of locking both the wheels (one (1) wheel with a U-type lock), providing at least two (2) points of contact with the frame of the bicycle, and supporting bicycles in an upright position. "Inverted U" bicycle racks are highly recommended.
- H. Cover. Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from sun and rainfall, and be at least seven (7) feet above the floor or ground.

**Figure 17.63-3 Short-Term/Class II Bicycle Parking Dimensions**



(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

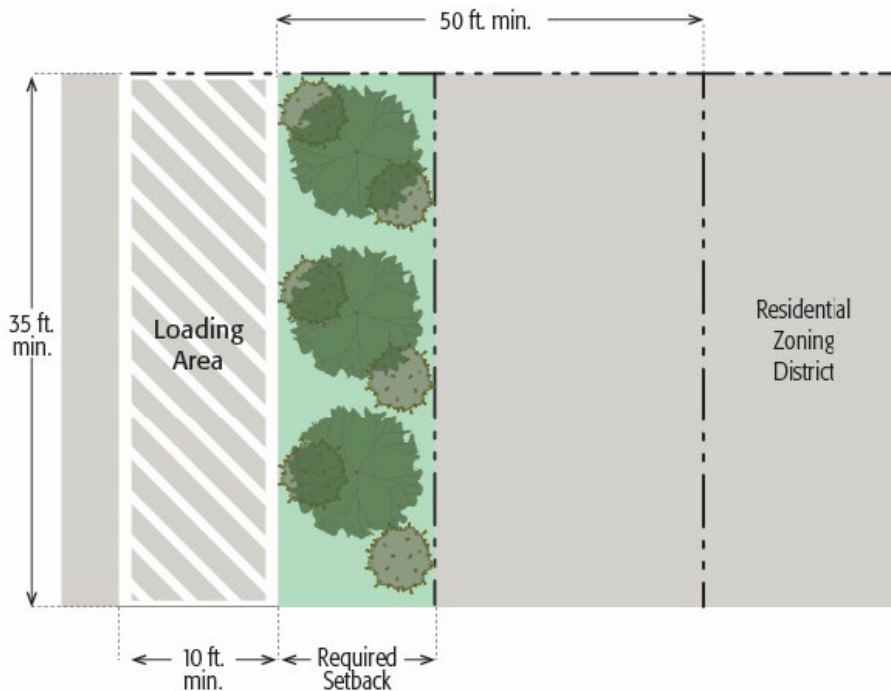
#### **17.63.090 Off-street loading.**

- A. Applicability. All retail, restaurant, hotel, warehousing, manufacturing, hospitals, laundry, and similar uses that involve the frequent receipt or delivery of materials or merchandise shall provide off-street loading spaces consistent with the requirements of this section.

- B. Number of Loading Spaces. The minimum number of required loading spaces shall be as specified in Table 17.63-5 (Required Loading Spaces).

Table 17.63-5 Required Loading Spaces	
Total Gross Floor Area	Required Loading Spaces
Less than 5,000 sq. ft.	None
5,000 to 25,000 sq. ft.	1
Greater than 25,000 sq. ft.	2 plus 1 per each additional 20,000 sq. ft.

**Figure 17.63-4 Off-Street Loading**



- C. Location.
1. Required loading spaces shall be located on the same lot as the use they are intended to serve.
  2. A formal agreement among property owners shall be required and recorded if an immediately adjacent lot is used as required loading spaces.
  3. No loading space shall be located closer than fifty (50) feet to a residential zone, unless the loading space is wholly enclosed within a building or screened by a solid wall not less than eight (8) feet in height.
- D. Dimensions.

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1. Each loading space shall have minimum dimensions of ten (10) feet wide, thirty-five (35) feet long, and fourteen (14) feet in vertical clearance.
  2. Deviations from the minimum dimensions standards may be approved by the Community Development Director if the spatial needs are less than the minimum required due to the truck size and type that will be utilized in the operation of a specific business.

E. Design and Configuration.

1. Loading spaces shall be configured to ensure that loading and unloading takes place on-site and not within adjacent public rights-of-way.
2. Sufficient maneuvering area shall be provided for loading spaces so that vehicles may enter and exit an abutting street in a forward direction.
3. Loading spaces and their associated maneuvering areas shall not encroach into required employee or visitor parking areas or other on-site areas required for vehicle circulation.
4. Loading spaces shall be striped and clearly identified as for loading purposes only.





## **PLANNING COMMISSION AGENDA REPORT**

### **PLANNING COMMISSION**

Donald Borgwardt, Chair  
Mayra Sanchez-Garcia      Jag Mokha  
Harold Kadach              Shawn Conour

**MEETING DATE: May 21, 2025**

**TO:** Chair and Commissioners

**FROM:** Chris Hoem, City Manager

**SUBJECT:**            **Public hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Section 17.71.085 “Expiration of a Permit” of Chapter 17.71 “Conditional Use Permit” of the Atwater Municipal Code to change the expiration limits for conditional use permits.**

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### **RECOMMENDED COMMISSION ACTION:**

It is recommended that Planning Commission:

1.     Open the public hearing and take any testimony from the public;
2.     Close the public hearing;
3.     Make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3) and adopt Resolution No. 0271-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.71 “Conditional Use Permit” of the Atwater Municipal Code.

#### **I.     BACKGROUND:**

The regulations for Conditional Use Permits were first adopted in 1983 and revised in 1984 and 1987. While other nearby cities have modernized their corresponding regulations, the City of Atwater is in need of an update in this matter.

Currently, the Code has a six-month expiration for newly approved Conditional Use Permits. This Zoning Ordinance Text Amendment (ZOTA) proposes to amend the expiration to five years.

#### **II.    ANALYSIS:**

Many projects—particularly those involving larger-scale development or significant site improvements—require extended timeframes for financing, design development, environmental review, and construction staging. A six-month window is often unrealistic, especially in today's economic and regulatory environment. Extending the expiration period to five years provides a more practical timeline that reflects the realities of project delivery.

A longer validity period reduces the need for applicants to request extensions or reapply, which in turn reduces staff time spent on processing minor extensions for valid, ongoing projects. This change promotes administrative efficiency and reduces unnecessary costs for applicants, especially those navigating complex or phased developments.

While the CUP would be valid for five years, staff retains authority to monitor compliance and enforce permit conditions throughout that period. Furthermore, the City may still revoke a CUP if it is not in compliance or becomes a nuisance, ensuring accountability without imposing rigid time constraints.

Economic fluctuations, construction delays, and supply chain disruptions have become increasingly common. Extending the expiration period provides applicants flexibility to adapt to market conditions without jeopardizing entitlements prematurely.

### **III. FISCAL IMPACTS:**

No negative fiscal impacts are anticipated with the approval of this project. This item has been reviewed by the Finance Department.

### **IV. LEGAL REVIEW:**

This item has been reviewed by the City Attorney's Office.

### **V. EXISTING POLICY:**

The ordinance will amend Chapter 17.71, "Conditional Use Permit,".

The draft ordinance does not conflict with any policies of the General Plan or other City policies or guidelines.

### **VI. PUBLIC PARTICIPATION:**

The public hearing was noticed and advertised for the regularly scheduled Planning Commission hearing. The public can provide comments on this item prior to Planning Commission action.

### **VII. ENVIRONMENTAL REVIEW:**

Pursuant to the California Environmental Quality Act (CEQA), the draft ordinance is categorically exempt under section 15061, (b)(3). This exemption states that the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the activity is not subject to CEQA.

**VIII. STEPS FOLLOWING APPROVAL:**

Following adoption of Resolution No. 0271-25, the recommendation will be forwarded to the City Council for consideration.

Submitted by:

\_\_\_\_\_  
Chris Hoem, City Manager

Attachments:

1. Resolution No. 0271 -25
2. Draft Ordinance
3. Exhibit A (Current Ordinance for Ch. 17.71)
4. Exhibit B (Redlined Version of Ch. 17.71)
5. Exhibit C (Proposed Ordinance for Ch. 17.71)



## PLANNING COMMISSION OF THE CITY OF ATWATER

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### RESOLUTION NO. 0271-25

**A RESOLUTION OF THE PLANNING  
COMMISSION OF THE CITY OF ATWATER  
RECOMMENDING THE CITY COUNCIL ADOPT  
ZONING ORDINANCE TEXT AMENDMENT NO.  
25-09-0100 AMENDING CHAPTER 17.71:  
“CONDITIONAL USE PERMIT” OF THE  
ATWATER MUNICIPAL CODE.**

**WHEREAS**, the City of Atwater wishes to modernize its conditional use permit ordinance; and,

**WHEREAS**, Chapter 17.71 “Conditional Use Permit” of the City of Atwater Municipal Code was initially adopted in 1983 and only partially revised in 1984 and 1987; and,

**WHEREAS**, the Planning Commission held a duly noticed public hearing as required by law on May 21, 2025; and,

**WHEREAS**, this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), “Review for Exemption”. This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.; and,

**WHEREAS**, the ZOTA will not have a detrimental effect on the health, safety, and welfare of the neighborhood, nor will it have any adverse effect on the community; and,

**WHEREAS**, the Planning Commission finds that the following findings can be made for ZOTA No. 25-09-0100:

1. The proposed ordinance is consistent with the Atwater General Plan.
2. Adoption of the resolution recommending the City Council adopt the proposed ordinance is exempt from CEQA review under CEQA guideline section 15061(b)(3).
3. The public hearing for this project has been adequately noticed and advertised.
4. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

**NOW THEREFORE BE IT RESOLVED**, that the recitals above are true and correct and hereby incorporated by reference. The Planning Commission of the City of Atwater does hereby recommend that the City Council adopt ZOTA No. 25-09-0100.

The foregoing resolution is hereby adopted this 21<sup>st</sup> day of May, 2025.

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
**DON BORGWARDT,**  
**CHAIR**

**ATTEST:**

\_\_\_\_\_  
**CHRIS HOEM,**  
**CITY MANAGER**



## CITY COUNCIL OF THE CITY OF ATWATER

### ORDINANCE NO. XXXX

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER ADOPTING ZONING ORDINANCE TEXT AMENDMENT NO. 25-09-0100 AMENDING CHAPTER 17.71: "CONDITIONAL USE PERMIT" OF THE ATWATER MUNICIPAL CODE.**

**WHEREAS**, the City of Atwater wishes to enact programs, policies, and regulations in support of housing and commercial development; and,

**WHEREAS**, the City of Atwater wishes to modernize its conditional use permit ordinance; and,

**WHEREAS**, Chapter 17.71 "Conditional Use Permit" of the City of Atwater Municipal Code was initially adopted in 1983 and only partially revised in 1984 and 1987; and,

**WHEREAS**, on May 21, 2025, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning this proposed Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

**WHEREAS**, this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), "Review for Exemption". This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.; and,

**WHEREAS**, the ZOTA will not have a detrimental effect on the health, safety, and welfare of the neighborhood, nor have any adverse effect on the community; and,

**WHEREAS**, the City Council finds that the following findings can be made for ZOTA No. 25-09-0100:

1. The proposed ordinance is consistent with the Atwater General Plan.

2. Adoption of the ordinance is exempt from CEQA review under CEQA guideline section 15061(b)(3).
3. The public hearing for this project has been adequately noticed and advertised.
4. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Atwater as follows:

**SECTION 1. Incorporation.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. CEQA.** this project is exempt under California Environmental Quality Act (CEQA) guideline section 15061(b)(3), "Review for Exemption". This exemption states, the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This is not subject to CEQA.

**SECTION 3. General Plan.** The City Council hereby finds that the adoption of the Ordinance is consistent with the General Plan.

**SECTION 4. Code Amendment.** Chapter 17.71: "Conditional Use Permit," of the Atwater Municipal Code is hereby amended and restated to read in its entirety as provided in "Exhibit A," attached hereto and incorporated herein by reference.

**SECTION 5. Effective Date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

**SECTION 7. Publication.** The City Clerk is directed to certify to the adoption of this Ordinance and post or publish this Ordinance as required by law.

**SECTION 8. Custodian of Records.** The custodian of records for this Ordinance is the City Clerk and the records comprising the administrative record are located at 1160 Fifth St, Atwater, CA 95301.

**SECTION 9. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

**INTRODUCED:**

**ADOPTED:**

**AYES:**

**NOES:**

**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
**MIKE NELSON, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**KORY J. BILLINGS, CITY CLERK**



## **CHAPTER 17.71 CONDITIONAL USE PERMIT**

### **17.71.010 Purpose.**

The purpose of the conditional use permit is to allow the proper integration into the community of uses which may be suitable only in specific locations in the zoning district or only if such uses are designed or laid out on the site in a particular manner.

A conditional use permit shall be required for all uses listed as conditional uses in the district regulations or elsewhere in this chapter that are hereafter created, changed, converted, or enlarged, either wholly, or in part.

In considering an application for a conditional use, the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures. In authorizing a conditional use, the Planning Commission may impose such requirements and conditions with respect to location, construction, maintenance and operation, and site planning, in addition to those expressly stipulated in this Code for the particular use, as they deem necessary for the protection of adjacent properties and the public interest.

(Ord. CS 532, 1983)

### **17.71.015 Changes or reestablishment of uses.**

Any use terminated for a period of less than one year may be re-instituted or changed to a similar or less intensive use without the necessity of obtaining a new use permit. The Community Development Director shall make the determination as to whether a new use is a similar or less intensive use which determination shall be subject to appeal to the Planning Commission.

(Ord. CS 624, 1987)

### **17.71.020 Application and fee.**

- A. Application shall be made by the property owner or certified agent thereof to the Planning Director on a form prescribed for this purpose by the City of Atwater. Conditional use permit, revocable, conditional, and/or valid for a term period, may be issued for any of the uses or purposes for which such permits are required or permitted by the terms of this chapter. Granting of a conditional use permit does not exempt the applicant from complying with all requirements of the fire and building code, or other applicable sections of this Code.

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- B. Application fee shall be set by resolution by the Council in an amount consistent with the actual cost of processing an application. No part of such fee shall be refundable.
  - C. Accompanying Maps and Drawings. Maps and drawings necessary to demonstrate that conditions set forth herein are fulfilled.

(Ord. CS 532, 1883)

#### **17.71.030 Public hearing.**

The Planning Director shall set the matter for public hearing not less than 30 days after date of application and shall send notice to owners of all property located within 300 feet of the property for which a conditional use permit is requested not less than ten days prior to the date of such hearing. Failure of owners to receive notice of hearing shall in no way affect the validity of action taken.

When Council approval is required as indicated elsewhere in this title, public hearings shall be advertised in the same manner.

(Ord. CS 532, 1983)

#### **17.71.040 Planning Commission Action.**

Provided that the Planning Commission is satisfied that the proposed structure or use conforms to the requirements and the intent of this Code and the Atwater General Plan, that any additional conditions stipulated by the Planning Director as deemed necessary in the public interest will be met, and that such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community, the Planning Commission may approve the issuance of a conditional use permit except for those permits that require Council approval.

(Ord. CS 532, 1483)

#### **17.71.050 Certificate.**

Upon approval of the use permit, and if no appeal from the decision has been filed within five calendar days from date of approval, the Planning Director shall issue a certificate. Said certificate shall contain the permit number, effective date and expiration date of permit, as well as conditions attached to approval of permit.

The certificate shall be permanently displayed in public view at all times. Such posting shall be a condition of every use permit and shall be agreed to in writing by the applicant prior to the approval by the Planning Commission.

(Ord. CS 532, 1983)

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**17.71.060 Building permit.**

Following the issuance of a conditional use permit, the building inspector shall issue a building permit if required, at such time as compliance with all other sections of this chapter and all rules and regulations of the City are ascertained, and shall ensure that development is undertaken and completed only in conformity to the approved plans.

(Ord. CS 532, 1983)

**17.71.070 Re-application.**

No person, including the original applicant, shall reapply for a similar conditional use permit on the same land, building or structure within a period of one year from date of the final decision on such previous application unless such decision is a denial without prejudice.

(Ord. CS 532, 1983)

**17.71.080 Revocation.**

A Use Permit can be revoked by the Planning Commission if approved by the Planning Commission, or by the City Council if approved by the City Council, at any time for noncompliance with conditions or other City regulations, or if it creates a nuisance to the neighborhood.

(Ord. CS 532, 1983)

**17.71.085 Expiration of permit.**

Use permits associated with site plans shall expire six months after approval, if no building permit has been issued by then and construction started. All other types of use permits shall expire six months after approval if operation has not started. A use permit shall also expire if the use has been discontinued six months or longer.

(Ord. CS 532, 1983)

**17.71.090 Appeal.**

Any decision of the Planning Commission may be appealed in writing to the City Council within five calendar days after Planning Commission action. If such an appeal is made, notice of the hearing on the appeal shall be given as provided for in Section 17.71.030.

(Ord. CS 532, 1983; Ord. CS 581, 1984)

## CHAPTER 17.71 CONDITIONAL USE PERMIT

### 17.71.010 Purpose.

The purpose of the conditional use permit is to allow ~~for the proper appropriate~~ integration ~~of certain land uses~~ into the community ~~of uses~~ which may be suitable only in specific locations ~~in the within a~~ zoning district, or only if ~~such uses are~~ designed ~~and/or~~ laid out ~~on the site~~ in a particular manner.

A conditional use permit ~~shall be~~ required for all uses listed as conditional uses in the district regulations or elsewhere in this chapter that are hereafter created, changed, converted, or enlarged, either wholly, or in part.

~~When~~ considering an application for a conditional use, the Planning Commission shall give due ~~regard consideration~~ to the nature and condition of all adjacent uses and structures. In authorizing a conditional use, the Planning Commission may impose ~~such~~ requirements and conditions ~~with respect relating~~ to location, construction, maintenance, ~~and~~ operation, and site planning, in addition to those expressly ~~stipulated in required by~~ this Code ~~for the particular use~~, as ~~they deem~~ necessary to ensure that the proposed use is consistent with all general plan goals and policies, and will not create negative impacts to adjacent properties or the general public for the protection of adjacent properties and the public interest.

(Ord. CS 532, 1983)

### 17.71.015 Changes or reestablishment of uses.

Any use, established pursuant to an approved conditional use permit, that has been discontinued ~~terminated for a period of~~ less than ~~one five~~ years may be ~~re-~~ instituted reestablished or changed to a similar or less intensive use without the ~~necessity of obtaining need for~~ a new use permit. The Community Development Director shall ~~make the determination as to determine~~ whether ~~a new the proposed~~ use is ~~a~~ similar or less intensive, ~~use which and this~~ determination shall be subject to appeal to the Planning Commission.

(Ord. CS 624, 1987)

### 17.71.020 Application and fee.

- A. ~~The a~~ Application shall be ~~submitted made~~ by the property owner or ~~certified their~~ authorized agent ~~thereof~~ to the Planning Community Development Director on a form prescribed ~~for this purpose~~ by the City of Atwater. A cConditional use permit, ~~revocable, conditional, and/or valid for a term period,~~ may be issued for any of the uses or purposes

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for which such permits are required or permitted by the terms of this ~~chapter~~Code. ~~Granting Approval~~ of a conditional use permit does not exempt the applicant from ~~complying compliance~~ with all ~~requirements applicable provisions~~ of the ~~Fire Code, and~~ ~~Building Code~~, or other ~~applicable~~ sections of this Code.

- B. ~~The a~~Application fee shall be set by resolution ~~of by~~ the City Council in an amount consistent with the actual cost of processing ~~the an~~ application. ~~No part of such fee shall be refundable~~The fee is nonrefundable.
- C. ~~Accompanying Maps and Drawings. Maps and drawings necessary to demonstrate that conditions set forth herein are fulfilled. The application shall include maps and drawings sufficient to demonstrate compliance with the requirements set forth in this Code~~

(Ord. CS 532, 1883)

### **17.71.030 Public hearing.**

The Planning Community Development Director shall ~~set schedule~~ the matter for a public hearing ~~not less no sooner~~ than 30 days after the date of application, ~~and shall send notice~~ Notice of the hearing shall be mailed to owners of all property located within 300 feet of the subject property ~~for which a conditional use permit is requested~~ not less than ten days prior to the hearing date ~~of such hearing~~. Failure of a property owners to receive such notice ~~of hearing~~ shall ~~in no way not~~ affect the validity of any action taken.

When Council approval is required, ~~as indicated specified~~ elsewhere in this title, the public hearings shall be ~~advertised noticed~~ in the same manner.

(Ord. CS 532, 1983)

### **17.71.040 Findings for Approval~~Planning Commission Action~~.**

~~Provided that the Planning Commission is satisfied that the proposed structure or use conforms to the requirements and the intent of this Code and the Atwater General Plan, that any additional conditions stipulated by the Planning Director as deemed necessary in the public interest will be met, and that such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community, the Planning Commission may approve the issuance of a conditional use permit except for those permits that require Council approval.~~

The Planning Commission may approve the issuance of a conditional use permit (or recommend action by the City Council if the proposal includes changes that require Council approval) only if all of the following findings can be made:

1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.

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2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.
  3. The proposed use will not be detrimental to the public health, safety, and welfare of the city.
  4. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

(Ord. CS 532, 1483)

#### **17.71.050 Certificate.**

Upon approval of the use permit, and if no appeal from the decision ~~has been~~is filed within five calendar days ~~from of the approval date of approval~~, the ~~Planning Community Development~~ Director shall issue a permit certificate. ~~Said The~~ certificate shall contain the permit number, effective date, ~~and~~ expiration date, ~~of permit, as well as and all~~ conditions ~~attached to of~~ approval ~~of permit~~.

The certificate shall be permanently displayed in public~~ly visible location on the premises view~~ at all times. ~~Such posting shall be~~Display of the certificate is a condition of every use permit and shall be ~~agreed-acknowledged to~~ in writing by the applicant prior to the final approval by the Planning Commission.

(Ord. CS 532, 1983)

#### **17.71.060 Building permit.**

Following the issuance of a conditional use permit, the building inspector shall issue a building permit, if required, ~~at such time as once~~ compliance with all applicable provisions ~~other sections~~ of this chapter and all City rules and regulations have been confirmed~~of the City are ascertained, and. The building inspector~~ shall ensure that development is ~~undertaken-initiated~~ and completed ~~only in conformity to~~conformance with the approved plans.

(Ord. CS 532, 1983)

#### **17.71.070 Re-application.**

No person, including the original applicant, shall reapply for a similar conditional use permit ~~for on~~ the same land, building, or structure within ~~a period of one year from date~~ of the final decision on ~~such the~~ previous application, unless ~~such decision is a denial~~the denial was made without prejudice.

(Ord. CS 532, 1983)

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### 17.71.080 Revocation.

A ~~Use P~~ermit ~~can may~~ be revoked by the Planning Commission if approved by the Planning Commission, or by the City Council if approved by the City Council, at any time for noncompliance with permit conditions, ~~or other violation of~~ City regulations, or if the use constitutes it creates a nuisance to the neighborhood.

(Ord. CS 532, 1983)

### 17.71.085 Expiration of permit.

~~Use permits associated with site plans shall expire six months after approval, if no building permit has been issued by then and construction started. All other types of use permits shall expire six months after approval if operation has not started. A use permit shall also expire if the use has been discontinued six months or longer.~~

A. Time Limits. The conditional use permit shall expire if not exercised within five years of approval. 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.

B. Extension of Time. The Community Development Director may approve time extensions of up to two years, in the following manner:

1. The applicant shall submit to the Community Development Department a written request for an extension of time no later than ten days before the expiration of the permit or approval.
2. The Community Development Director may extend the permit or approval for an additional two 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.
- 1.4. The Community Development Director may choose to refer any extension of time requests to the Planning Commission for review and final decision.

(Ord. CS 532, 1983)

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**17.71.090 Appeal.**

Any decision of the Planning Commission may be appealed in writing to the City Council within five calendar days ~~after of the~~ Planning Commission's action. If ~~such~~ an appeal is made, notice of the hearing ~~on the appeal~~ shall be ~~given as~~ provided as specified for in Section 17.71.030.

(Ord. CS 532, 1983; Ord. CS 581, 1984)



## **CHAPTER 17.71 CONDITIONAL USE PERMIT**

### **17.71.010 Purpose.**

The purpose of the conditional use permit is to allow for the appropriate integration of certain land uses into the community which may be suitable only in specific locations within a zoning district, or only if designed and laid out in a particular manner.

A conditional use permit is required for all uses listed as conditional uses in the district regulations or elsewhere in this chapter that are hereafter created, changed, converted, or enlarged, either wholly, or in part.

When considering an application for a conditional use, the Planning Commission shall give due consideration to the nature and condition of all adjacent uses and structures. In authorizing a conditional use, the Planning Commission may impose requirements and conditions relating to location, construction, maintenance, operation, and site planning, in addition to those expressly required by this Code, as necessary to ensure that the proposed use is consistent with all general plan goals and policies, and will not create negative impacts to adjacent properties or the general public.

(Ord. CS 532, 1983)

### **17.71.015 Changes or reestablishment of uses.**

Any use, established pursuant to an approved conditional use permit, that has been discontinued for less than five years may be reestablished or changed to a similar or less intensive use without the need for a new use permit. The Community Development Director shall determine whether the proposed use is similar or less intensive, and this determination shall be subject to appeal to the Planning Commission.

(Ord. CS 624, 1987)

### **17.71.020 Application and fee.**

- A. The application shall be submitted by the property owner or their authorized agent to the Community Development Director on a form prescribed by the City of Atwater. A conditional use permit may be issued for any of the uses or purposes for which such permits are required or permitted by the terms of this Code. Approval of a conditional use permit does not exempt the applicant from compliance with all applicable provisions of the Fire Code, Building Code, or other sections of this Code.

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- B. The application fee shall be set by resolution of the City Council in an amount consistent with the actual cost of processing the application. The fee is nonrefundable.
  - C. The application shall include maps and drawings sufficient to demonstrate compliance with the requirements set forth in this Code

(Ord. CS 532, 1883)

#### **17.71.030 Public hearing.**

The Community Development Director shall schedule the matter for a public hearing no sooner than 30 days after the date of application. Notice of the hearing shall be mailed to owners of all property located within 300 feet of the subject property no less than ten days prior to the hearing date. Failure of a property owner to receive such notice shall not affect the validity of any action taken.

When Council approval is required, as specified elsewhere in this title, the public hearing shall be noticed in the same manner.

(Ord. CS 532, 1983)

#### **17.71.040 Findings for Approval.**

The Planning Commission may approve the issuance of a conditional use permit (or recommend action by the City Council if the proposal includes changes that require Council approval) only if all of the following findings can be made:

1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.
2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.
3. The proposed use will not be detrimental to the public health, safety, and welfare of the city.
4. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

(Ord. CS 532, 1483)

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**17.71.050 Certificate.**

Upon approval of the use permit, and if no appeal from the decision is filed within five calendar days of the approval date, the Community Development Director shall issue a permit certificate. The certificate shall contain the permit number, effective date, expiration date, and all conditions of approval.

The certificate shall be permanently displayed in publicly visible location on the premises at all times. Display of the certificate is a condition of every use permit and shall be acknowledged in writing by the applicant prior to the final approval by the Planning Commission.

(Ord. CS 532, 1983)

**17.71.060 Building permit.**

Following the issuance of a conditional use permit, the building inspector shall issue a building permit, if required, once compliance with all applicable provisions of this chapter and all City rules and regulations have been confirmed. The building inspector shall ensure that development is initiated and completed in conformance with the approved plans.

(Ord. CS 532, 1983)

**17.71.070 Re-application.**

No person, including the original applicant, shall reapply for a similar conditional use permit for the same land, building, or structure within one year of the final decision on the previous application, unless the denial was made without prejudice.

(Ord. CS 532, 1983)

**17.71.080 Revocation.**

A use permit may be revoked by the Planning Commission if approved by the Planning Commission, or by the City Council if approved by the City Council, at any time for noncompliance with permit conditions, violation of City regulations, or if the use constitutes a nuisance to the neighborhood.

(Ord. CS 532, 1983)

**17.71.085 Expiration of permit.**

- 
- A. Time Limits. The conditional use permit shall expire if not exercised within five years of approval. 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.
- B. Extension of Time. The Community Development Director may approve time extensions of up to two years, in the following manner:
1. The applicant shall submit to the Community Development Department a written request for an extension of time no later than ten days before the expiration of the permit or approval.
  2. The Community Development Director may extend the permit or approval for an additional two 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 Community Development Director may choose to refer any extension of time requests to the Planning Commission for review and final decision.

(Ord. CS 532, 1983)

#### **17.71.090 Appeal.**

Any decision of the Planning Commission may be appealed in writing to the City Council within five calendar days of the Planning Commission’s action. If an appeal is made, notice of the hearing shall be provided as specified in Section 17.71.030.

(Ord. CS 532, 1983; Ord. CS 581, 1984)