

**REPORT TO MAYOR AND CITY COUNCIL****TO THE HONORABLE MAYOR AND CITY COUNCIL:**

DATE: September 8, 2015

SUBJECT: DEVELOPMENT CODE UPDATE AMENDMENTS TO SECTIONS 18.20.020, PERSONAL SERVICES RESTRICTED USE CLASSIFICATIONS; 18.40.020, MECHANICAL AND ELECTRONIC GAMES; 18.200.050, SMALL RESIDENTIAL CARE FACILITIES IN OFFICE AND COMMERCIAL DISTRICTS; 18.200.130, CHILD DAY CARE FACILITIES; 18.200.200, TEMPORARY EVENTS, USES, AND STRUCTURES; SECTION 18.415.100, DECISIONS AND FINDINGS; 18.505.020, TIME LIMITS AND EXTENSIONS; AND 18.540.090, LIMITATIONS OF ACTIONS

Report in Brief

This staff report focuses on this year's proposed annual code updates. Although the annual updates are primarily intended to correct errors and comply with State legislative mandates, these updates also include provisions that benefit small businesses.

Background

The Development Code is an evolving document that requires routine updates to remain an effective instrument reflecting the land use goals and policies of the City. Periodic Development Code updates are necessary to address changing conditions, community needs and interests, and to comply with State legislative mandates.

The City Council adopted the current Development Code on July 24, 2012, following a complete overhaul of the former Zoning Ordinance which had not been comprehensively updated since its adoption in 1953. The adoption of the new Development Code was the culmination of a multi-year effort. With the review and recommendation of the Planning Commission, annual Development Code updates have been part of the Planning division's ongoing work program each year since 2012.

On July 22, 2014, the City Council took the most recent step to update the Development Code by adopting Ordinance 14-2, which effectively renumbered and reformatted the Development Code to be consistent with the Municipal Code. The action did not change the content of the Code but instead reorganized it in a logical and coherent manner with an expandable numbering system. The new numbering also designated reserved chapters to accommodate new subject matter as future needs arise. Over the past year, staff has been updating all applications, checklists, handouts, and other public information to reflect the newly renumbered Development Code sections.

The Planning Commission held three study sessions to discuss potential updates to the Development Code on October 17, 2014, February 4, 2015, and on April 15, 2015. At the first study session, the discussion

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topics included a prohibition on hookah lounges, addressing the Mechanical and Electronic Games ordinance, revisiting Temporary Sign provisions, general code clean-up items, and a number of other long-range projects.

During the second study session held on February 4, 2015, the Planning Commission focused on enhancements for small businesses, including discussion regarding new code provisions for sidewalk sales, A-frame signs, improving business outreach and promotion, and returning the issuance of temporary banner permits to the Permit Center (which has since begun). Due to the complexity of the issue, the Planning Commission directed staff to hold a follow-up study session to focus solely on A-frame signs.

Following the direction of the Planning Commission's February 4, 2015 study session, Planning staff provided a report and presentation to the City Council on March 24, 2015. At that meeting, the City Council provided staff with a number of comments, was generally in agreement that temporary signs should be regulated with "balance, fairness, and common sense," and did not recommend specific changes. Staff then presented the Council's feedback to the Planning Commission at their following meeting.

The Planning Commission's third study session focusing on A-frame signs was held on April 15, 2015. Due to concerns with the aesthetic impact on the City's image as well as substantial difficulties with regulation and enforcement, the Planning Commission did not recommend any revisions to the existing A-frame sign provisions for downtown sidewalk cafés. Beyond aesthetic considerations, the Commission cited as reasons for their decision: (1) the City's approach of not initiating a code enforcement action on an unpermitted sign until unless a formal complaint is filed, and (2) limited staff resources for regulation and enforcement.

The Planning Commission held a public hearing to consider the current round of proposed Development Code Updates at their meeting on July 15, 2015 and recommended the City Council approve the amendments by a 4-0 vote (with one Commission position vacant). Although there were no public comments regarding the proposed Development Code updates at the Planning Commission hearing, nine people were in attendance to hear the item. Staff reached out to the local Chamber of Commerce, Todos Santos Business Association (TSBA), and Small Business Association prior to the three study sessions and Planning Commission hearing for this year's Development Code updates. Representatives from those organizations provided staff with valuable input during the process.

Future Development Code Update Projects

In the next few months, three new Development Code update projects will be initiated and a fourth may be added depending on the outcome of a future decision. The first involves an update to Title 17 of the Municipal Code, the City's Subdivision Code. The City Council approved a contract with Ben Noble, City and Regional Planning, on July 7, 2015 to assist with the preparation of a new Subdivision Ordinance. The outcome of that process is expected to come forward for City Council review and approval sometime next year.

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The second Development Code update already in progress is related to the current drought emergency. Earlier this year, the Governor issued Executive Order B-29-15, requiring all cities to adopt a water efficient landscaping ordinance prior to December 1, 2015 which is at least as effective in conserving water as the standard ordinance recently adopted by the Department of Water Resources. Staff anticipates an update to Section 18.170, the City's Water Efficient Landscaping Ordinance, to come before Council in late November.

The City's Wireless Communications Facilities Ordinance also needs to be updated in order to comply with recent changes made at the Federal level. Due to its legal and technical complexity, staff will seek an outside consultant firm to assist with the preparation of the Wireless Ordinance update process beginning in Fall 2015.

Finally, the Housing and Economic Development Council Committee will be discussing enabling the use of digital billboards at their September 28, 2015 meeting. Should the Council opt to pursue the allowance of digital billboards, Staff would be required to initiate an amendment the City's Sign Ordinance, as they are prohibited under the current code provisions.

I. California Environmental Quality Act (CEQA)

Because the proposed Development Code changes are either (1) minor in nature and constitute error corrections, (2) the codification of existing policy, or (3) the result of State legislative action, staff has determined the proposed code amendments will have no impact on the environment and do not require further review under CEQA. In addition, any future projects which may result from or be affected by any of the proposed changes would be individually addressed under CEQA. Pursuant to the provisions of California Environmental Quality Act of 1970, as amended, this Development Code Amendment project is classified as exempt pursuant to 15061(B)(3), and no further environmental review is required.

II. Discussion and Analysis of Proposed Development Code Amendments

18.20.020 Use Classifications - Exhibit A

"Personal Services, Restricted" is a land use classification (Section 18.20.020) that is defined as "an establishment that provides personal services that tend to have a negative economic impact upon surrounding areas and may need to be dispersed to minimize their adverse impacts." "Personal Services, Restricted" designated land uses require either a Use Permit or Minor Use Permit prior to commencing with their business operations, depending on the requirements of each individual zoning district.

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The Planning Commission and staff are recommending that four land uses identified as “Personal Services, Restricted” be deleted: Fortune Tellers, Palm and Card Readers, Psychic Readers, and Hookah Lounges. Of these, Fortune Tellers, Palm and Card Readers, and Psychic Readers are being removed due to a recent court decision which identified these land uses as having certain protections under the First Amendment, protecting freedom of expression. Hookah Lounges are also recommended to be deleted from this section and therefore establishment of new hookah lounges businesses would be prohibited in the City.

Hookah Lounges

Following the Planning Commission’s discussion regarding hookah lounges at the October 17, 2015 study session, the Planning Commission directed staff to prepare a draft ordinance that would effectively prohibit new hookah lounge business from opening or existing hookah lounge businesses from expanding in the City of Concord. This direction is consistent with prior City policies and ordinances regarding tobacco use, including the City’s prohibition on smoking in the workplace.

The State of California’s 1994 Smokefree Workplace Act, which is codified under California Labor Code Section §6404.5, prohibits hookah lounges and other tobacco-oriented businesses with on-site smoking from serving and consuming food and drink while the City of Concord’s Chapter 8.35, Smoking in Public Places and Workplaces, prohibits entertainment uses at these types of businesses.

The City of Concord currently has two hookah lounges in operation, neither of which primarily operates as a retail tobacco store. These two businesses will become legal non-conforming uses should the prohibition take effect, in that they may continue to operate but would not be allowed to expand.

Fortune Tellers, Palm and Card Readers, Psychic Readers

Due to a recent court decision, fortune tellers, palm and card readers, and psychic readers may have protected status under the First Amendment. The City Attorney’s Office is currently in the process of re-evaluating the City’s code provisions related to these land uses to ensure compliance under Federal law. These particular uses have been associated with the Roma culture and certain religious faiths, and may have protected status under Federal law. Although these uses are proposed for deletion under the “Personal Services, Restricted” land use classification, the effect would not prohibit their use or regulation under other existing related land uses classifications. Pending the outcome of the City Attorneys’ evaluation, additional code provisions may come forward for Council consideration regarding these uses in the future.

18.40.020 Small Residential Care Facilities in Office and Commercial Districts – Exhibit B

Residential Care Facility provisions in Concord’s Development Code are based upon requirements established by State law. Small Residential Care Facilities generally provide care, supervision and assistance with daily living activities, such as bathing and grooming, in a residential home for less than six persons. They

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may also provide incidental medical services under special care plans, but do not serve as hospitals, nor provide skilled nursing.

It is legal for Small Residential Care Facilities to exist and operate within the Community Office zoning district, but the current Table of Permitted Uses does not correctly identify this provision.

The Planning division recently noticed that a portion of a table identified in Section 18.40.020, Office and Commercial Districts, was not in conformance with Sections 1568 and 1569 of the California Health and Safety Code, most likely due to a clerical error. The proposed Development Code correction would restore the allowance of a Small Residential Care Facility in the Community Office zoning district by correctly identifying it as being a permitted use (“ZC”) in the Table of Permitted Uses (the minor change is on the bottom of Exhibit B, Page 7 of 8, under the first column).

18.200.050 Child Day Care Facilities – Exhibit C

Regulations related to child day care facilities in Concord’s Development Code are established by State law (California Health and Safety Code Sections 1597.44, 1597.465, et al). The current code provisions regarding Family Day Care Homes are in compliance with State law, but have not been updated in regards to allowances for children who reside in the home or belong to an assistant caretaker working in the home.

The Planning Commission and staff recommend an update and clarification of the existing language regarding Child Day Care Facilities in the Development Code to match the level of detail identified in State Administrative Code (Sections 102352(f)(1)(A) and 102416.5(b)). These changes do not modify the existing code provisions or alter the number of children currently permitted, but clarify an omitted level of detail as it pertains to children who already live in the licensee’s home or may belong to an assistant child care provider who does not live in the licensee’s home, in compliance with State law.

18.200.130 Mechanical and Electronic Games – Exhibit D

In 1983, the City Council approved Ordinance 83-8, which imposed strict restrictions on the use, location, and operation of mechanical and electronic games. Any Concord business wishing to operate four or more arcade or pinball games is currently required to obtain Planning Commission approval of a Use Permit, pass a criminal background check, and prohibit minors from playing games between 7:00 am and 3:30 pm on a school day, among other restrictions. These restrictions continue to remain in effect in the current Development Code.

Last summer, a concerned local business owner brought this code provision to the attention of the Planning Division following some difficulties establishing his business that included a number of electronic games. After researching the issues, staff found the regulations to be onerous for a substantial number of existing Concord businesses such as pizza restaurants and retail stores. Staff also found that one of the reasons

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why the Mechanical and Electronic Game provisions continued to remain in place was due to their usefulness in the prevention and enforcement of illegal gambling operations.

From time to time, the City of Concord has had problems with illegal gambling operations. They tend to operate in plain view and appear as a legitimate business functioning as an internet cafe or business center, providing rows of computers for customer use. They often sell a product such as a phone card or internet access time, but in return for the token purchase, they allow customers to win additional money through a sweepstakes or gambling game provided on computers or other devices in the business. The Code Enforcement division has often relied upon the Mechanical and Electronic Games code to enforce against these prohibited operations.

The proposed amendments to the Development Code in this section would maintain the City's enforcement ability while simplifying and streamlining the process for legitimate businesses by allowing the use of mechanical and electronic games with an Administrative Permit. This Administrative Permit approval may be issued over the counter at the Permit Center, rather than through a Use Permit application process.

Restrictions related to the hours of operation, distance from residences, and the police background check requirement would also be eliminated, though the City will retain the ability to require these as a condition of approval imposed on the Administrative Permit if needed. The presence of a responsible manager would continue to be required. In addition, retail businesses which sell vintage games as well as schools, museums, cultural centers, and public libraries would be exempted from the Administrative Permit requirement altogether. The proposed code amendment is substantially more business friendly while still allowing an appropriate level of oversight and regulation.

18.200.200 Temporary Events, Uses, and Structures – Exhibit E

The Development Code provisions for Temporary Events and Outdoor Merchandise Display that currently exist in Section 18.200.200 are not clearly written, resulting in some difficulty in interpretation and application of the code requirements. The Planning Commission previously considered these items at their February 4, 2015 Study Session. At that meeting, staff recommended a number of Development Code clean-up items pertaining to the outdoor display of merchandise and to revise the Development Code to differentiate between the different levels of outdoor displays, which can range from a simple sidewalk sale to a multi-day parking lot sales event. With direction from the Planning Commission, draft code language was prepared to improve the functionality of this code section.

Sidewalk sales are a relatively common form of business promotion and, when regulated properly, generally have a positive economic benefit with few associated problems. The proposed Development Code revisions would allow Sidewalk Sales with an approved Administrative Permit for up to three consecutive days once every three months. The code has been drafted to allow staff the ability to review, evaluate, and condition each proposed sidewalk sale on a case-by-case basis to address potential issues. Sidewalk sales will

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not be allowed in the public right-of-way with the exception of businesses in the Downtown Pedestrian (DP) and Downtown Mixed Use (DMX) zoning districts with storefronts fronting the public right-of-way, who will be able to apply for an Administrative Permit to conduct a sidewalk sale when accompanied by an Encroachment Permit. Current code prohibits sidewalk sales in the public right-of-way in all districts.

Two additional changes are proposed to Section 18.200.200 regulating Minor Promotional Events, which are small events that do not require a permit such as Girl Scout cookie sales or small fundraisers. The first recommended change would allow limited Outdoor Produce Displays at grocery stores without a special permit. The other proposed revision would prohibit Minor Promotional Events from using amplified sound equipment or erecting temporary structures such as a tent or stage.

If amplified sound or temporary structures are desired, then the event would be classified as a Major Temporary Event and require an Administrative Permit. In addition, the proposed revisions would enable grocery stores and supermarkets to display fresh produce outdoors without the need to apply for a permit from the City. A number of grocery stores and markets in Concord already display fresh produce in front of their store entrance on a daily basis in a tasteful manner and, with the proposed code revisions, will no longer require a permit to do so. If the store wishes to display merchandise other than fresh produce, they would be able to do so with a Sidewalk Sale Permit under the provisions of the proposed code amendment.

18.415.100 Decisions and Findings – Exhibit F

As a matter of code clean-up and housekeeping, staff proposes to delete an obsolete requirement to make findings that projects are consistent with the Design Guidelines. References to the Community Design Guidelines were generally removed in the 2012 Development Code Update. Concord's Community Design Guidelines have not been updated since 1987. Deleting this reference does not negate the City's authority to impose conditions on design or aesthetics, introduce future aesthetic standards, or affect the established Design Review and approval process. This deletion is also consistent with the more recent approach to establish design guidelines for specific districts, such as identified in the Downtown Specific Plan, rather than having a single standard imposed city-wide.

18.505.020 Time Limits and Extension – Exhibit G

This Section is proposed to be amended to extend the minimum timeframe for any permit or approval to obtain building permits from 12 to 24 months. As a practical matter, complex projects often require more than one year of time between Planning Commission or City Council approval and submitting an application for building permits.

In addition, these revisions would also allow the reviewing authority (such as the Planning Commission or the City Council) the ability to provide building permit time extensions of up to 24 months, rather than the current maximum of 12 months. The City's code only allows for one time extension to be

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granted in this provision would stay in place. The amount of time permitted for each time extension would still be considered on a case-by-case basis. This code provision does not apply to tentative subdivision maps, which have timeframes regulated by State law under the Subdivision Map Act. Active projects which have previously requested a time extension would be able to apply for a further 12 month extension.

18.540.090 Limitation of Actions – Exhibit H

Minor edits include the deletion of references in the Development Code to State statutes that no longer exist. California Government Code Section 65907 involving severability is still referenced in the Development Code, even though the State code section was changed some years ago and no longer applies. This proposed code deletion will have no effect on any provisions of the Development Code.

Fiscal Impact

The adoption of the proposed Development Code updates will have no fiscal impact on the City.

Public Contact

All appropriate public notices of this agenda item have been posted. An advertisement was posted in the newspaper in accord with the public notification requirements.

Recommendation

The Planning Commission and staff recommend that the City Council adopt Ordinance 15-8, approving the proposed amendments to the Development Code.


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Attachments:

1. Ordinance 15-8
2. Exhibit A: 18.20.020 Use Classifications
3. Exhibit B: 18.40.020 Small Residential Care Facilities
4. Exhibit C: 18.200.050 Child Day Care Facilities
5. Exhibit D: 18.200.130 Mechanical and Electronic Games
6. Exhibit E: 18.200.200 Temporary Events, Uses, and Structures
7. Exhibit F: 18.415.100 Decisions and Findings
8. Exhibit G: 18.505.020 Time Limits and Extension
9. Exhibit H: 18.540.090 Limitation of Actions

ORDINANCE NO. 15-8

AN ORDINANCE AMENDING THE CONCORD MUNICIPAL CODE, TITLE 18, DEVELOPMENT CODE, CHAPTERS 18.20.020 (USE CLASSIFICATIONS), 18.40.020 (SMALL RESIDENTIAL CARE FACILITIES), 18.200.050 (CHILD DAY CARE FACILITIES), 18.200.130 (MECHANICAL AND ELECTRONIC GAMES), 18.200.200 (TEMPORARY EVENTS, USES, AND STRUCTURES), 18.415.100 (DECISIONS AND FINDINGS), 18.505.020 (TIME LIMITS AND EXTENSIONS), AND 18.540.090 (LIMITATION OF ACTIONS).

WHEREAS, California Government Code section 65800 et seq. provides for the amendment of any and all adopted City of Concord (“City”) zoning laws, ordinances, rules and regulations; and

WHEREAS, the City has complied with the requirements of the Local Planning Law (Government Code section 65100 *et seq.*), and the City’s applicable ordinances and resolutions with respect to approval of amendments to Title 18 of the Concord Municipal Code (“Development Code”); and

WHEREAS, the City of Concord has, from time to time, made amendments to the Development Code to address changes in circumstances; and

WHEREAS, on July 24, 2012, the City Council adopted Chapter 122 of the Concord Municipal Code (“Development Code”), to ensure consistency with General Plan policies, and an update of its zoning maps to ensure consistency with the adopted General Plan Map; and

WHEREAS, on July 22, 2014, the City Council adopted Ordinance No. 14-2, which reformatted and renumbered Chapter 122 into Title 18 of the Concord Municipal Code (“Development Code”); and

WHEREAS, the City of Concord initiates regular and routine Development Code Clean-Up Amendments to comply with State legislative actions, to ensure consistency, and to address minor technical errors, omissions, and clarifications of terms and procedures in the Development Code; and

WHEREAS, such text amendments improve the accuracy of the Development Code and its standards by achieving internal consistency and consistency with the rest of the Concord Municipal Code; and

1 **WHEREAS**, the Planning Commission previously hosted three public study sessions to
2 discuss the Amendment to the Development Code on October 17, 2014, February 4, 2015, and April
3 15, 2015; and

4 **WHEREAS**, the Planning Commission, after giving all public notices required by State Law
5 and the Concord Municipal Code, held a duly noticed public hearing on July 15, 2015, on the
6 proposed Amendment; and

7 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
8 information, testimony, and comments received during the public review process, including
9 information received at the public hearing, the oral report from City staff, the written report from City
10 staff dated July 15, 2015, materials, exhibits presented, and all other information that constitutes the
11 record of proceedings on which the Planning Commission has based its decision are maintained at the
12 offices of the City of Concord Planning Division (collectively, "Amendment Information"); and

13 **WHEREAS**, said Development Code Amendment has complied with the requirements of
14 "The Rules to Implement the California Environmental Quality Act of 1970" (CEQA) in that the City
15 of Concord has reviewed the Amendment under the provisions of CEQA, and has determined that the
16 Amendment is exempt pursuant to Section 15061(B)(3), Review for Exemptions of the CEQA
17 Guidelines; and

18 **WHEREAS**, on July 15, 2015, the Planning Commission, after consideration of all pertinent
19 plans, documents, and testimony, did recommend City Council approval of the Amendment by a 4-0
20 vote.

21 **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
22 **ORDAIN AS FOLLOWS:**

23 **Section 1.** Concord Municipal Code Title 18 (Development Code) is hereby amended as
24 identified on Exhibits A through H, attached hereto and incorporated herein by this reference.

25 **Section 2.** The City Council hereby finds that this Ordinance is consistent with the goals,
26 objectives, and policies of the Concord General Plan. The Development Code Ordinance Amendment
27 is also consistent with the General Plan because it does not create any new or changed conditions to
28

1 the environment, is intended to encourage and enhance economic activity, and allow for the continued
2 high quality of development in the City of Concord.

3 **Section 3.** The Planning Division has determined that the Development Code Amendment
4 has complied with the requirements of "The Rules to Implement the California Environmental Quality
5 Act of 1970" (CEQA) as amended, in that the Planning Division has reviewed the Development Code
6 Amendment under the provisions of CEQA, and has determined that the Amendment is exempt
7 pursuant to Section 15061(B)(3), Review for Exemptions of the CEQA Guidelines.

8 **Section 4.** This Ordinance No. 15-8 shall become effective thirty (30) days following its
9 passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire
10 Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City
11 Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption,
12 including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney's
13 Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance and
14 once within fifteen (15) days after its passage and adoption, including the vote of the
15 Councilmembers, in the Contra Costa Times, a newspaper of general circulation in the City of
16 Concord.

17
18
19 _____
Tim Grayson
Mayor

20
21 ATTEST:

22
23 _____
Joelle Fockler, CMC
City Clerk

24
25 (Seal)
26
27
28

1 Ordinance No. 15-8 was duly and regularly introduced at a regular meeting of the City Council
2 of the City of Concord held on September 8, 2015, and was thereafter duly and regularly passed and
3 adopted at a regular meeting of the City Council of the City of Concord on September 22, 2015, by
4 the following vote:

5 **AYES:** Councilmembers -

6 **NOES:** Councilmembers -

7 **ABSTAIN:** Councilmembers -

8 **ABSENT:** Councilmembers -

9 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and
10 regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

11
12
13
14

Joelle Fockler, CMC
City Clerk

Exhibit A

18.20.020 Use classifications.

Personal Services.

A. General. An establishment that provides recurrently needed nonmedical services of a personal nature, which may involve the retail sales of products related to the services provided. This classification applies to establishments with a primary focus of household and consumer product repair, as opposed to a retail sales establishment that offers service and repair of their merchandise as an ancillary use. (See "General" under "Retail Sales.") Examples include:

1. Barber and beauty shops.
2. Clothing rental.
3. Day spas.
4. Dry cleaning pick-up stores with limited equipment.
5. Home electronics and small appliance repair.
6. Laundromats (self-service laundries).
7. Massage therapy.
8. Portrait photography.
9. Shoe repair shops.
10. Tailors and seamstresses.
11. Tanning salons.
12. Television and radio repair.
13. Travel agencies.
14. Video store.

B. Improvement or Instructional. An establishment that provides instructional services or facilities for personal improvement including fine arts, crafts, dance or music studios, exercise or fitness studios, learning centers, driving schools, photography, diet center, and martial arts. This classification does not include vocational training.

C. Restricted. An establishment that provides personal services that tend to have a negative economic impact upon surrounding areas and may need to be dispersed to minimize their adverse impacts. Examples include:

1. Bail bonds.
- ~~2. Fortune tellers.~~

~~3. Hookah lounges.~~

4. 2. Massage parlors.

~~5. Palm and card readers.~~

7. 3. Pawn shops.

~~8. Psychic readers.~~

9. 4. Spas and hot tubs for hourly rental.

10. 5. Tattoo and body piercing services.

Exhibit B

18.40.020 Table 18.40.020 – Office and commercial districts – Allowed uses and permit requirements.

A. Applicability. Table 18.40.020 identifies the uses allowed by the development code in each office and commercial zoning district and the type of permit required to establish each use. See CDC 18.25.030(B) or Division VII of this title (Permits and Permit Procedures). Additional requirements may apply pursuant to Division IV (Development Standards) and Division V (Standards for Specific Uses) of this title.

| Table 18.40.020 Office and Commercial Districts Allowed Uses and Permit Requirements | | | | | | ZC – Permitted Use, Zoning Clearance AP – Administrative Permit Required MP – Minor Use Permit Required UP – Use Permit Required – Use Not Allowed |
|---|-----------------------------|-------------------|-------------------|----|----|--|
| Land Use Classifications | Permit Required by District | | | | | Additional Requirements |
| | CO | CMX | NC | SC | RC | |
| Office, Commercial, and Retail Uses | | | | | | |
| Adult Day Care Center | – | ZC ⁽⁵⁾ | ZC ⁽⁵⁾ | ZC | ZC | |
| Adult-Oriented Business | – | – | – | – | – | Chapter 18.210 CDC, Adult-Oriented Businesses |
| Animal Services | | | | | | |
| Boarding, Kennel | – | UP | UP | MP | MP | |
| Dog Day Care, Training | – | ZC | ZC ⁽²⁾ | ZC | ZC | |
| Grooming | – | ZC | ZC ⁽²⁾ | ZC | ZC | |
| Hospital, Veterinary Clinic | ZC | ZC | ZC ⁽²⁾ | ZC | ZC | |
| Antique, Collectible Store | – | ZC ⁽⁴⁾ | ZC | ZC | ZC | |
| Automobile Sales and Rental/Leasing | | | | | | |
| Auction | – | – | – | ZC | – | |
| Brokers, Office Only | ZC | ZC | ZC | ZC | ZC | |
| Brokers, Office with Vehicle Display | AP | AP | – | ZC | ZC | |
| Dealership, New | – | – | – | UP | ZC | |

| | | | | | | |
|--|----|-------------------|----------------------|-------------------|-------------------|---|
| Dealership, Used | - | - | - | ZC | - | |
| Dealership, Motorcycles | - | - | - | ZC | ZC | |
| Rental | - | - | - | AP | MP | |
| Automobile Services and Repair | | | | | | |
| Car Wash, Attended | - | - | UP | AP | UP | CDC 18.200.090, Gas stations and car washes |
| Car Wash, Unattended | - | - | - | UP | - | CDC 18.200.090, Gas stations and car washes |
| Gas Station | - | - | UP | UP | UP | CDC 18.200.090, Gas stations and car washes |
| Maintenance Services | - | UP | UP | ZC | ZC | |
| Major Repair/Body Work | - | - | - | ZC | - | |
| Minor Repair | - | - | UP | ZC | AP | |
| Banks and Financial Services | | | | | | |
| Bank, Credit Union | - | ZC ⁽⁴⁾ | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC | |
| Bank with Drive-Through Service | - | UP | UP | UP | MP | CDC 18.200.060, Drive-through facilities |
| Check Cashing Business | - | - | - | - | - | |
| Building Materials Sales and Services | | | | | | |
| No Outdoor Storage | - | - | ZC | ZC | ZC | |
| With Outdoor Storage | - | - | - | AP | UP | CDC 18.200.160, Outdoor sales and displays |
| Business Support Services | ZC | ZC ⁽³⁾ | ZC ^(2, 3) | ZC ⁽³⁾ | ZC ⁽³⁾ | |
| Catering Service | - | ZC ⁽⁴⁾ | ZC ⁽²⁾ | ZC | ZC | |
| Eating and Drinking Establishments | | | | | | |
| Bar, Night Club, Lounge | - | UP | UP | UP | UP | CDC 18.200.080, Entertainment uses |
| Food Vendor Group Site | - | MP | MP | MP | MP | CDC 18.200.210, Food vendor group sites |
| Micro-Brewery/Distillery | - | - | - | MP | MP | CDC 18.200.040, Alcoholic beverage sales |
| Micro-Brewery/Distillery, Large ⁽⁶⁾ | - | - | - | UP | UP | CDC 18.200.040, Alcoholic beverage sales |

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|--|----|-------------------|-------------------|-------------------|-------------------|---|
| Restaurant, Full Service | – | AP | AP | UP | ZC | CDC 18.200.040, Alcoholic beverage sales |
| Restaurant, Limited Service | – | ZC ⁽⁴⁾ | ZC | AP | ZC | |
| Restaurant, with Drive-Through | – | UP | UP | UP | UP | CDC 18.200.060, Drive-through facilities |
| Restaurant, with Live Entertainment | – | – | UP | UP | UP | CDC 18.200.080, Entertainment uses |
| Tasting Room | – | – | – | AP | AP | CDC 18.200.040, Alcoholic beverage sales |
| Fitness Facility, Health Club | – | AP | AP ⁽²⁾ | AP ⁽²⁾ | AP | |
| Food, Beverage Sales | | | | | | |
| Convenience Store, no Alcohol Sales | – | ZC ⁽⁴⁾ | ZC | ZC | ZC | |
| Convenience Store, with Alcohol Sales | – | UP | UP | – | UP | CDC 18.200.040, Alcoholic beverage sales |
| Grocery Store | – | ZC ⁽⁴⁾ | ZC | ZC | ZC | |
| Liquor Store | – | – | UP | – | UP | CDC 18.200.040, Alcoholic beverage sales |
| Hotel, Motel | – | UP | UP | UP | UP | |
| Maintenance Services | | | | | | |
| Office with No Outdoor Storage or Activities | – | – | – | ZC | – | |
| Office with Outdoor Storage or Activities | – | – | – | AP | – | |
| Nursery, Preschool, Childcare | UP | UP | UP | AP | AP | CDC 18.200.050, Child day care facilities |
| Offices | | | | | | |
| Administrative, Information Processing | ZC | ZC | – | ZC | ZC | |
| Medical, Dental | ZC | ZC | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC | |
| Professional | ZC | ZC | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC | |
| Personal Services | | | | | | |
| General | ZC | ZC | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC ⁽²⁾ | |

| | | | | | | |
|---|---|-------------------|-------------------|----|----|---|
| Improvement, Instructional | – | ZC | ZC ⁽²⁾ | ZC | ZC | |
| Restricted | – | – | MP | MP | MP | |
| Repair Service, Appliance and Small Equipment | – | – | UP | ZC | – | |
| Retail Sales | | | | | | |
| Big Box | – | UP | UP | UP | UP | |
| General | – | ZC ⁽⁴⁾ | ZC | ZC | ZC | |
| Nursery, Garden Center | – | UP | ZC | ZC | ZC | CDC 18.200.160, Outdoor sales and displays |
| Restricted | – | – | MP | MP | MP | |
| Retail Sales with Drive-Through | – | UP | UP | UP | UP | CDC 18.200.060, Drive-through facilities |
| Secondhand Sales | – | AP | AP | AP | – | |

| Business Park and Industrial Uses | | | | | | |
|---|----|----|---|----|----|--|
| Auto Wrecking, Dismantling Yard | – | – | – | – | – | |
| Contractors, Special Trade | | | | | | |
| Cabinet Shop | – | – | – | ZC | – | |
| Contractor Office, No Outdoor Storage | ZC | ZC | – | ZC | – | |
| Contractor Yard, with Outdoor Storage | – | – | – | ZC | – | |
| Fleet-Based Service | – | – | – | ZC | UP | |
| Freight and Truck Terminal | – | – | – | – | – | |
| Heavy Vehicle and Large Equipment, Sales/Rental, Service, and Repair | | | | | | |
| Commercial Vehicles and Equipment | – | – | – | AP | – | |
| Recreational Vehicle | – | – | – | AP | – | |
| Laboratory, Research, and Development | ZC | AP | – | ZC | – | |
| Manufacturing, Processing | | | | | | |
| Artisan/Custom Product | – | – | – | ZC | – | |
| Industry, Heavy | – | – | – | – | – | |

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|--|----|-------------------|-------------------|-------------------|----|---|
| With No Outdoor Storage or Activities | - | - | - | ZC | - | |
| With Outdoor Storage or Activities | | - | - | AP | - | |
| Warehouse Show Room with Assembly and Sales | - | - | - | ZC | - | |
| Media Production Facility | ZC | ZC | - | ZC | - | |
| Storage | | | | | | |
| Hazardous Materials | - | - | - | - | - | |
| Self-Storage Facility, Mini-Storage | - | - | - | UP | - | |
| Vehicle | - | - | - | UP | - | |
| Towing Services | - | - | - | UP | - | |
| Warehouse, No Outdoor Storage | - | - | - | ZC | - | |
| Warehouse, with Outdoor Storage | - | - | - | ZC | - | |
| Wholesaling, Distribution | - | - | - | AP | - | |
| Public/Quasi-Public and Recreational Uses | | | | | | |
| Airport | - | - | - | - | - | |
| Ambulance Service | - | UP | - | AP | - | |
| Cemetery, Columbarium, Mausoleum | - | - | - | - | - | |
| Conference, Convention Facility | UP | - | - | - | UP | |
| Cultural Institution | - | UP | UP | UP | UP | |
| Emergency and Homeless Shelter | - | - | - | - | - | CDC 18.200.070, Emergency and homeless shelters |
| Farmers' Market | - | - | UP | UP | UP | |
| Funeral Parlor, Mortuary | - | - | UP | UP | UP | |
| Government Office | ZC | ZC | ZC | ZC | ZC | |
| Heliport | - | - | - | - | - | |
| Library | ZC | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC | |
| Medical Services | | | | | | |

| | | | | | | |
|---|----|-------------------|-------------------|-------------------|----|---|
| Hospital, Medical Center | - | - | - | - | - | |
| Medical Marijuana Dispensary | - | - | - | - | - | |
| Medical Clinic | ZC | - | ZC ⁽²⁾ | ZC ⁽²⁾ | ZC | |
| Nursing Facility/Extended Care | - | UP | UP | UP | - | |
| Urgent Care Facility | ZC | ZC ⁽⁴⁾ | ZC ⁽²⁾ | ZC | ZC | |
| Meeting Facility, Public/Private | UP | UP | UP | UP | UP | |
| Military | - | - | - | - | - | |
| Parking Facility | AP | - | AP | AP | AP | |
| Public Maintenance and Service Facility | - | - | - | AP | - | |
| Recreational Facilities | | | | | | |
| Bingo Hall | - | - | - | - | UP | |
| Commercial Recreation, Indoor | - | AP ⁽⁴⁾ | AP | UP | ZC | |
| Golf Course, Country Club | - | - | - | - | - | CDC 18.200.130, Mechanical and electronic games |
| Park and Recreation Facility | - | - | - | - | - | |
| Residential Recreation Facility | - | AP ⁽⁵⁾ | - | - | - | |
| Sports and Entertainment, Assembly | - | - | UP | - | UP | CDC 18.200.080, Entertainment uses |
| Sports and Recreation Facility | - | - | UP | - | UP | CDC 18.200.130, Mechanical and electronic games |
| Recycling Facilities | | | | | | |
| Small Collection Facility | - | - | AP | AP | AP | CDC 18.200.170, Recycling facilities |
| Large Collection Facility | - | - | - | UP | - | CDC 18.200.170, Recycling facilities |
| Processing Facility | - | - | - | - | - | CDC 18.200.170, Recycling facilities |
| Religious Facility | UP | UP | UP | - | - | |

| | | | | | | |
|--|-------------------|-------------------|-------------------|----|----|---|
| Schools | | | | | | |
| Elementary, Middle, Secondary | – | MP | – | – | – | |
| College, University | – | MP | – | – | – | |
| Trade School, Vocational Training | AP | AP | AP | AP | AP | |
| Social Service Facility, Community Organization | AP | AP | AP | AP | – | |
| Theater, Auditorium | – | UP | UP | – | UP | CDC 18.200.130, Mechanical and electronic games |
| Utility Facility, Transmission Towers | – | – | ZC | ZC | ZC | |
| Wireless Telecommunication Facility – CDC 18.205.010 – 18.205.050, Wireless Communication Facilities | | | | | | |
| Residential Uses | | | | | | |
| Bed and Breakfast Inn | – | UP | – | – | – | |
| Dwelling, Dwelling Unit, Housing Unit | | | | | | |
| Single-Family, Detached | ZC | – | – | – | – | |
| Single-Family, Detached – Small Lot Subdivision | UP | UP | – | – | – | |
| Single-Family, Attached | ZC | ZC | – | – | – | |
| Secondary Living Unit | AP | AP | – | – | – | CDC 18.200.180, Secondary living units |
| Duplex | ZC | ZC | – | – | – | |
| Multifamily | UP | UP | UP ⁽¹⁾ | – | – | |
| Family Day Care Home, Small | ZC ⁽⁵⁾ | ZC ⁽⁵⁾ | – | – | – | CDC 18.200.050, Child day care facilities |
| Family Day Care Home, Large | MP ⁽⁵⁾ | MP | – | – | – | CDC 18.200.050, Child day care facilities |
| Group Housing | UP | UP | – | – | – | |
| Home-Based Business | – | ZC ⁽⁵⁾ | ZC ⁽²⁾ | – | – | CDC 18.200.100, Home-based businesses |
| Live/Work Unit | – | ZC ⁽⁵⁾ | – | – | – | CDC 18.200.110, Live/work or work/live |

| | | | | | | |
|---|-------------------|-------------------|----|----|---|---|
| | | | | | | units |
| Mixed-Use Projects | UP | AP | UP | – | – | |
| Mobile Home Park | – | – | – | – | – | |
| Residential Care Facility, Small | ZC ⁽⁵⁾ | ZC ⁽⁵⁾ | – | – | – | |
| Residential Care Facility, Large | – | MP | – | – | – | |
| Residential Facility for Seniors, Assisted Living | – | UP | UP | – | – | |
| Work/Live Unit | – | – | – | AP | – | CDC 18.200.110, Live/work or work/live units |

| Open Space and Agricultural Uses | | | | | | |
|------------------------------------|----|----|----|----|----|--|
| Companion Animal, Horses, Fowl | – | – | – | – | – | |
| Community Garden | AP | AP | AP | AP | AP | |
| Crop Production, Orchard, Vineyard | ZC | ZC | ZC | ZC | ZC | |
| Livestock, Grazing | – | – | – | – | – | |
| Mining and Quarrying | – | – | – | – | – | |

- (1) Not allowed on ground floor.
 - (2) Allowed to occupy up to 20 percent gross area of shopping center or multi-tenant building or 20 percent street frontage of one building.
 - (3) No outdoor facilities, storage, or activities are allowed.
 - (4) Requires a minimum lot size of 10,000 square feet.
 - (5) Allowed with residential use only.
 - (6) A facility which exceeds 3,000 square feet.
- [Ord. 14-6 §§ 3, 4; Ord. 13-5; Ord. 12-5; Ord. 12-4. DC 2012 § 122-131].

Exhibit C

18.200.050 Child day care facilities.

Where allowed by Division II of this title (Zoning Districts – Uses and Standards), child day care facilities, including small and large family day care homes, child day care centers, nursery schools, and preschools, shall comply with the requirements of this section.

A. Purpose. The following requirements provide location and operational standards for child day care facilities, in compliance with state law, to recognize the needs of childcare providers and minimize effects on adjoining properties. All facilities shall be licensed in compliance with the requirements of the California Department of Social Services.

B. Applicability. Child day care facilities shall be allowed as follows:

~~1. Small Family Day Care Home (Eight or Fewer Children). (See CDC 18.20.020, "Family day care home.") A small family day care home shall be allowed within a single-family residence when operated by a resident of the property. The small family day care home shall be in addition to the residential use of the property.~~

~~2. Large Family Day Care Home (Seven to 14 Children). (See CDC 18.20.020, "Family day care home.") A large family day care home shall be allowed within a single-family residence, when operated by a resident of the property. The large family day care home shall be in addition to the residential use of the property.~~

1. "Small family day care home" means a home that provides family day care for up to six children, or for up to eight children if certain criteria are met, as set forth in California Health and Safety Code Section 1597.44 and as defined in regulations (see 22 California Administrative Code Sections 102352(f)(1)(A) and 102416.5(b)). These capacities include children under age ten who live in the licensee's home.

2. "Large family day care home" means a home that provides family day care for up to twelve children, or for up to fourteen children if certain criteria are met, as set forth in California Health and Safety Code Section 1597.465 and as defined in state regulations (see 22 California Administrative Code Sections 102352(f)(1)(B) and 102416.5(c)). These capacities include children under age ten who live in the licensee's home and the assistant provider's children under age ten who do not live in the licensee's home.

3. Child Day Care Center, Preschool, or Nursery School (15 or More Children). Child day care centers, preschools, or nursery schools shall be allowed subject to the permit specified by Division II of this title (Zoning Districts – Uses and Standards).

C. Permit Requirements.

1. Small Family Day Care Home. The use of a single-family residence as a small family day care home shall be considered a residential use of property for the purposes of the development code, and no permit shall be required.

2. Large Family Day Care Home. The use of a single-family residence as a large family day care home shall be considered a residential use of property for the purposes of the

development code and may be operated, subject to first obtaining a minor use permit in accordance with Chapter 18.435 CDC (Minor Use Permits and Use Permits), except as follows:

- a. Not less than 10 days prior to the date on which a decision will be made on the application, the planning division shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large family day care home, in accordance with CDC 18.500.040 (Exception to required public hearing);
- b. No hearing shall be held before a decision is made on the application, unless a hearing is requested by the applicant or other affected person;
- c. If a public hearing is not requested, the planning division may approve the application without holding a public hearing;
- d. If a hearing is held in accordance with Chapter 18.500 CDC (Public Hearings), any interested person may appeal the decision of the zoning administrator in accordance with the provisions of Chapter 18.510 CDC (Appeals and Calls for Review);
- e. For an appeal involving a large family day care home only, the notice of hearing which is required to be provided by any other section of the development code shall be limited to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large family day care home. Notwithstanding any other provision of the development code, such notice shall not be provided to owners of property beyond such 100-foot radius.

3. Child Day Care Center, Preschool, or Nursery School. Child day care centers, preschools, or nursery schools shall be allowed subject to the permit required by Division II of this title (Zoning Districts – Uses and Standards).

D. General Requirements. The following standards shall apply to all large family day care homes, child day care centers, preschools, and nurseries:

1. Parking and Loading. The following parking requirements shall be provided in addition to the parking requirements in Chapter 18.160 CDC (Parking, Loading, and Access):
 - a. A minimum of one off-street parking space per employee;
 - b. For large family day care homes, employee parking shall be in addition to the off-street parking required for the residential use. Driveways may be used for employee parking, provided the driveway is no less than 18 feet in length, measured from the property line or back of sidewalk, whichever is less; and
 - c. A safe area for pick-up and delivery of children shall be provided. This area shall only be allowed in a driveway, in an off-street parking area, or other on-site area with direct access to the facility.
2. Noise. The location of the facility, including outdoor play areas, shall be sited to minimize noise impacts on neighboring properties. Noise levels shall comply with the standards identified in the general plan.

3. Outdoor Play Areas. Outdoor play areas shall be:

- a. Enclosed by a natural barrier, wall, solid fence, or other solid structure at least six feet in height; and
- b. Adequately separated from driveways, streets, and parking.

4. Building and Fire Codes. All facilities shall comply with all applicable city, county, and state requirements, including the Uniform Building Code and Fire Code.

E. Findings. The following findings shall be made for approval of a minor use permit or use permit for a large family day care home, child day care center, preschool, or nursery school, in addition to the findings required in Chapter 18.435 CDC (Minor Use Permits and Use Permits):

1. The facility meets all of the standards specified in this section;
2. The facility meets applicable state licensing requirements;
3. Drop-off facilities avoid interference with traffic and promote the safety of children;
4. The facility meets applicable fire and building codes;
5. Additional findings for large family day care homes:
 - a. The primary use of the home is as a residence;
 - b. One off-street parking space is provided for each nonresident employee;
 - c. The facility avoids noise impacts to neighboring properties by design and layout of the site; and
 - d. The facility is not within 300 feet of any other such licensed facility.

F. Appeals. Any interested person may appeal the decision on the minor use permit or use permit in accordance with the provisions of Chapter 18.510 CDC (Appeals and Calls for Review).

Exhibit D

18.200.130 Mechanical and electronic games.

Where allowed by Division II of this title (Zoning Districts – Uses and Standards), establishments that operate mechanical and electronic games, either as a principal use or ancillary to a principal use, such as a restaurant or retail establishment, shall comply with the requirements of this section.

~~A. Purpose. The following requirements control the location and hours of operation of mechanical and electronic games centers to prevent school-aged children from playing the games during school hours and to discourage minors from congregating in areas close to commercial establishments that sell alcoholic beverages.~~

~~B. Applicability. These requirements apply to all establishments that install, operate, or maintain more than four mechanical and electronic games, including computers used for entertainment, or establishments that have 25 percent or more floor area (excluding areas inaccessible to the public such as kitchens and storage rooms) devoted to amusement and electronic games, whichever is more restrictive.~~

~~C. Location. Establishments with amusement and electronic games shall be located a minimum distance away from the following:~~

- ~~1. Five hundred feet from any residential (RS-) district boundary or residential use;~~
- ~~2. One thousand feet from any educational, religious, or cultural institutions, public parks, public buildings, and boys' and girls' clubs or other youth organizations; or~~
- ~~3. Five hundred feet from a liquor store, bar, or cocktail lounge.~~

~~The distance shall be measured in a straight line from the main public entrance of the facility to the district boundary, property line of school sites, and other institutions, or to the main entrance of the liquor store or cocktail lounge. Exits not limited to emergency use only shall generally be directed away from a residential (RS-) district adjoining the site.~~

~~D. Permit Requirements. Where allowed by Division II of this title (Zoning Districts – Uses and Standards), and as required by this section, a minor use permit or use permit (Chapter 18.435-CDC (Minor Use Permits and Use Permits)) shall be required as follows:~~

- ~~1. Minor Use Permit. A minor use permit shall be required for establishments that propose four or more mechanical or electronic games as an ancillary use, if they occupy less than 25 percent of the floor area.~~
- ~~2. Use Permit. A use permit shall be required for all other establishments that install or operate four or more mechanical or electronic games.~~

~~E. Chief of Police Recommendation. All applications shall be referred to the chief of police for review and comment. In addition to the general authority to deny a minor use permit or use permit established in Chapter 18.435-CDC (Minor Use Permits and Use Permits), the review authority~~

~~shall deny an application based upon the chief of police's recommendation, for any of the following reasons:~~

- ~~1. The applicant has been convicted of, or has pled no contest to, one or more of the following offenses:
 - ~~a. A crime requiring registration under Penal Code Section 290;~~
 - ~~b. Violation of Penal Code Section 311.2, 311.4, 311.5, 315, 316, 318, 647(a), 647(b), or 647(d), or of any comparable section of any other state's statutes;~~
 - ~~c. Violation of any provision of Penal Code Part I, Title 9C.10 (Penal Code Section 330, et seq.), or of any comparable section of any other state's statutes; or~~
 - ~~d. A crime requiring registration under Health and Safety Code Section 11590.~~~~
- ~~2. The applicant has knowingly made any false, misleading, or fraudulent statement of facts in the permit application or any other document required by the city.~~
- ~~3. The applicant has had a similar license revoked for good cause within the last year, unless the applicant shows a material change in circumstances since the date of revocation.~~

~~F. General Requirements.~~

- ~~1. Adult Manager Required. At least one adult manager (18 years of age or 21 or over if serving alcohol) shall be on the premises during the time the mechanical and electronic games are open to the public.~~
- ~~2. Manager's License. The permit shall be reviewed and approved by the chief of police. A use permit or minor use permit shall not be approved if the chief of police finds that the applicant has been convicted of or committed any of the offenses in subsection (E)(1) of this section.~~
- ~~3. Hours of Operation for Minors Under 18 Years of Age. Operators of establishments with mechanical and electronic games are prohibited from allowing any minor to play any mechanical or electronic game located on any premises open to the public during the following times:
 - ~~a. Between 7:00 a.m. and 3:30 p.m. on weekdays during the academic school year of the Mt. Diablo Unified School District, unless the weekday is a school holiday for the District.~~
 - ~~b. After 10:00 p.m. Sunday through Thursday throughout the year.~~
 - ~~c. After midnight on any Friday or Saturday throughout the year.~~~~
- ~~4. Hours Posted. All establishments subject to this section shall post, in a conspicuous place near the games, a notice with the above time restrictions, including the statement: "Pursuant to CDC 18.200.130." The lettering on the notice shall be at least two inches in height, of one-half inch stroke, and in a color contrasting with the background.~~
- ~~5. Conditions. The review authority may impose reasonable restrictions on the physical design, location, and operation of an establishment with mechanical and electronic games in~~

~~order to minimize the effects of noise, congregation, parking, and other nuisance factors that may be detrimental to the public health, safety, and welfare of the surrounding community.~~

~~6. Exemptions. This section does not apply to coin-operated amusement rides primarily designed for non-school-aged children. [Ord. 12-4. DC 2012 § 122-626].~~

A. Purpose. The following requirements apply to businesses which employ mechanical or electronic games in order to minimize nuisances that may be detrimental to the public health, safety, and welfare of the surrounding community.

B. Applicability. These requirements apply to all establishments that operate or maintain five or more mechanical and/or electronic games.

C. Permit Requirements. An administrative permit shall be required for commercial establishments that operate five or more mechanical or electronic games.

D. Conditions. The review authority may impose reasonable restrictions on the physical design, location, parking, lighting, and operation of an establishment with mechanical and electronic games in order to minimize the effects of noise, congregation, parking, and other nuisance factors that may be detrimental to the public health, safety, and welfare of the surrounding community. These restrictions may include a requirement for a police background check to be conducted.

E. Exemptions. This section does not apply to vintage mechanical or electronic games for sale at an antique or collectible store, or devices used for educational purposes at a school, museum, cultural center, or public library.

F. Adult Manager Required. At least one adult manager (18 years of age or 21 or over if serving alcohol) shall be on the premises during the time the mechanical and electronic games are open to the public. The onsite manager shall be responsible for ensuring compliance with this Section and any conditions imposed; this obligation is in addition to the compliance obligations of the property owner, proprietor, and any other responsible parties.

H. Conflicts. In the event of any conflict between this Section 18.200.130 (Mechanical and electronic games), other provisions the Development Code, conditions imposed on a particular use or establishment, or any provisions of the Concord Municipal Code, the more restrictive shall prevail.

Exhibit E

18.200.200 Temporary events, uses, and structures.

A. Purpose. This section establishes procedures, standards, and requirements for the approval of temporary activities, events, and uses which are intended to operate on a short-term basis for a limited period. Such activities, events, and uses may not meet the typical use or development standards for a particular zoning district, but may be acceptable due to their temporary nature. Temporary activities, events, and uses include special events provided for the enjoyment of the public, sales and promotional activities intended to serve commercial interests, seasonal activities, temporary construction related activities, and similar temporary activities, events, and uses.

B. Applicability. This section shall apply to temporary activities, events, and uses which are established, operated, and conducted as required by this section. This section does not apply to vendors, which are subject to Chapter 12.50 CMC (Vendors).

C. Permit Requirements. Unless otherwise specified in this section, temporary events, activities, and uses shall require the following approvals. Other temporary or short-term activities that do not fall within these categories shall comply with Division II (Zoning Districts – Uses and Standards), Division IV (Development Standards), and Division V (Standards for Specific Uses) of this title.

1. Exempt Temporary Uses. Minor temporary events, activities, and uses are exempt from the requirements of this section when conducted in accordance with the limitations and conditions described below.
2. Minor Temporary Uses. Minor temporary activities, events, and uses shall require a zoning clearance determination, in accordance with Chapter 18.410 CDC (Zoning Clearance).
3. Major Temporary Uses. Major temporary activities, events, and uses are allowed subject to approval of an administrative permit in accordance with Chapter 18.420 CDC (Administrative Permits), for up to 12 months unless otherwise specified or conditioned in the permit approval. All administrative permit approvals shall be based on compliance with the findings in subsection (G) of this section.

D. Exempt Temporary Uses. Exempt temporary activities, events, and uses conducted in accordance with the limitations and conditions described below shall include:

1. Emergency Facilities. Emergency public health and safety facilities and activities.
2. Garage Sales. No property may have more than three sales per year, and no sale may exceed two consecutive days.
3. Public Property. Activities which are authorized by the city and conducted on city owned properties. Such activities may be subject to CMC 4.05.040 (Permits for use of parks).

E. Minor Temporary Uses. Minor temporary activities, events, and uses conducted in accordance with the limitations and conditions described below shall include:

1. Construction Yards – On-Site. On-site construction yards, for an approved construction project. The construction yard shall be removed immediately upon completion of the construction activities, or expiration of the building permit or other permit authorizing the construction project, whichever occurs first.

2. Minor Promotional Events. Special events that meet the following criteria, as applicable, when the planning division determines that the event or activity will not impact an adjacent residential area:

a. Is conducted within an established shopping center;

b. Does not occur after 9:00 p.m.;

c. Is not attended by more than 100 persons;

d. Does not involve the use of a tent, trailer, vehicle, freestanding canopy, stage, or temporary structure;

e. ~~d.~~ Does not have amplifying equipment ~~within 300 feet of a residential area;~~ and

f. ~~e.~~ Does not occur for more than three consecutive days in the same location more than once every six months.

3. Real Estate Sales Offices. Temporary real estate sales offices for the initial sale of property in new residential developments, subject to the following standards:

a. Is located within a new residence that is part of the development or within a temporary building; and

b. Adequate visitor parking and safe circulation are provided that will not interfere with ongoing construction activities.

4. Temporary Work Trailers. A trailer or modular structure used as a construction office, or a temporary work site for employees of a business, subject to the following standards:

a. There is an approved building permit for the permanent facility;

b. The trailer or modular structure is only allowed during the construction of a subdivision, or permanent nonresidential structure or facility;

c. The applicant has demonstrated that the construction office or temporary work site is a short-term necessity;

d. The structure shall be approved for a maximum period of one year or until expiration of the building permit or other construction permit, whichever occurs first, unless an extension is granted; and

e. The trailer or modular structure is removed prior to final building inspection or issuance of a certificate of occupancy for the permanent structure.

5. Outdoor Produce Displays. Outdoor fresh produce displays associated with an existing supermarket or grocery store. Displays consisting of a table or bin with fresh produce for

purchase are allowed when placed adjacent to the storefront entrance during regular business hours. The location and placement may not obstruct emergency egress or pedestrian access.

F. Major Temporary Events and Temporary Uses. Major temporary activities, events, and uses require approval of an administrative permit and are limited to a specific duration, generally up to 12 months, unless otherwise specified below, or conditioned in the permit approval. Approval shall only be granted when all of the findings in subsection (G) of this section are met. Major temporary activities, events, and uses shall include:

1. Carnivals, Circuses, Fairs, and Amusement Places. Festivals, fairs, tent shows, exhibits, games of skill, or rides when conducted at an outdoor location, subject to the following standards:

- a. Complies with operational standards contained in Chapter 5.40 CMC (Carnivals, Circuses, Fairs, and Amusement Places);
- b. Is located a minimum of 300 feet from any residential property, except that schools, churches, and other local nonprofit educational or charitable organizations may be exempt from this requirement pursuant to CMC 5.40.040 (Location requirements); and
- c. Has obtained a permit from the police department if the activity exceeds a total of seven days.

2. Location Filming. The use of a specific site for the filming of commercials, movies, videos, etc.

3. Major Promotional Events, Activities, Art Fairs, and Festivals. Special events and recurring activities that do not meet the conditions for minor promotional events in subsection (E)(2) of this section.

4. Model Homes. A model home or model home complex for an approved residential subdivision which has active construction permits. The models shall be converted to units for sale upon the completion of sales of all similar models or prior to acceptance of the subdivision improvements by the city.

~~5. Outdoor Sales and Displays. Temporary promotional sales and outdoor displays, associated with a permanent on-site use, may occur in nonresidential districts for 30 consecutive days within a 12-month period, subject to the following standards:~~

- ~~a. Merchandise displays are located in close proximity to the primary structure where the items are sold indoors;~~
- ~~b. Merchandise is displayed in a planned, orderly, and attractive manner as an extension of the window display and shall not constitute an expansion of the retail floor area (such as clothing racks);~~
- ~~c. Merchandise displays do not interfere with adjacent business displays, storefronts, access, or visibility;~~

- ~~d. Merchandise displays occupy a fixed, specifically approved, and defined location that does not disrupt pedestrian traffic, obstruct access to parking areas or driveways, or encroach onto landscape areas;~~
- ~~e. Display fixtures are of good quality and durable materials and construction;~~
- ~~f. Merchandise displays do not exceed a height of eight feet above the sidewalk; and~~
- ~~g. Displays are removed during nonbusiness hours, unless otherwise approved.~~

5. Sidewalk Sale Events. A merchant or group of merchants within a defined shopping center or business district may display their merchandise for sale on tables, display racks, or platforms outside their place of business during normal business hours. Sidewalk sale events may be permitted for up to three consecutive days, once every three months, subject to the following standards:

- a. Sidewalk sales shall be conducted in front of, or immediately adjacent to, the retail establishment. This excludes locations used for loading and unloading, landscaped areas, vehicular driving aisles, fire lanes, fire clearances, corner visibility areas adjacent to intersections and driveways, and areas necessary for emergency egress or disabled access to and from a building. A minimum four feet of unobstructed clearance shall be provided for all pedestrians passing the storefront and entrance.
- b. Sidewalk sales held in the public right-of-way shall only be permitted in the Downtown Pedestrian (DP) or Downtown Mixed Use (DMX) Zoning Districts with approval of an encroachment permit.
- c. No merchandise shall be left outside when the business is closed or displayed during periods of inclement weather. No merchandise may be stored or displayed on the ground.
- d. The sidewalk sale merchandise to be sold must be directly related to the retail establishment and must be attended by an employee or employees of the business. Under no circumstance shall merchants unconnected with the permitted business be allowed to conduct a sidewalk sale.

6. Seasonal Holiday Sales. Christmas tree lots and pumpkin patches subject to the following standards. Stand-alone seasonal sales associated with other holidays are prohibited.

- a. Sales of pumpkins may be conducted between October 1st and Thanksgiving Day, and sales of Christmas trees may be conducted between Thanksgiving Day and December 25th, seven days a week, and shall not operate between the hours of 10:00 p.m. and 8:00 a.m.;
- b. Seasonal sales lots shall prevent nuisance factors on adjoining parcels, such as glare or direct illumination, dirt, dust, noise, odors, smoke, waste, and vibration;
- c. Adequate parking facilities and vehicular and pedestrian circulation shall be provided;
- d. Appropriate setbacks are provided to ensure adequate separation from adjoining land uses and a safe environment for vehicles and pedestrians; and

e. All trees, pumpkins, and other related sale items, as well as signs and temporary structures, shall be removed within 10 days after the end of sales, and the appearance of the site shall be returned to its original state. A monetary deposit shall be required, upon application, as set forth in the currently adopted city fee schedule to guarantee site cleanup.

7. Temporary Classrooms. A temporary classroom, including a manufactured or mobile unit, may be approved for a maximum of one year at an existing private school. An extension of one year may be granted by the planning division. A temporary structure proposed for a longer time period shall comply with all provisions of the development code applicable to a permanent structure on the same site.

8. Temporary Shelter. The use of a trailer, as defined in Vehicle Code Section 630, camper as defined in Vehicle Code Section 243, or recreational vehicle as defined in Health and Safety Code Section 18010, and a trailer coach as defined in Vehicle Code Section 635, is prohibited for residential purposes except for the following conditions:

a. If an existing home is damaged and determined to be uninhabitable by the building official, a trailer, camper, or RV may be occupied for a maximum one-year period, when a building permit has been issued and is active.

b. A trailer, camper, or recreational vehicle may be parked on a lot consistent with the regulations of CDC 18.160.160 (Parking and storage of recreational vehicles).

9. Vehicle Sales Events. Temporary events sponsored by a credit union or similar organization and held on private property such as a business park, with the property owner's authorization. These events shall be limited to a maximum of two consecutive days and shall not occur in the same location more than two times a year.

10. Used Goods Collection Centers. Used goods collection facilities at any location other than within a permanent building or structure shall comply with all of the following standards:

a. The location of collection centers (trailers or containers) shall not obstruct any required parking spaces or disrupt either automobile or pedestrian traffic to or within the site;

b. Collection centers shall be located so they are not visible from the public right-of-way;

c. The location of collection centers shall not create a public or private nuisance;

d. Only one trailer or container shall be permitted per parcel;

e. Collection centers shall be operated by nonprofit organizations;

f. Collection centers shall be kept clean, well maintained, neatly painted, and in good operating condition;

g. Each collection center shall be clearly marked with the name of the nonprofit organization doing the collection and the local telephone number of the organization;

h. Any litter or spillage shall be immediately removed and cleaned;

- i. The collection center shall be manned at all times the center is in use;
- j. The written consent of the property owner shall be provided at the time permission is requested to use a collection center; and
- k. Upon termination of a collection campaign or program, collection facilities shall be removed and the site restored to its original condition within 48 hours.

11. Similar Temporary Activities. A temporary activity, event, or use that the planning division determines is similar to the other activities listed in this section, and is compatible with the applicable zoning district and surrounding land uses.

G. Findings. Administrative permits for temporary events, activities, and uses, in accordance with Chapter 18.420 CDC (Administrative Permits), shall be approved only when all of the following findings can be made:

- 1. The establishment, maintenance, or operation of the activity, event, or use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the proposed use.
- 2. The activity, event, or use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.
- 3. Approved measures for the removal of the activity, event, or use and site restoration have been required to ensure that no changes to the site would limit the range of possible future land uses otherwise allowed.
- 4. The approval includes provisions to ensure that each site occupied by a temporary activity, event, or use shall be cleaned of debris, litter, or any other evidence of the temporary use upon completion or removal of the activity, event, or use and shall thereafter be used in compliance with the provisions of the development code. The review authority may require an appropriate security deposit prior to the initiation of the activity, event, or use to ensure proper cleanup after the use is terminated.
- 5. The time and duration of the temporary use or event is limited and appropriate for the purpose, and does not result in a nuisance or affect the public health, welfare, or safety of the community.
- ~~5-6.~~ Additional conditions may be required, as appropriate, to minimize any adverse impacts of the temporary activity, event, or use.

H. Prohibited Temporary Activities, Uses, and Structures.

- 1. Privately Owned Vehicle Sales. The parking of privately owned automobiles in commercial, industrial, or public parking lots for the express purpose of offering the vehicle for sale is prohibited. This does not apply to permanent automobile/vehicle sales and leasing uses.
- 2. Shipping and Cargo Containers. Temporary structures including shipping and storage containers shall be prohibited as temporary stand-alone structures and are only permitted as building components of permanent structures subject to design and site review, with

particular attention paid to roofing, exterior treatment, architecture, compatibility with adjacent buildings, and placement on a permanent foundation.

Exhibit F

18.415.100 Decision and findings.

A. Decision and Findings. The review authority shall consider the recommendations from the design review board and may approve, conditionally approve, or deny the application after finding that:

1. The project is consistent with the general plan; and
2. The project meets the criteria in CDC 18.415.080 (Design criteria); ~~and~~
- ~~3. The project is consistent with all applicable design guidelines adopted by the city council that are in effect at the time of approval.~~

B. In approving a design and site review, the review authority may impose conditions of approval as deemed necessary to:

1. Ensure that the proposal conforms to the general plan and other applicable plans or policies adopted by the city council; and
2. Ensure that the proposal meets the requirements of the applicable zoning district, applicable provisions in the Concord Municipal Code, and other standards in the development code.

Exhibit G

18.505.020 Time limits and extensions.

A. Time Limits.

1. Unless conditions of approval or other provisions of the development code establish a different time limit, any planning permit or approval granted in compliance with Division VII of this title (Permits and Permit Procedures) that is not exercised within ~~12~~ 24 months of its approval shall expire and become void, except where an extension of time is approved in compliance with subsection (B) of this section (Extensions) or the applicant can demonstrate that they have diligently attempted to exercise the permit but were unable due to circumstances beyond their control (i.e., failure to obtain required permit from other governmental agency).

2. The planning permit shall not be deemed "exercised" until:

- a. A building or grading permit has been issued and actual construction diligently commenced thereon and has not expired;
- b. A certificate of occupancy has been issued; or
- c. The use is established (in operation) at the site.

3. For the purposes of the development code, "actual construction" shall mean the placing of construction materials on the site in a permanent manner consistent with approved plans and permits, including the installation of public or private improvements; provided, that in all cases construction work shall be diligently pursued until completion of the subject structure.

4. The planning permit or approval shall remain valid after it has been exercised as long as the building permit (or other applicable permit) is active for the project, or a final building inspection or certificate of occupancy has been issued.

5. If a project is to be developed in preapproved phases, each subsequent phase, until 50 percent or more of the site is developed, shall be exercised within 12 months from the date that the previous phase was exercised, unless otherwise specified in the planning permit, or the planning permit shall expire and be deemed void.

6. If the project also involves the approval of a tentative map, the phasing shall be consistent with the tentative map and all planning permit approvals shall be valid for the life of the tentative map.

B. Extensions. Upon request by the applicant, the city may extend the time for an approved planning permit to be exercised in the following manner:

1. The permittee shall file a written request for an extension of time with the planning division at least 10 days before the expiration of the permit, together with the filing fee required by the city's fee schedule.

2. The applicable review authority shall hold a public hearing on any proposed extension in compliance with Chapter 18.500 CDC (Public Hearings).

3. The burden of proof is on the permittee to establish with substantial evidence that the permit should not expire. If the applicable review authority determines that the permittee has proceeded in good faith and has exercised due diligence in complying with the conditions in a timely manner, the review authority may grant a time extension for up to ~~an additional 12~~ a total of 24 months from the date of the decision to extend the permit; provided, that the review authority first finds that:

- a. The requested extension is consistent with the general plan and any applicable specific plan, and the overall project remains consistent with those plans as they exist at the time the extension request is being considered;
- b. The findings required by the original approval remain valid; and
- c. There are adequate provisions for public services and utilities (e.g., access, drainage, fire protection, sewers, water, etc.) to ensure that the requested extension would not endanger, jeopardize, or otherwise constitute a hazard to the public health, safety, or general welfare, or be injurious to the property or improvements in the vicinity and applicable zoning district.

4. Exception. If the project approval includes the approval of a tentative map, which is subject to additional time extensions, all planning permit approvals shall be valid for the life of the tentative map.

Exhibit H

18.540.090 Limitation of actions.

Except as otherwise provided in Government Code Section 65009, any court action or proceedings to attack, review, set aside, void or annul any decision on matters listed in this chapter, including, but not limited to, rezoning or reclassification of property, or concerning any of the proceedings, acts or determinations taken, done or made prior to such decisions, or to determine the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any person unless such action or proceeding is commenced and service is made on the city after the effective date of such decisions.

~~A. The provisions of this section apply to all matters listed in the development code; provided, however, that should any court of competent jurisdiction hold that this section is invalid in its application to matters referred to in California Government Code Section 65907, then such validity shall not affect the application of the provisions of this section to all other matters listed in the development code, and, to this end, the application of this section to matters other than those listed in California Government Code Section 65907 is hereby declared to be severable.~~

~~B. The city council hereby declares that it would have adopted this chapter and made the same applicable to matters other than those listed in California Government Code Section 65907—irrespective of any holding that this chapter cannot legally be applied to matters referred to in California Government Code Section 65907.—~~