

CITY OF YUBA CITY
STAFF REPORT

Date: January 21, 2020

To: Honorable Mayor & Members of the City Council

From: Administration

Presentation By: Shannon L. Chaffin, City Attorney

Summary

Subject: Use Permit Ordinance Amendment - Initiation

Recommendation: Initiate an Ordinance update that will amend the Yuba City Municipal Code to allow for direct City Council review of Use Permits by amending Sections 8-5.7001, and 8-5.7003 of Article 70 of Chapter 5 of Title 8; and Section 8-5.7101 of Article 71 of Chapter 5 of Title 8

Fiscal Impact: Staff time to administer and enforce the ordinance as appropriate.

Purpose:

To provide staff direction regarding specific terms of the ordinance and initiate the process to update the Municipal Code to allow for direct City Council review of Use Permits by amending the Yuba City Municipal code.

Background:

City Council has provided past direction to establish an option for Council to directly review and consider use permit entitlements at the discretion of the Council. Staff has developed an ordinance amendment that would implement that option for the Council.

An overview of the current process for the review and issuance of City Use Permits is as follows:

Conditional Use Permit

The Yuba City Zoning Ordinance includes regulations concerning where and under what conditions a business may operate in the City. In some cases a Conditional Use Permit (CUP) is required to operate a business. Currently, a Conditional Use Permit is a discretionary permit reviewed by the Planning Commission and appealable to City Council that ensures a desired use is compatible with the General Plan, and surrounding land uses.

Planning Commission

Conditional Use Permit applications currently require a public hearing before the Planning Commission. Staff prepares a report with a recommendation on the Use Permit application. This report will be sent to the Planning Commission and applicant before the hearing. At the Planning Commission hearing, the applicant will be given an opportunity to present their proposal. Staff will then present the staff report and recommendations. At the hearing any member of the public wishing to speak on the matter may do so. Following public comments, the Planning Commission will decide to approve the project, approve it with conditions, deny the project or continue it for further study. The Planning Commission decision is final unless appealed to the City Council.

Appeal to the City Council

The applicant or any other members of the public have the right to appeal the Planning Commission decision to the City Council. The appeal must be filed in writing with the City Clerk within ten working days of the Planning Commission's decision. If an appeal is filed, Staff will prepare a written report and recommendation to the City Council. The appellant will also be given an opportunity to speak. The City Council may refer the matter back to the Planning Commission for further consideration, reverse, affirm or modify the decision of the Planning Commission.

Analysis:

An amendment to the Municipal Code is being proposed to add an Alternative City Council Use Permit Review Process that would allow the project to bypass the City Planning Commission public hearing process and be heard directly by the City Council. The new language in Municipal Code Section 8-5.7003 is proposed to be amended to add the following language:

Alternative City Council Use Permit Review Process. ...the City Council may review a use permit pursuant to an alternative City Council use permit review process as follows:

- Once a use permit application is final, and prior to commencing any other level of review process, the Planning Director will provide a list of the location(s) of the property affected by the proposed use permit, along with a general description of the proposed use, to the City Council.
- Within 7 calendar days thereafter, any member of the City Council may direct the City Manager to add an item on the Agenda, at the next reasonably available meeting of the City Council, for consideration whether to use the alternative City Council use permit review process. If no request is made within 7 calendar days, the Planning Director shall proceed with the level of review otherwise set forth in Section 8-5.7003(a).
- No less than 7 calendar days prior to the matter being considered by the City Council, the Planning Director shall give notice to the applicant that the City Council will be considering whether to proceed with the alternative review process. Notice shall include the date, time and place of the City Council meeting, a general explanation of the matter to be considered, and a general description of the location of the property for which the use permit is proposed. Notice of the meeting shall also be mailed, emailed or otherwise provided at least 7 days prior to the meeting to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is subject to the meeting. In the alternative, if the nature of the use is such that more than 250 parcels of real property would be within 300 feet of the proposed use, then notice may be published in a newspaper of general circulation. The failure of any person or entity to receive notice given pursuant to this subsection shall not constitute grounds for invalidating any action for which the notice was given.
- At the next reasonably available meeting of the City Council, the City Council may consider whether to proceed with the alternative City Council use permit review process. Factors for proceeding with the alternative review process can include likelihood of an appeal to the City Council if another review process is used, the public interest in expediting the review process, and other items related to public health, safety and welfare. The City Council may not consider the merits of, or whether to approve or deny, the use permit, but shall have sole discretion whether to utilize the alternative review process for the use permit.
- The alternative City Council use permit review process may not be used unless approved by a majority of the City Council. If so approved, the City Council use permit review process shall be the same as established for the Planning Commission use permit review. No advisory recommendation from the Planning Commission is required, but may be requested by the City Council. If so requested, the Planning Commission, following a public hearing, shall make an

advisory recommendation to the City Council within 40 days of first hearing the matter. Following the Planning Commission's recommendation, or if none is requested, the Council shall conduct a public hearing. The use permit shall be decided based on the same findings as subsection (d) of this Section.

- The decision of the City Council shall be final; there is no right of appeal.
- If the alternative City Council use permit review process is not approved by a majority of the City Council, or if not decision is rendered by the City Council within 20 days of the first meeting, then it shall not be used and an applicable level of review as set forth in subsection (a) shall be instead applied.

The draft ordinance proposed for initiation would sunset in one year (366 days) after it becomes effective unless the Council renews it. The ordinance also confirms the City Council's authority to waive fees for an appeal, and implements direct review by the City Council for projects whose conditions of approval require such review.

Fiscal Impact:

None, other than staff time to administer and enforce the ordinance as appropriate.

Alternatives:

- 1) Reject the proposed ordinance.
- 2) Provide Staff with direction for modifying the proposed ordinance.

Recommendation:

Initiate an ordinance update that will amend the Yuba City Municipal Code to allow for direct City Council review of Use Permits by amending Sections 8-5.7001, and 8-5.7003 of Article 70 of Chapter 5 of Title 8; and Section 8-5.7101 of Article 71 of Chapter 5 of Title 8.

Attachment:

- A. (Draft) Ordinance amending the Yuba City Municipal Code to allow for direct City Council review of Use Permits

Prepared By:

/s/ Jaspreet Kaur

Jaspreet Kaur
Administrative Analyst

Submitted By:

/s/ Michael Rock

Michael Rock
City Manager

Reviewed by:

Development Services
City Attorney

BM

SLC by email

ATTACHMENT A

Use Permit Ordinance

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
UPDATING THE YUBA CITY MUNICIPAL CODE TO ALLOW FOR
DIRECT CITY COUNCIL REVIEW OF USE PERMITS BY AMENDING
SECTIONS 8-5.7001, AND 8-5.7003 OF ARTICLE 70 OF CHAPTER 5
OF TITLE 8; AND SECTION 8-5.7101 OF ARTICLE 71, OF CHAPTER 5
OF TITLE 8; OF THE YUBA CITY MUNICIPAL CODE**

WHEREAS, the City Council periodically assesses the Yuba City Municipal Code to ensure efficient use of City resources and streamlining to promote the public health, safety and welfare; and

WHEREAS, as part of this process, on _____, 2020, the City Council initiated an amendment to the Yuba City Municipal Code to allow for direct City Council review of certain entitlements (proposed Ordinance); and

WHEREAS, after initiation, the amendments were assessed by City Staff and provided to the Planning Commission for review and assessment; and

WHEREAS, the Planning Commission held a public hearing on _____, 2020, to consider the update to the Yuba City Municipal Code initiated by the City Council, including whether the project was subject to the California Environmental Quality Act (CEQA); and

WHEREAS, after considering all information provided to it, and providing an opportunity to the public to provide public testimony, the Planning Commission [did OR did not] find i) the proposed amendments were consistent with the General Plan; ii) the amendments were in the public interest; and iii) the amendments were not a “project” under CEQA Guidelines Section 15378, as they are an administrative activity providing for an additional entitlement review process that will not result in direct or indirect physical changes in the environment; and

WHEREAS, after due consideration of all the items before it, the Planning Commission then [did OR did not] recommend the City Council adopt the proposed Ordinance and make an associated determination the proposed Ordinance was not a “project” for the purposes of CEQA; and

WHEREAS, the proposed Ordinance was presented to the Council for a public hearing and consideration at its regular meeting of _____, 2020; and

WHEREAS, after receiving the recommendation of the Planning Commission and considering all public testimony and presentation by City Staff, the City Council waived the first reading and introduced the proposed Ordinance; and

WHEREAS, the proposed Ordinance was again presented to the City Council for a public hearing and consideration at its regular meeting of _____, 2020; and

WHEREAS, the City Council now desires to waive the second reading and adopt this Ordinance.

THE CITY COUNCIL OF THE CITY OF YUBA CITY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Yuba City finds that the adoption of this Ordinance is not a “project” for the purposes of CEQA Guidelines Section 15378, as the amendments provide for an administrative mechanism allowing for an additional entitlement review process that will not result in direct or indirect physical changes in the environment. Therefore, this matter is not subject to CEQA.

Section 2. The Council further finds and determines that adoption of the Ordinance is in the public interest, is consistent with the City’s General Plan, and promotes the public health, safety and welfare.

Section 3. Section 8-5.7001 (Permitted uses—Level of review for multiple-family, commercial and industrial uses) of Article 70 (Types of Review/Permits) of Chapter 5 (Zoning) of Title 8 (Planning and Zoning) of the Yuba City Municipal Code is amended to read as follows:

Sec. 8-5.7001. - Permitted uses—Level of review for multiple-family, commercial and industrial uses.

This section specifies the level of review for proposed multiple-family, commercial and industrial uses of land or structures that are listed as "permitted" uses within the district the proposed use is located. The process provides for increasing levels of review based on the size or intensity of a project. For specific construction standards and regulations within flood hazard zones, see Title 6, Chapter 9, Article 9, Flood Damage Prevention, for additional information.

(a) *Level of review.* To determine the applicable review process, a proposed project shall be compared to the following matrix. When Planning Commission (Section 8-5.7001(c)) or City Council (Section 8-5.7001(d)) development plan review is required by this article and a use permit is also required then the site plan review process shall be used in lieu of the use permit process. [Notwithstanding, in the alternative City Council use permit review process \(Section 8-5.7003\(f\)\) may be used in the sole discretion of the City Council for qualifying use permit reviews.](#)

Land Use ⁽¹⁾	Review Criteria	Development Plan Review		
		Ministerial	Planning Commission	City Council
Multiple-Family	# of Units	1—25	26—100	101+
Office	Gross floor area (sf.)	1—35,000	35,001—100,000	100,001+
Retail & Service Indoor Outdoor	Square footage	1—25,000	25,001—100,000	100,001+

	Square footage	1—35,000	35,001— 125,000	125,001+
Industrial Warehouse & Outdoor Storage	Square footage	1—35,000	35,001— 100,000	100,001+
	Square footage	1—50,000	50,001— 150,000	150,001+
Conversion of an Existing Facility to a Different Category of Use	Square footage of usable area	1—35,000	35,001— 100,000	100,001+
Conversion of Commercial or Industrial Sites to Same Category of Use	Tenant Improvements	All projects		
Central City Specific Plan		All projects		

- (1) Expansion of facilities have the same level of review as a new project (considering expansion area only) provided it has been two years or more between original completion and beginning of the next expansion. Otherwise the total square footage is figured as cumulatively.
- (b) *Ministerial development plan review.*
- (1) Those projects determined to be ministerial shall be reviewed and decided upon by the Planning Director. No public hearing is required for this level of review.
- (2) Following receipt of a complete application and review of the application, the Planning Director shall do one of the following:
- (i) Approve the application if it is determined that the proposal will comply with all applicable requirements of this chapter and other City standards. Applications for all residential uses are required to satisfy at least one of the findings found in Title 6, Chapter 9, Article 6 of the Municipal Code. The term to begin and complete construction for an approved development plan shall be the same as the building permit.
 - (ii) Deny the application if it is determined that the proposal will not comply with all applicable standards of this chapter and all other City standards.
 - (iii) Request further information as needed in order to make the determination to approve or deny the application.
- (3) *Appeals.* The decision of the Planning Director may be appealed to the Planning Commission (Section 8-5.7104(a)).
- (c) *Planning Commission development plan review.* This provides a review process for

medium to large expansions or new projects that for which the anticipated uses are permitted by the district in which the proposal is located. Because of the scale of the proposal the Planning Commission's review is needed to assure that the project will be compatible with existing or expected neighboring improvements and that adequate public facilities are available to serve the project.

- (1) *Process.* Following acceptance of a complete development plan application, the proposal shall be distributed by the Planning Department to other City departments and other relevant public agencies for review and comment. Following review by City staff and recommendation by the Planning Department, the Planning Commission shall conduct a public hearing on the proposal. Procedures contained in Article 71 of this chapter are applicable to the Planning Commission development plan review.
 - (2) *Notice and hearing.* Notice of a public hearing shall be given pursuant to Government Code §§ 65090 through 65095.
 - (3) *Determination.* Following the close of the public hearing the Planning Commission shall approve, approve with conditions or deny the application within 30 days of the close of the hearing.
 - (4) *Findings for approval.* Approval or approval with conditions shall be granted when the following findings can be made, based on information in the record:
 - (i) The site for the proposed use is adequate in size and shape to accommodate said use, public access, parking and loading, yards, landscaping and other features required by this chapter.
 - (ii) The streets serving the site are adequate to carry the quantity of traffic generated by the proposed use.
 - (iii) The site design, design of the buildings and the scale of the project will complement neighboring facilities.
 - (iv) The application satisfies at least one of the findings found in Title 6, Chapter 9, Article 6 of the Municipal Code.
 - (5) *Appeals.* The decision of the Planning Commission may be appealed to the City Council (Section 8-5.7104(b)).
- (d) *City Council development plan review.* The City Council development plan review process shall be the same as established for the Planning Commission development plan review except that the Planning Commission, following a public hearing, shall make an advisory recommendation to the City Council. Following the Commission's recommendation, the Council shall conduct a public hearing. The development plan shall be decided based on the same findings as required of the Planning Commission. Procedures contained in Article 71 of this chapter are applicable to City Council development plan review.

(e) *Review authorized by condition of approval. If a previously approved development plan or other entitlement granted by the City has a condition of approval requiring proposed modifications to, or review of, said entitlement to be submitted to City Council for approval consideration, then the alternative City Council use permit review process shall be used for said entitlement. No approval by the majority of the City Council shall be required in such circumstances.*

Section 4. Section 8-5.7003 (Use Permits) of Article 70 (Types of Review/Permits) of Chapter 5 (Zoning) of Title 8 (Planning and Zoning) of the Yuba City Municipal Code is amended to read as follows:

Sec. 8-5.7003. - Use permits.

Uses requiring a use permit are those for which their effect on surrounding uses and the environment typically cannot be determined in advance of being proposed for a particular location. This process provides for the review of the location, configuration, design and impacts of the proposed use.

- (a) *Process.* Following acceptance of a complete use permit application, the proposal shall be distributed by the Planning Department to other City departments and other relevant public agencies for review and comment. The City Council shall also be provided with a list of the location(s) of the property affected by the proposed use permit, along with a general description of the proposed use. Following review by City staff and recommendation by the Planning Department, the Planning Commission shall conduct a public hearing on the proposal unless the alternative City Council use permit review process is required per Section 8-5.7003(f).
- (b) *Notice and hearing.* Notice of a public hearing shall be given pursuant to Government Code §§ 65090 through 65095.
- (c) *Determination.* Following the close of the public hearing the Planning Commission shall approve, approve with conditions or deny the use permit application within 30 days of the close of the hearing.
- (d) *Findings for approval.* Approval or approval with conditions shall only be granted when the following findings can be made, based on information in the record:
 - (1) The proposal is consistent with the General Plan.
 - (2) The site for the proposed use is adequate in size and shape to accommodate said use, public access, parking and loading, yards, landscaping and other features required by this chapter.
 - (3) The streets serving the site are adequate to carry the quantity of traffic generated by the proposed use.
 - (4) The site design and the size and design of the buildings will complement neighboring facilities.
 - (5) The establishment or operation of the use or building applied for will not be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the vicinity of the proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
 - (6) At least one of the findings in Title 6, Chapter 9, Article 6 of the Municipal Code is satisfied.
- (e) *Appeals.* The decision of the Planning Commission may be appealed to the City Council (Section 8-5.7104(b)). Upon request of the appealing party, the City Council may waive any fee required for an appeal to the City Council, in whole or in part, to the appealing party.
- (f) Alternative City Council use permit review process. Notwithstanding any other provision of this Section, the City Council may review a use permit pursuant to an alternative City Council use permit review process as follows:
 - (i) Once a use permit application is final, and prior to commencing any other level of review process, the Planning Director will provide a list of the location(s) of the property affected by the proposed use permit, along with a general description of the proposed use, to the City Council.
 - (ii) Within 7 calendar days thereafter, any member of the City Council may direct the City Manager to add an item on the Agenda, at the next reasonably available meeting of the City Council, for consideration whether to use the alternative City Council use permit review process. If no request is made within 7 calendar days, the Planning Director shall proceed with the level of review otherwise set forth in Section 8-5.7003(a)

- (iii) No less than 7 calendar days prior to the matter being considered by the City Council, the Planning Director shall give notice to the applicant that the City Council will be considering whether to proceed with the alternative review process. Notice shall include the date, time and place of the City Council meeting, a general explanation of the matter to be considered, and a general description of the location of the property for which the use permit is proposed. Notice of the meeting shall also be mailed, emailed or otherwise provided at least 7 days prior to the meeting to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is subject to the meeting. In the alternative, if the nature of the use is such that more than 250 parcels of real property would be within 300 feet of the proposed use, then notice may be published in a newspaper of general circulation. The failure of any person or entity to receive notice given pursuant to this subsection shall not constitute grounds for invalidating any action for which the notice was given.
- (iv) At the next reasonably available meeting of the City Council, the City Council may consider whether to proceed with the alternative City Council use permit review process. Factors for proceeding with the alternative review process can include likelihood of an appeal to the City Council if another review process is used, the public interest in expediting the review process, and other items related to public health, safety and welfare. The City Council may not consider the merits of, or whether to approve or deny, the use permit, but shall have sole discretion whether to utilize the alternative review process for the use permit.
- (iv) The alternative City Council use permit review process may not be used unless approved by a majority of the City Council. If so approved, the City Council use permit review process shall be the same as established for the Planning Commission use permit review. No advisory recommendation from the Planning Commission is required, but may be requested by the City Council. If so requested, the Planning Commission, following a public hearing, shall make an advisory recommendation to the City Council within 40 days of first hearing the matter. Following the Planning Commission's recommendation, or if none is requested, the Council shall conduct a public hearing. The use permit shall be decided based on the same findings as subsection (d) of this Section.
- (v) The decision of the City Council shall be final; there is no right of appeal.
- (vi) If the alternative City Council use permit review process is not approved by a majority of the City Council, or if not decision is rendered by the City Council within 20 days of the first meeting, then it shall not be used and an applicable level of review as set forth in subsection (a) shall be instead applied.

Section 5. Section 8-5.7101 (Amendments to permits and variances) of Article 71 (Permit and Variance Procedures) of Chapter 5 (Zoning) of Title 8 (Planning and Zoning) of the Yuba City Municipal Code is amended to read as follows:

Sec. 8-5.7107. - Amendments to permits and variances.

Amendments to permits may be granted as follows:

- (a) Minor revisions for which the resulting project is considered by the Planning Director to be substantially the same as originally approved, may be approved by the

Planning Director unless otherwise required by a condition of approval requiring review by the City Council.

- (b) All other revisions must be reviewed and decided upon by the body having the authority to decide upon the original application, unless otherwise required by a condition of approval requiring review by the City Council, or as otherwise may be warranted by either the City Council use permit review process. Upon application for an amendment to a permit, the permit procedures and requirements set forth in this chapter shall be complied with.

Section 6. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 7. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 8. This ordinance shall take effect and be in full force and effect from and after 30 days after its final passage and adoption. Thereafter, it shall automatically expire and have no further effect as of the 366th day after its effective date unless otherwise renewed or extended by act of the City Council.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the _____th day of _____, 2020, and passed and adopted at a regular meeting held on the _____th day of _____, 2020.

AYES:

NOES:

ABSENT:

ATTEST:

Shon Harris, Mayor

Patricia Buckland, City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

SHANNON CHAFFIN, City Attorney
Aleshire & Wynder, LLP

