



**YREKA PLANNING COMMISSION
REGULAR MEETING AGENDA
March 16, 2022 – 5:30 P.M.
Yreka City Council Chamber, 701 Fourth Street, Yreka, CA**

Regular Meetings of the Yreka Planning Commission are held the 3rd Wednesday of every month.

The full agenda packet can be found on the City’s website: www.ci.yreka.ca.us/AgendaCenter

Join this meeting via Zoom:

Link: <https://us02web.zoom.us/j/6194957056>
Meeting ID# 619-495-7056

Members of the public may also remotely listen to and participate in the meeting via teleconference. If you wish to listen or participate in this meeting through teleconference, simply dial into the conference number below, and enter the meeting ID#.

Conference call in Number: 669-900-6833 (Toll-Free 888 788 0099)

“**RAISE YOUR HAND**” to provide public comment for your desired item. Speakers will be asked to identify themselves.

- **Online:** If you are online, click on “raise hand” on the bottom of your screen.
- **Mobile App:** In the mobile app, you can raise your hand by tapping the "Raise Hand" option in the "More" tab.
- **Telephone:** If you are calling in via telephone, to raise your hand, dial *9 (star-nine). Speakers will be called on by the last four digits of their phone number. To unmute yourself dial *6 (star-six).

1. CALL TO ORDER and PLEDGE OF ALLEGIANCE:

2. ROLL CALL:

3. GENERAL PUBLIC COMMENTS:

This is the time for public comments regarding issues or matters not on the agenda but still within the jurisdiction of the Planning Commission of Yreka. Public comments period is not intended to be “Question and Answer” period or conversations with the Commissioners or City staff. Commissioners, when recognized by Chair, may ask questions of presenter but no action may be taken by the Planning Commission during the public comment section of the meeting, except to direct staff to prepare a report or place an item on a future agenda.

- Please speak from the podium.
- Please state your name for the record prior to providing your comments.
- Please address the Commission as a whole.
- If you have documents to present, please provide a hard copy to the Clerk or Planning Director
- Please limit your remarks to three (3) minutes.

4. STAFF & COMMISSIONER’S COMMENTS:

Members of the Planning Commission may make brief announcements, reports, or request staff to report to Commission on any matter at a subsequent meeting.

5. CONSENT AGENDA:

All matters listed under the consent agenda are considered routine and non-controversial and will be enacted by one motion unless any member of the Commission wishes to remove an item for discussion, or a member of the public wishes to comment on an item.

- a. Approval of Minutes of the regular meeting held February 16, 2022

6. PUBLIC HEARINGS:

Public Hearing Protocol:

1. Chair will describe the purpose of the Public Hearing.
2. City Staff will provide the Staff Report.
3. City Staff will respond to questions from the Planning Commission.
4. Chair will open the Public Hearing.
5. Citizens wanting to comment will come to the podium, provide the Commissioners with their name and address, and provide their comments.
6. Chair will close the Public Hearing.
7. Planning Commission will deliberate and act on the item.

A. Zoning Ordinance Amendment: Chapter 16.44 “Conditional Use Permit”

City Staff will present proposed amendments to Chapter 16.44 “Conditional Use Permits” of the Yreka Municipal Code to update and clarify findings for award of conditional use permit, update revocation process, and clarify appeals process for conditional use permit appeals hearings. The proposed action has been determined to meet the guidelines for “General Rule” exemption pursuant Section 15061 of the California Environmental Quality Act (CEQA) guidelines.

Possible Action: Motion to approve draft Chapter 16.44 for City Council consideration.

B. Zoning Ordinance Creation and Amendment: Chapters 16.12, 16.46, 16.59 “Nonconforming Lots, Uses, and Structures”

City Staff will present a proposal to strike Sections 16.12.680, 16.46.120, and 16.46.130 and create Chapter 16.59 “Nonconforming Lots, Uses, and Structures” to create regulations to provide direction and guidance for the recognition of legally, existing nonconforming uses, lots and structure in Yreka. The proposed action has been determined to meet the guidelines for “General Rule” exemption pursuant Section 15061 of the California Environmental Quality Act (CEQA) guidelines.

Possible Action: Motion to approve striking of Sections 16.12.680, 16.46.120, and 16.46.130 and creation of draft Chapter 16.59 for City Council consideration.

C. Zoning Ordinance Creation: Chapter 16.57 “Rezoning”

City Staff will present a proposal to create Chapter 16.57 “Rezoning” to create regulations to provide findings and procedures to review applications for rezoning properties within the City of Yreka. The proposed action has been determined to meet the guidelines for “General Rule” exemption pursuant Section 15061 of the California Environmental Quality Act (CEQA) guidelines.

Possible Action: Motion to approve draft Chapter 16.57 for City Council consideration.

D. Zoning Ordinance Amendment: Chapter 16.58 “Variances”

City Staff will present a proposal to amend Chapter 16.58 “Variances ” of the Yreka Municipal Code to create regulations to provide findings and procedures to review applications for variances. The proposed action has been determined to meet the guidelines for “General Rule” exemption pursuant Section 15061 of the California Environmental Quality Act (CEQA) guidelines.

Possible Action: Motion to approve draft Chapter 16.58 for City Council consideration.

7. NEW BUSINESS:

A. Annual Progress Report 2021:

Background: Presentation and request for approval of Annual Progress Report due to the state by April 1, 2022.

Possible Action: Motion to approve transmission of 2021 Annual Progress Report to the Governor’s Office of Planning and Research and the California Department of Housing and Community Development.

8. FUTURE PLANNING ITEMS:

Future agenda items are action items and presentations to the Planning Commission that will occur within the next 90-days. All dates are tentative and subject to change if needed.

- **March 22, 2022 Existing Conditions Report** – Rescheduled from March 8th. The Planning Department will host an online presentation of the existing conditions report for the City of Yreka.
- **March 31, 2022 5:30 to 6:30PM – General Plan Open House** The Planning Department will host another open house March 31st at the Community Building to collect input on mapping and development of parks, housing, and commercial uses.
- **April 12, 2022 – Visioning Workshop** The Planning Department will host a hybrid workshop in the City Council Chambers to review the visioning survey results and develop a 2044 visioning statement and objectives.
- **April 19, 2022 – Housing Community Workshop #2:** Workshop will be held in conjunction with City Council.
- **April 20, 2022 - Objective Design Standards:** Introduction of proposed ordinances changes to meet new state standards on multi-housing building design standards.
- **April 20, 2022 – Draft 2044 Vision** The Planning Department will present a draft vision statement developed through the visioning survey and workshop.
- **May 18, 2022 – Safety Element Minor Update:** Presentation of proposed amendments to the Safety Element to meet FEMA and California Office of Emergency Services standards.
- **May 18, 2022 – Circulation Element Minor Update:** Presentation of proposed amendments to the Circulation Element to meet state requirements for Vehicle Miles Traveled (VMT) standards.

9. ADJOURNMENT

In compliance with the requirements of the Brown Act, notice of this meeting has been posted in a publicly accessible place, 72 hours in advance of the meeting.

All documents produced by the City which are related to an open session agenda item and distributed to the City Council are made available for public inspection in the City Clerk's Office during normal business hours.

Decisions of the Planning Commission may be appealed to the City Council by filing a written notice of appeal within ten (10) calendar days of the decision. Appeals must be submitted to the City Clerk's office together with the appeal fee of \$150.00 plus publication fee if required.

If you challenge any action taken pursuant to the California Environmental Quality Act, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Department at, or prior to, the public hearing. (Public Resources Code Section 21177).

Public Hearings: If, in the future, you wish to challenge in court any of the matters on an agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing. Any person seeking to challenge a City Council decision made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that action 90 days following the date on which the decision becomes final as provided in Code of Civil Procedure Section 1094.6. Please refer to Code of Civil Procedure 1094.6 to determine how to calculate when a decision becomes "final."

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council/Planning Commission to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies

The City of Yreka does not discriminate on the basis of race, color, national origin, religion, age, gender, sexual orientation, disability, or any other legally protected classes in employment or provision of services. In compliance with the Americans with Disabilities Act, those requiring accommodations for this meeting should notify the Planning Department 48 hours prior to the meeting at (530) 841-2324 or by notifying the Deputy Planning Director at casson@ci.yreka.ca.us.

MINUTES OF THE REGULAR MEETING OF THE
YREKA PLANNING COMMISSION HELD
ON THE 16th DAY OF FEBRUARY 2022

1. **Call To Order** - On the 16th day of February 2022 at 6:30 p.m., the Planning Commission of the City of Yreka met in the City Council Chamber and via Zoom in said City in regular session. The meeting was called to order by Planning Commission Chair Matt Osborn
2. **Roll Call** - Present: Brian Devlin, Matt Osborn, Peter O'Brien, and Richard Rolzinski.
Amy Fernandez joined the meeting at 6:36 p.m.
Absent: None
Conflict of Interest Declaration – None
3. **General Public Comment** – None
4. **Staff and Commissioner's Comments** – Planning Director Juliana Lucchesi gave updates on the General Plan
5. **Consent Agenda** – Planning Director announced that all matters listed under the consent calendar are considered routine and will be enacted by one motion unless any member of the Commission wishes to remove an item for discussion or a member of the audience wishes to comment on an item:

- a. Approval of Minutes of the Regular Meeting held January 19, 2021

COMMISSION ACTION: Motion to approve the consent agenda as presented

MOTIONED: Rolzinski

SECONDED: O'Brien

AYES: Commissioners Osborn, Rolzinski, Devlin, O'Brien, and Fernandez

NAYS: None

ABSTAIN: None

ABSENT: None

6. **Public Hearings**
 - a. Discussion/Possible Action – CUP 2021-46 Sidhu Gas Station and Convenience Store Public Hearing

Public Comment Opened:

Commissioners Rolzinski and Fernandez asked questions, applicant present to answer.

Public Comment Closed

COMMISSION ACTION: Motion to approve Planning Commission Resolution PCR-22-01 "A Resolution of the Planning Commission of the City of Yreka, California Approving the Conditional Use Permit for the Sidhu Gas Station and Convenience Store Project and Adoption of Class 1 (Existing Facilities) and Class 2 (Replacement/Reconstruction) exemptions under the California Environmental

Quality Act (CEQA) at Assessor's Parcel Numbers: 057-473-210 and 057-473-240",
by title only.

MOTIONED: O'Brien

SECONDED: Devlin

AYES: Commissioners Osborn, Rolzinski, Devlin, O'Brien, and Fernandez

NAYS: None

ABSTAIN: None

ABSENT: None

- b. Discussion/Possible Action – Revocation Public Hearing for CUP 2020-05 Living Quarters at Yreka Truck Stop

Public Comment Opened:

Commissioners O'Brien, Devlin, Fernandez, Rolzinski, and Osborn asked questions, applicant present to answer.

Public Comment Closed

COMMISSION ACTION: Motion to approve Planning Commission Resolution PCR-22-02 "A Resolution of the Planning Commission of the City of Yreka, California, Amending the Conditional Use Permit No. 2020-05 for Living Quarters at the Yreka Truck Stop"

MOTIONED: Fernandez

SECONDED: O'Brien

AYES: Commissioners O'Brien, Devlin, Fernandez, and Osborn

NAYS: Rolzinski

ABSTAIN: None

ABSENT: None

7. New Business

- a. Discussion/Possible Action – Planning Commission 2022 Meeting Schedule

Public Comment Opened:

Commissioners discussed times and dates of 2022 meeting schedule

Public Comment Closed

COMMISSION ACTION: Motion to move Planning Commission Meetings to 5:30 p.m. every third Wednesday of each month.

MOTIONED: O'Brien

SECONDED: Devlin

AYES: Commissioners O'Brien, Devlin, Fernandez, Osborn, and Rolzinski

NAYS: None

ABSTAIN: None

ABSENT: None

- b. Discussion/Possible Action – Planning Commission Membership Expansion

Public Comment Opened:

Commissioners discussed membership expansion and qualifications

Public Comment Closed

COMMISSION ACTION: Motion to keep Planning Commission Member count at 5 and table membership qualifications. Chair directs Staff to get more information on Membership Qualifications.

MOTIONED: Devlin

SECONDED: Rolzinski

AYES: O'Brien, Osborn, Rolzinski, Fernandez, and Devlin

NAYS: None

ABSTAIN: None

ABSENT: None

8. **Future Agenda Items** – Director Lucchesi presented future agenda action items and presentations to Commissioners. No action taken.
9. **Adjournment** – There being no further business before the Commission, the meeting was adjourned at 7:34 PM.

_____, Chair
Approved by motion of the Planning
Commission on March 16, 2022



CITY OF YREKA
PLANNING COMMISSION AGENDA MEMORANDUM

Prepared by: Juliana Lucchesi, AICP, Planning Director
Agenda Title: Zoning Ordinance Amendment: Chapter 16.44 "Conditional Use Permit"
Meeting date: March 16, 2022

Recommended Actions:

- 1. Open public hearing, hear public comment, and close public hearing**
- 2. Motion to approve draft Chapter 16.44 for City Council consideration.**

Summary:

The Planning Department staff have identified four standard planning and zoning activities that need updating to clarify findings, establish sound due process procedures, and comply with current state and federal case law on the application of conditional use permits, nonconforming status, variances, and rezonings.

Background:

A zoning district establishes areas within a city where certain uses are allowed by-right (without special permitting) and the standards for the development for those uses. Zoning districts are set up to regulate and guide development in a direction set by the community. Conditional or special uses occur when the community wants flexibility for new uses of new development standards that have not been previously allowed in a zoning district. These conditional uses tend to be supportive of the other surrounding uses but may have impacts on the surrounding properties that required special consideration. For example, rooftop bars and restaurants have become more common in downtown areas but may exceed historically set height maximums or create more noise due to the activities being outside. A conditional use permit process would allow the city to permit this type of use while ensuring it is developed in a way that compliments the surrounding area.

Complete neighborhoods require an array of uses outside of residential, some of which require conditions. For example a church is typically a conditional use in many zones due to the building needed to be bigger than surrounding residential homes to accommodate the audience and needs special parking considerations to accommodate peak hours on Sundays. Another example is small-scale commercial uses such as neighborhood coffee shops, retailers, or

farmers' stalls, which can be limited in size, hours or operation, or outdoor seating to ensure a peaceful neighborhood.

Environmental Review:

The proposed ordinance changes have been reviewed for environmental compliance with the California Environmental Quality Act (CEQA). The proposed amendments were found to not have any foreseeable direct or indirect impacts to the environment; therefore, the proposed amendments would not be considered a "project" under CEQA. This is called a General Rule exemption under CEQA Guidelines Section 15061(b)(3).

Review by Public & Outside Agencies:

The proposed amendments were noticed to meet Government Code Section 65090. There have been no public comments submitted at the time of this packet release.

Commission Actions:

All proposed zoning code creation and amendments require at least one public hearing at the Planning Commission level. The Planning Commission should hold the public hearing to comply with Government Code Section 65854.

The Planning Commission may take one of the following actions regarding ordinance updates:

- 1. No Action** – Planning Commission may choose to take no action on the proposed amendments. In this case there is an existing ordinance which regulates conditional use permits. That previous ordinance would remain in effect if Planning Commission took no action.
- 2. Approve as Submitted** – Planning Commission may adopt the proposed amendments as submitted by City Staff. In this case, the amendments in Attachment 3 would be presented to the City Council for a first reading.
- 3. Amend Proposed Language and Approve as Amended** – Planning Commission may propose amendments to the presented ordinance changes. Planning Commission should state why they wish to make the change and the preferred language. Planning Commission may then approve the proposed amendments for City Council consideration as amended or table the item to the next meeting to allow Staff time to make changes in the ordinance for another round of Planning Commission review.

4. **Table Item for More Consideration** – Planning Commission may make a motion to table the item to the next meeting to allow more time for review and consideration.
5. **Give Staff Direction** – Planning Commission may want more public input or information to feel more comfortable with the proposed amendments. Planning Commission should be specific to the information request or why they would like more information and/or public input.

Staff Recommendation:

City Staff recommend approval of the proposed amendments as submitted due to strict legal nature of the ordinance procedures established by case law. The proposed amendments accomplish the following:

- Creates a clear purpose for the Conditional Use Permit ordinance that clarifies why the city would allow and regulate conditional uses.
- Refines the application and review process to ensure clear expectation of applicants and create timeframes for reasonable review and submission of application materials. These timeframes were established statewide under the “Permit Streamlining Act” enacted in 1977 (Government Code Section 65921).
- Establishes new findings to grant a conditional use permit that comply with land use case law. A land use ordinance cannot be so vague or uncertain that a person of common intelligence and understanding must guess as to its meaning this would violate due process of the law (*People v. Gates*, 41 Cal. App 3d 590 (1974)). Vagueness and subjectivity are two elements that a city wants to avoid in its findings; therefore, the terms “morales” and “peaceful” are removed from the findings. These terms have been found to be incredibly subjective and not enforceable under the law. The terms health, safety, and welfare have been litigated close to death and have well established meanings and definitions.
- Establishes clear standards for the application of conditions for a conditional use permit. This accomplishes a similar goal as the above bullet point.
- Establishes a legally defensible appeals process to meet the requirements of due process.

City Staff can accommodate Planning Commission comments and proposed amendments to the extent that they are legally defensible under national and California laws.

Attachments:

- 1. Original Chapter 16.44 “Conditional Use Permit”**
- 2. Tracked Changes Proposed by the Planning Department**
- 3. Proposed Amendments to Chapter 16.44 “Conditional Use Permit”**

Chapter 16.44 CONDITIONAL USE PERMITS

Sections:

16.44.010 Conditional Use Permits.

A conditional use permit may be issued in the manner specified herein for any of the uses or purposes for which such conditional use permits are required by the terms of this title.

(Ord. 775 (part), 2004).

16.44.020 Application.

- A. Application for a conditional use permit shall be made to the Planning Commission in writing on a form prescribed by the Planning Commission, and shall be accompanied by plans, elevations, and a site plan required by Chapter 16.52, showing the detail of the proposed use of land or building. Such application shall be accompanied by a fee set by resolution of the City Council.

(Ord. 775 (part), 2004).

16.44.030 Public Hearing.

- A. A public hearing by the Planning Commission shall be held within forty-five (45) days after filing of the completed application for the conditional use permit and compliance with California Environmental Quality Act. Notice of the hearings shall be given in the manner set forth in Section 16.14.010 by the Planning Director.

(Ord. 775 (part), 2004).

16.44.040 Action by the commission.

- A. In order to grant any conditional use permit the findings of the Planning Commission shall be that the establishment, maintenance or operation of the use or building applied for will not, under the circumstances of the particular case, be materially detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be materially detrimental to property or improvements in the neighborhood or to the general welfare of the city. The Planning Commission may impose such conditions in connection with the conditional use permit as it deems necessary to secure the purposes of this title, and may require that such conditions will be complied with by the applicant.
- B. The Planning Commission shall render its decision on any conditional use permit within thirty-five (35) days following close of the public hearing. Failure of the Commission to render its decision within the period shall be deemed to be a denial of the application. The granting of any conditional use permit, when conforming to the provisions of this paragraph, is an administrative function, the authority and responsibility for performing which, is imposed upon the Planning Commission and the action thereon by the Commission shall be final and conclusive except in the event of an appeal as hereinafter provided.

(Ord. 775 (part), 2004).

16.44.050 Revocation of conditional permits.

- A. Any conditional use permit granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval, or in the event the use permitted is abandoned or not utilized for a period of one year. Notwithstanding the foregoing, upon submission of a written request by the holder of the conditional use permit prior to termination of the use permit, the Planning Director may extend any such conditional use permit for a period of one year if there is reasonable justification for not utilizing the permit as required by this section.
- B. Any conditional use permit granted in accordance with the terms of this title may be revoked if any condition or term of such permit is violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds that the continuance of the conditional use permit will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within 30 days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

(Ord. 775 (part), 2004).

16.44.060 Modification of site plan for which a conditional use permit has been granted.

Any conditional use permit granted pursuant to this chapter shall be conducted only in accordance with the site plan approved at the time of issuance of the conditional use permit. In the event the holder of a conditional use permit desires to modify said site plan, an application shall be filed for modification of the site plan for approval or disapproval of the planning commission, in accordance with the same procedure for the issuance of a conditional use permit as provided in this chapter provided that compliance with Section 16.14.010 shall not be required. Notwithstanding the foregoing, minor alterations of the site plan may be granted by the Planning Director, if he/she finds that such modification does not materially change the site plan or have the potential of adversely impacting adjacent property owners, and is otherwise in full compliance with all other provisions of this code or any other laws, rules or regulations relating thereto.

(Ord. 775 (part), 2004).

16.44.070 Conditional use permits within any historic district, landmark, or landmark site.

Any application for a conditional use permit required or permitted pursuant to the terms of this title which visually impacts the exterior appearance of any property or structure within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code, shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the planning commission. Any such application received prior to the first of any calendar month shall be reviewed by the historic district and landmarks commission at its next regular meeting and said commission shall immediately thereafter forward to the planning commission its report and recommendations in regard to said application, taking into consideration the effect of such application upon the historic district, landmark, or landmark site. In the event said commission does not act within the time pursuant to this section, the planning commission may proceed on the basis that the historic district and landmarks commission does not object to said application.

(Ord. 775 (part), 2004).

Chapter 16.44 CONDITIONAL USE PERMITS

16.44.010 ~~Conditional Use Permits Purpose~~

~~Conditional uses are characterized by their potential to generate certain types of impacts, depending upon where the use is located, how it is designed, and how it is operated. These uses require a higher level of review than a permitted use, or use-by-right, in order to ensure that the use is appropriate as proposed and designed for the zoning district. The conditional use permit process enables the decision-maker to determine whether the use is appropriate for its proposed location, to review its design and site layout to minimize or eliminate impacts, and to impose conditions of approval to ensure the use will be compatible with the surrounding area and with adjacent uses. The conditional use permit can also serve as one approval, incorporating a design review approval, for instance, and eliminating the need for separate applications and review.~~

~~The regulations of this chapter are established to achieve the following purposes:~~

- ~~A. To provide flexibility within zoning districts in siting certain types of uses and in determining whether a use, as proposed, would be appropriate for a particular location;~~
- ~~B. To establish a process to authorize a conditional use and impose reasonable conditions of approval upon the project that will minimize or eliminate potential impacts;~~
- ~~C. To ensure that conditional uses are consistent with the goals, objectives, and policies of the General Plan, the Zoning Ordinance, and the Development Code;~~
- ~~D. To protect the public health, safety, and welfare by ensuring that the conditional use is compatible with existing and future surrounding uses;~~
- ~~E. To streamline the review process by providing for the concurrent processing of associated applications, such as a planned development or a design review, thereby eliminating the need for separate applications and submittals.~~

~~A conditional use permit may be issued in the manner specified herein for any of the uses or purposes for which such conditional use permits are required by the terms of this title.~~

~~(Ord. 775 (part), 2004).~~

16.44.020 Application and Review Process:

- A. Application Checklist. The application submittal shall contain all of the materials required by the conditional use permit checklist. The conditional use permit checklist shall be developed and maintained by the Planning Department.
- B. Application fee. A conditional use permit application fee shall be paid at the time of application submission to the Planning Department. The conditional use permit application fee shall be set by City Council resolution.
- ~~A.~~ C. At a minimum, the Conditional Use Permit Application shall be accompanied by building plans, elevations, landscaping plan, and a site plan required by Chapter 16.52, showing the detail of the proposed use of land and/or building.
- D. The application shall be submitted to the Planning Department for review. The Planning Department shall have 30 calendar days to review the application:
 - 1. If the Planning Department determines that the application is incomplete, the Department shall notify the applicant of the application deficiencies. The applicant will have a maximum of 90 calendar days from the date of the notification letter to correct the deficiencies. If no response or correction are presented the application shall be deemed denied at the conclusion of the 90th-day.

2. If the Planning Department determines that the application is complete, the proposed conditional use permit shall be reviewed for environmental compliance with the California Environmental Quality Act (CEQA). Upon completion of the environmental review, the Planning Department shall schedule a public hearing with the Planning Commission no more than 15 days after determining environmental compliance. Application for a conditional use permit shall be made to the Planning Commission in writing on a form prescribed by the Planning Commission, and shall be accompanied by plans, elevations, and a site plan required by Chapter 16.52, showing the detail of the proposed use of land or building. Such application shall be accompanied by a fee set by resolution of the City Council.

~~(Ord. 775 (part), 2004).~~

16.44.030 Public Hearing.

- ~~A. — A public hearing by the Planning Commission shall be held and noticed within forty five (45) days after filing of the completed application for the conditional use permit and compliance with California Environmental Quality Act in compliance with Government Code Sections 65090 through 65096. Notice of the hearings shall be given in the manner set forth in Section 16.14.010 by the Planning Director.~~

~~(Ord. 775 (part), 2004).~~

16.44.040 Findings and Review Procedures Action by the commission:

- ~~A. In order to grant any conditional use permit the findings of the Planning Commission shall be that the establishment, maintenance or operation of the use or building applied for will not, under the circumstances of the particular case, be materially detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be materially detrimental to property or improvements in the neighborhood or to the general welfare of the city. The Planning Commission may impose such conditions in connection with the conditional use permit as it deems necessary to secure the purposes of this title, and may require that such conditions will be complied with by the applicant.~~
- ~~B. The Planning Commission shall render its decision on any conditional use permit within thirty-five (35) days following close of the public hearing. Failure of the Commission to render its decision within the period shall be deemed to be a denial of the application. The granting of any conditional use permit, when conforming to the provisions of this paragraph, is an administrative function, the authority and responsibility for performing which, is imposed upon the Planning Commission and the action thereon by the Commission shall be final and conclusive except in the event of an appeal as hereinafter provided.~~

~~(Ord. 775 (part), 2004).~~

The Planning Commission must make the following findings to grant a conditional use permit:

1. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community. The following shall be considered to make this finding:
 - a. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-servicing uses in the areas; and
 - b. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and
 - c. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district.
2. Such use of feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - a. The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures.;

- b. The accessibility and traffic patterns for persons, non-motorized vehicular traffic, and vehicles, the type and volume of such traffic, the adequacy of proposed off-street parking and loading, and of proposed alternatives to off-street parking;
- c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor;
- d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs; and
- 3. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the implementation of the General Plan; and
- 4. Such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable zoning district, specific plan, and planned unit development.
- 5. That adequate public facilities and services are available to serve the site or will be made available concurrent with the proposed development.
- 6. Such use or feature as proposed will not reduce or prevent the expansion of the City's residential unit inventory.

16.44.050 Conditions of Approval

- A. When authorizing a Conditional Use Permit as provided herein, the Planning Commission, or the City Council on appeal, shall prescribe such additional conditions, beyond those specified in this Code, as are in its opinion necessary to secure the objectives of the Code. Once any portion of the Conditional Use Permit authorization is utilized, all such conditions pertaining to such authorization shall become immediately operative.
- B. The violation of any condition so imposed shall constitute a violation of this Code and may constitute grounds for revocation of the Conditional Use authorization. Such conditions may include time limits for exercise of the Conditional Use authorization; otherwise, any exercise of such authorization must commence within a reasonable time.
- C. Authorization of a minor change in any condition previously imposed in the authorization of a conditional use permit shall require Planning Director approval. Authorization of a major change in any condition previously imposed in the authorization of a conditional use permit shall be subject to the same procedures as a new conditional use permit.
- D. The definition of a "minor" change for the purposes of this Section may mean a change in the timing of implementation of a condition, location of proposed structures on the site if the change in location does not impact traffic patterns or access, and changes to façade, signage, or lighting.
- E. The definition of a "major" change for the purposes of this Section may mean a change that impacts the overall traffic flow on or around the property, change that would exceed the capacity of public facilities and services, or a change that would conflict with the findings prescribed in Section 16.44.040.

16.44.060 Appeals

In case the applicant or other affected are not satisfied with the action of the Planning Commission they may, within ten (10) calendar days after the rendition of the decision thereon by the Commission, appeal in writing to the City Council pursuant Section 16.14.030.

16.44.0570 Revocation of conditional permits.

- A. Any conditional use permit granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval, or in the event the use permitted is abandoned or not utilized for a period of one year. Notwithstanding the foregoing, upon submission of a written request by the holder of the conditional use permit prior to termination of the use permit, the Planning Director may extend any such conditional use permit for a period of one year if there is reasonable justification for not utilizing the permit as required by this section.
- B. Any conditional use permit granted in accordance with the terms of this title may be revoked if any condition or term of such permit is violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds that the continuance of the conditional use permit will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within 30 days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

~~(Ord. 775 (part), 2004).~~

~~16.44.060 Modification of site plan for which a conditional use permit has been granted.~~

~~Any conditional use permit granted pursuant to this chapter shall be conducted only in accordance with the site plan approved at the time of issuance of the conditional use permit. In the event the holder of a conditional use permit desires to modify said site plan, an application shall be filed for modification of the site plan for approval or disapproval of the planning commission, in accordance with the same procedure for the issuance of a conditional use permit as provided in this chapter provided that compliance with Section 16.14.010 shall not be required. Notwithstanding the foregoing, minor alterations of the site plan may be granted by the Planning Director, if he/she finds that such modification does not materially change the site plan or have the potential of adversely impacting adjacent property owners, and is otherwise in full compliance with all other provisions of this code or any other laws, rules or regulations relating thereto.~~

~~(Ord. 775 (part), 2004).~~

16.44.070 Conditional use permits within any historic district, landmark, or landmark site.

Any application for a conditional use permit required or permitted pursuant to the terms of this title which visually impacts the exterior appearance of any property or structure within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code,

shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the Planning Commission. ~~Ord. 775 (par~~

Chapter 16.44 CONDITIONAL USE PERMITS

16.44.010 Purpose

Conditional uses are characterized by their potential to generate certain types of impacts, depending upon where the use is located, how it is designed, and how it is operated. These uses require a higher level of review than a permitted use, or use-by-right, in order to ensure that the use is appropriate as proposed and designed for the zoning district. The conditional use permit process enables the decision-maker to determine whether the use is appropriate for its proposed location, to review its design and site layout to minimize or eliminate impacts, and to impose conditions of approval to ensure the use will be compatible with the surrounding area and with adjacent uses. The conditional use permit can also serve as one approval, incorporating a design review approval, for instance, and eliminating the need for separate applications and review.

The regulations of this chapter are established to achieve the following purposes:

- A. To provide flexibility within zoning districts in siting certain types of uses and in determining whether a use, as proposed, would be appropriate for a particular location;
- B. To establish a process to authorize a conditional use and impose reasonable conditions of approval upon the project that will minimize or eliminate potential impacts;
- C. To ensure that conditional uses are consistent with the goals, objectives, and policies of the General Plan, the Zoning Ordinance, and the Development Code;
- D. To protect the public health, safety, and welfare by ensuring that the conditional use is compatible with existing and future surrounding uses;
- E. To streamline the review process by providing for the concurrent processing of associated applications, such as a planned development or a design review, thereby eliminating the need for separate applications and submittals.

16.44.020 Application and Review Process

- A. Application Checklist. The application submittal shall contain all of the materials required by the conditional use permit checklist. The conditional use permit checklist shall be developed and maintained by the Planning Department.
- B. Application fee. A conditional use permit application fee shall be paid at the time of application submission to the Planning Department. The conditional use permit application fee shall be set by City Council resolution.

- C. At a minimum, the Conditional Use Permit Application shall be accompanied by building plans, elevations, landscaping plan, and a site plan required by Chapter 16.52, showing the detail of the proposed use of land and/or building.
- D. The application shall be submitted to the Planning Department for review. The Planning Department shall have 30 calendar days to review the application:
 - 1. If the Planning Department determines that the application is incomplete, the Department shall notify the applicant of the application deficiencies. The applicant will have a maximum of 90 calendar days from the date of the notification letter to correct the deficiencies. If no response or correction are presented the application shall be deemed denied at the conclusion of the 90th-day.
 - 2. If the Planning Department determines that the application is complete, the proposed conditional use permit shall be reviewed for environmental compliance with the California Environmental Quality Act (CEQA). Upon completion of the environmental review, the Planning Department shall schedule a public hearing with the Planning Commission no more than 15 days after determining environmental compliance.

16.44.030 Public Hearing.

A public hearing by the Planning Commission shall be held and noticed in compliance with Government Code Sections 65090 through 65096.

16.44.040 Findings and Review Procedures

The Planning Commission must make the following findings to grant a conditional use permit:

- 1. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community. The following shall be considered to make this finding:
 - a. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-servicing uses in the areas; and
 - b. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and
 - c. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district.
- 2. Such use of feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
 - a. The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures.;

- b. The accessibility and traffic patterns for persons, non-motorized vehicular traffic, and vehicles, the type and volume of such traffic, the adequacy of proposed off-street parking and loading, and of proposed alternatives to off-street parking;
 - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor;
 - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs; and
- 3. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the implementation of the General Plan; and
 - 4. Such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable zoning district, specific plan, and planned unit development.
 - 5. That adequate public facilities and services are available to serve the site or will be made available concurrent with the proposed development.
 - 6. Such use or feature as proposed will not reduce or prevent the expansion of the City's residential unit inventory.

16.44.050 Conditions of Approval

- A. When authorizing a Conditional Use Permit as provided herein, the Planning Commission, or the City Council on appeal, shall prescribe such additional conditions, beyond those specified in this Code, as are in its opinion necessary to secure the objectives of the Code. Once any portion of the Conditional Use Permit authorization is utilized, all such conditions pertaining to such authorization shall become immediately operative.
- B. The violation of any condition so imposed shall constitute a violation of this Code and may constitute grounds for revocation of the Conditional Use authorization. Such conditions may include time limits for exercise of the Conditional Use authorization; otherwise, any exercise of such authorization must commence within a reasonable time.
- C. Authorization of a minor change in any condition previously imposed in the authorization of a conditional use permit shall require Planning Director approval. Authorization of a major change in any condition previously imposed in the authorization of a conditional use permit shall be subject to the same procedures as a new conditional use permit.
- D. The definition of a "minor" change for the purposes of this Section may mean a change in the timing of implementation of a condition, location of proposed structures on the site if the change in location does not impact traffic patterns or access, and changes to façade, signage, or lighting.
- E. The definition of a "major" change for the purposes of this Section may mean a change that impacts the overall traffic flow on or around the property, change that would exceed the capacity of public facilities and services, or a change that would conflict with the findings prescribed in Section 16.44.040.

16.44.060 Appeals

In case the applicant or other affected are not satisfied with the action of the Planning Commission they may, within ten (10) calendar days after the rendition of the decision thereon by the Commission, appeal in writing to the City Council pursuant Section 16.14.030.

16.44.070 Revocation of conditional permits.

- A. Any conditional use permit granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval, or in the event the use permitted is abandoned or not utilized for a period of one year. Notwithstanding the foregoing, upon submission of a written request by the holder of the conditional use permit prior to termination of the use permit, the Planning Director may extend any such conditional use permit for a period of one year if there is reasonable justification for not utilizing the permit as required by this section.
- B. Any conditional use permit granted in accordance with the terms of this title may be revoked if any condition or term of such permit is violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds that the continuance of the conditional use permit will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within 30 days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

16.44.070 Conditional use permits within any historic district, landmark, or landmark site.

Any application for a conditional use permit required or permitted pursuant to the terms of this title which visually impacts the exterior appearance of any property or structure within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code, shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the Planning Commission.



CITY OF YREKA
PLANNING COMMISSION AGENDA MEMORANDUM

Prepared by: Juliana Lucchesi AICP, Planning Director
Agenda Title: Zoning Ordinance Creation and Amendment: Chapters 16.12, 16.46, 16.59 "Nonconforming Lots, Uses, and Structures"
Meeting date: March 16, 2022

Recommended Action:

- 1. Open public hearing, hear public comment, and close public hearing**
- 2. Motion to approve proposed amendments to Chapter 16.59 for City Council consideration.**

Summary:

The Planning Department staff have identified four standard planning and zoning activities that need updating to clarify findings, establish sound due process procedures, and comply with current state and federal case law on the application of conditional use permits, nonconforming status, variances, and rezonings.

Background:

A nonconformity in zoning is an existing lot, structure, or use that fails to comply with new standards because it was established legally under previous rules. Illegal, nonconforming uses, lots, and structures were noncompliant when established and are not legally protected under federal, state, or local laws.

Communities create planning and zoning laws to achieve future community goals and development style. Existing development may not meet these goals and become noncompliant due to the rule changes. Nonconformity laws step in at this point to protect property owners through "grandfather" status with limitations.

These limitations are applied in situations where a property owner wants to expand or modify a structure or use or rebuild after a natural disaster. Generally, property changes that cross a certain threshold, whether physical or monetary, trigger a requirement that an owner must bring the property into compliance with the current zoning standards. The purpose of these triggers is to encourage redevelopment that is in line with the community's vision for the future. But, as a side effect these buildings and uses can actually slow the pace of change and development. Because nonconforming status creates a barrier to reinvestment,

it is important for communities to carefully consider how nonconformities are treated under new planning and zoning regulations.

There are two types of nonconformity; benign and detrimental. Benign nonconformities are not geographically concentrated and have small deviations from existing regulations. Examples of benign nonconformities are lots slightly smaller than the minimum lot standard, unlisted uses that are similar to the permitted uses, and minor shortfalls in off-street parking spaces. Detrimental nonconformities have a high probability of eventually harming public health or safety. When new zoning regulation are being considered, these types of nonconformities should have explicit language for their elimination or relocation. Examples of detrimental nonconformities may include a bar or restaurant with late night hours in a quiet residential neighborhood or heavy industry in a floodplain.

In instances where continuance of a nonconformity poses an especially acute risk to public health and safety, communities may take more drastic measures. These measures include nuisance abatement actions, amortization schemes that require conformance after a specified period of time, or public buyouts for willing sellers. Because these options carry significant legal risks for local governments, local officials should always engage competent legal counsel before taking action and create specific elimination language in the ordinance.

Nonconforming lots, structures, and uses are a natural byproduct of new zoning standards. While most zoning ordinances encourage phasing out nonconformities, not all nonconformities pose risks to public health and safety. Instead of treating all nonconformities the same, it makes more sense to distinguish between benign and detrimental nonconformities. Communities can transform benign nonconformities into conforming lots, structures, or uses through rezoning, explicit exemptions from new standards, or special permit processes. And they can expedite the elimination of detrimental nonconformities through strict limits on expansion, rebuilding, or reoccupancy.

Environmental Review:

The proposed ordinance changes have been reviewed for environmental compliance with the California Environmental Quality Act (CEQA). The proposed amendments were found to not have any foreseeable direct or indirect impacts to the environment; therefore, the proposed amendments would not be considered a “project” under CEQA. This is called a General Rule exemption under CEQA Guidelines Section 15061(b)(3).

Review by Public & Outside Agencies:

The proposed amendments were noticed to meet Government Code Section 65090. There have been no public comments submitted at the time of this packet release.

Commission Actions:

All proposed zoning code creation and amendments require at least one public hearing at the Planning Commission level. The Planning Commission should hold the public hearing to comply with Government Code Section 65854.

The Planning Commission may take one of the following actions regarding ordinance updates:

1. **No Action** – Planning Commission may choose to take no action on the proposed amendments. In this case there is some language in the municipal code that could apply to nonconforming uses, but not enough language exists to regulate nonconforming lots and structures. This means that any request from the public regarding nonconforming uses, lots, and structure will need to be presented to the Planning Commission in each instance.
2. **Approve as Submitted** – Planning Commission may adopt the proposed amendments as submitted by City Staff. In this case, the amendments in Attachment 3 would be presented to the City Council for a first reading.
3. **Amend Proposed Language and Approve as Amended** – Planning Commission may propose amendments to the presented ordinance changes. Planning Commission should state why they wish to make the change and the preferred language. Planning Commission may then approve the proposed amendments for City Council consideration as amended or table the item to the next meeting to allow Staff time to make changes in the ordinance for another round of Planning Commission review.
4. **Table Item for More Consideration** – Planning Commission may make a motion to table the item to the next meeting to allow more time for review and consideration.
5. **Give Staff Direction** – Planning Commission may want more public input or information to feel more comfortable with the proposed amendments. Planning Commission should be specific to the information request or why they would like more information and/or public input.

Staff Recommendation:

City Staff recommend approval of the proposed ordinance as submitted due to strict legal nature of the ordinance procedures established by case law. The proposed ordinance creation accomplishes the following:

- Creates a clear purpose for the regulation of nonconformities that clarifies why the city would allow their continuance and regulation.
- Defines nonconforming uses, lots, structures, and buildings to create clear understanding of what they are and reasonable regulations for their continuance.
- Clarifies state mandated exemptions for equitable housing, agriculture, timber, and mineral production projects (Government Code Section 65850)
- Establishes language to clarify protections for legal versus illegal nonconformities.

City Staff can accommodate Planning Commission comments and proposed amendments to the extent that they are legally defensible under national and California laws.

Attachments:

- 1. Current Ordinance Language Proposed to be Struck from the Code**
- 3. Proposed Chapter 16.59 “Nonconforming Lots, Uses, and Structures”**

Attachment 1. Original Nonconforming Language

16.12.680 Nonconforming building or use.

- A. "Nonconforming building" means a structure that does not conform to present regulations.
- B. "Nonconforming use" means a land use which does not conform to present regulations.
- C. "Legally existing" means a use that predates present regulations but was legally constructed or established at the time the use or construction first commenced.

(Ord. 775 (part), 2004).

16.46.120 Nonconforming uses.

- A. The lawful use of land or buildings existing prior to the adoption of Ordinance No. 775 (February 19, 2004) may be continued provided no such use shall be enlarged or increased, nor be extended to occupy a greater area than that occupied by such use on the date of adoption of said ordinance, even though such use does not conform to the regulations herein specified for the district in which such land is located. If any such use ceases, the subsequent use of such land shall be in conformity to the regulations specified by this title for the district in which such land is located.
- B. The nonconforming use of a portion of the building may be extended throughout the building provided that in each case a conditional use permit shall first be obtained, and providing the Planning Commission determines that such use is not detrimental to the public health, safety, and welfare nor contrary to the general intent of this Title.
- C. If a nonconforming use ceases voluntarily by the owner for a continuous period of six (6) months, it shall be considered abandoned and shall thereafter be used only in accordance with the regulations for the district in which it is located.

(Ord. 775 (part), 2004).

16.46.130 Nonconforming buildings.

- A. Nonconforming buildings or structures damaged or destroyed by fire, explosion, earthquake, flooding, or other act to an extent of more than fifty percent (50%) of their reasonable value, may be restored only if made to conform to all the regulations of the district in which it is located.
- B. Nonconforming buildings or structures damaged or partially destroyed by fire, explosion, earthquake, flooding, or other act to an extent of less than fifty percent (50%) of their reasonable value, may be restored and the use thereof may be continued on condition that the restoration is started within six (6) months and diligently continued to completion, provided that such nonconforming building or use shall not be enlarged.
- C. Reconstruction of Nonconforming Buildings or Structures. Notwithstanding the provisions of subsection (A) of this section, the owner of any nonconforming building or buildings may file an application with the Planning Commission for a conditional use permit to reconstruct any building or buildings in the event such building or buildings may be damaged to the extent greater than fifty percent (50%) of its reasonable value either before or within six (6) months after any such destruction. The Planning Commission may grant a conditional use permit for the construction of such building or buildings if it finds that such reconstruction would not be contrary to the public health, safety, comfort and general welfare and that such reconstruction would be compatible with the properties in the same general area within the same zone.
- D. The owner of any nonconforming building or structure may file an application with the Planning Commission for a conditional use permit to reconstruct or replace any building or structure in the event such building or structure has deteriorated to the extent that continued occupancy or utilization of building or structure is a threat to the comfort and safety of the occupants of the property. The Planning Commission may grant a conditional use permit for the reconstruction or replacement of such building or structure if it finds that such reconstruction would not be contrary to the public health, safety, comfort and general welfare and that such reconstruction would be compatible with the properties in the same general area within the same zone.

(Ord. 775 (part), 2004).

16.54.120 Effect of chapter on existing uses.

No existing use of land or structure shall be deemed to be a nonconforming use solely because of the lack of off-street parking facilities or off-street loading facilities prescribed in this chapter, provided that facilities being used for off-street parking and off-street loading on January 1, 2000 shall not be reduced in capacity to less than the number of spaces or berths or reduced to less than the minimum standards prescribed in this chapter. Where an existing use is expanded, the parking requirements of this chapter shall apply only to the addition.

(Ord. 775 (part), 2004).

NONCONFORMING LOTS, USES, AND STRUCTURES

16.59.010 Purpose.

This chapter is intended to provide direction and guidance for the recognition of legally existing nonconforming uses, lots, and structures. Within the zoning districts established by zoning ordinance, structures, lots, and land uses exist that were lawful prior to the adoption or amendment of the zoning ordinance, but which would be prohibited, regulated, or restricted differently under the terms of this title or future amendments. It is the intent of this chapter to encourage the eventual conversion of these uses, lots, and structures to a conforming status and to permit them to exist in the interim under the conditions under which they were established.

16.59.020 Nonconforming uses.

The lawful use of legally existing nonconforming land may be continued; provided, that:

- (A) The lot, use, or structure is not enlarged, increased, or extended to occupy a greater area of land or structure than was occupied on the date of adoption of this code;
- (B) The use is not moved in whole or in part to any other portion of the lot or parcel or to another nonconforming lot; and
- (C) If the use ceases for a period of more than 12 calendar months, the subsequent use of the land shall be conforming.

16.59.030 Nonconforming lots.

Any nonconforming single lot, tract or parcel of land that was lawfully created and recorded with the County Assessor's office may be used for the purposes permitted by this title notwithstanding the minimum lot area, lot width and lot depth required.

16.59.040 Nonconforming structures and buildings.

A legally existing nonconforming structure may remain and be used; provided, that:

- (A) Changes to the structure that would alter or expand the nonconformity must obtain a conditional use permit as per Chapter 16.44 YMC. This provision shall not require a conditional use permit to alter dwelling units to achieve compliance with City, State, and Federal regulations intended to create and maintain equitable housing (such as the Americans with Disabilities Act);
- (B) If moved, the structure shall be made to conform to current local, State, and Federal codes;
- (C) If a building is damaged or destroyed by more than 50 percent of its square footage, the building must be reconstructed in compliance with the requirements for the zone in which it is located;

(D) Any accessory structure that is damaged or removed to an extent that exceeds 50 percent of its square footage may be replaced or reconstructed in substantially the same location and of substantially the same design as the pre-damaged or pre-removed structure, if a complete application is submitted for any and all required construction permits within 12 calendar months of the damage or removal;

(E) Nonconforming Site Improvements (Not Including Structure). Where an existing site improvement (landscaping, parking lot layout, etc.) is nonconforming with the current regulations related to such, nothing in this section shall prohibit minor site improvements that result in the reduction of this nonconformity.

(F) Improvements, modifications, or the reconstruction of a building that is damaged or destroyed at or below 50 percent of its square footage, shall meet all current California building and fire code sections.

16.59.050 Exemptions.

(A) Equitable Housing Exemption. Any existing nonconforming building or structure that is rehabilitated under a housing rehabilitation program for the benefit of low-income persons may be repaired, reconstructed, or structurally altered without being brought into full compliance with the regulations set forth in this code with regard to setbacks, off-street parking, and street improvements so long as the footprint of the existing building is not expanded.

(B) Agriculture, Timber, and Mineral Production Exemption. Nonconforming agriculture, timber production, and mineral resource production uses are exempt from conforming to current zoning regulations, unless the use is abandoned for more than 24 calendar months.

16.59.060 Illegally existing nonconforming uses, lots, and structures.

Uses of land, lots, or structures that were created in violation of the Yreka Municipal Code, state law, federal law, zoning ordinance, subdivision regulations, or building code in effect at the time the use was established are presumed to be in violation of the current regulations and illegally existing. The land use must be brought into conformance with the standards of this code, not the code in effect at the time the use was illegally initiated.



CITY OF YREKA
PLANNING COMMISSION AGENDA MEMORANDUM

Prepared by: Juliana Lucchesi, AICP, Planning Director
Agenda Title: Zoning Ordinance Creation: Chapter 16.57 "Rezoning"
Meeting date: March 16, 2022

Recommended Actions:

- 1. Open public hearing, hear public comment, and close public hearing**
- 2. Motion to approve draft Chapter 16.57 for City Council consideration.**

Summary:

The Planning Department staff have identified four standard planning and zoning activities that need updating to clarify findings, establish sound due process procedures, and comply with current state and federal case law on the application of conditional use permits, nonconforming status, variances, and rezonings.

Background:

Cities use zoning as a means to advance their vision for the local communities by setting permitted uses and standards for various zoning districts. However, zoning may not keep up with the intentions of property owners and the needs of the community. Rezoning is an action that can be initiated by the city or a private applicant to change the zoning designation of a specific property or modify the zoning district to include a new use or change the development standards.

Rezoning a property should not be granted lightly. The city should critically analyze the existing zoning code to see if it fails the community by creating too strict of an environment for change and analyze if the proposed rezoning meets the future needs of the city.

Environmental Review:

The proposed ordinance changes have been reviewed for environmental compliance with the California Environmental Quality Act (CEQA). The proposed amendments were found to not have any foreseeable direct or indirect impacts to the environment; therefore, the proposed amendments would not be considered a "project" under CEQA. This is called a General Rule exemption under CEQA Guidelines Section 15061(b)(3).

Review by Public & Outside Agencies:

The proposed amendments were noticed to meet Government Code Section 65090. There have been no public comments submitted at the time of this packet release.

Commission Actions:

All proposed zoning code creation and amendments require at least one public hearing at the Planning Commission level. The Planning Commission should hold the public hearing to comply with Government Code Section 65854.

The Planning Commission may take one of the following actions regarding ordinance updates:

1. **No Action** – Planning Commission may choose to take no action on the proposed amendments. In this case there is no language on rezoning in the municipal code. This means that staff does not have a clear process for considering rezonings, application process, or application fees.
2. **Approve as Submitted** – Planning Commission may adopt the proposed amendments as submitted by City Staff. In this case, the amendments in Attachment 3 would be presented to the City Council for a first reading.
3. **Amend Proposed Language and Approve as Amended** – Planning Commission may propose amendments to the presented ordinance changes. Planning Commission should state why they wish to make the change and the preferred language. Planning Commission may then approve the proposed amendments for City Council consideration as amended or table the item to the next meeting to allow Staff time to make changes in the ordinance for another round of Planning Commission review.
4. **Table Item for More Consideration** – Planning Commission may make a motion to table the item to the next meeting to allow more time for review and consideration.
5. **Give Staff Direction** – Planning Commission may want more public input or information to feel more comfortable with the proposed amendments. Planning Commission should be specific to the information request or why they would like more information and/or public input.

Staff Recommendation:

City Staff recommend approval of the proposed amendments as submitted due to strict legal nature of the ordinance procedures established by case law. The proposed amendments accomplish the following:

- Creates a clear purpose and procedure for rezoning and zoning code changes.

- Creates an application and review process to ensure clear expectation of applicants and create timeframes for reasonable review and submission of application materials. These timeframes were established statewide under the “Permit Streamlining Act” enacted in 1977 (Government Code Section 65921).
- Establishes possible actions for the Planning Commission and City Council to ensure careful consideration on the application of the current zoning regulations and if there exists a need to change the application or code language.
- Establishes a legally defensible appeals process to meet the requirements of due process.

City Staff can accommodate Planning Commission comments and proposed amendments to the extent that they are legally defensible under national and California laws.

Attachments:

1. Proposed Chapter 16.57 “Rezoning and Law Change Procedure”

Chapter 16.57 REZONING AND LAW CHANGE PROCEDURE

Sections:

16.57.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the Rezoning and Zoning Text Amendment Procedure. The purpose of these provisions is to prescribe the procedure by which changes may be made in the text of the zoning regulations and in the application thereof to specific properties. This procedure shall apply to all proposals to rezone property, to change the text of the zoning regulations, or to establish, amend, or delete any development control map.

16.57.020 No Council action without Planning Commission recommendation.

The City Council shall not rezone any property, change the text of any provision of the zoning regulations, or establish, amend, or delete any development control map until after it has received, pursuant to this procedure, a recommendation and/or findings from the City Planning Commission.

16.57.030 Initiation.

- A. Private Party Initiation. The owner of any property, or their authorized agent, may make application to the City Planning Commission to rezone such property, to amend or delete any development control map applicable thereto.
- B. Commission Initiation. The City Planning Commission may, and upon request of the City Council shall, initiate action to rezone any property, to change the text of the zoning regulations, or to establish, amend, or delete any development control map. Such initiation shall be for the purpose of reviewing the merits of the proposal and shall not imply advocacy by the Commission for the rezoning or other change. A City Council or Planning Commission initiated process is exempt from Section 16.57.040.

16.57.040 Application and Review Process

- A Application Checklist. The application submittal shall contain all of the materials required by the rezoning/zoning text amendment checklist. The rezoning/zoning text amendment checklist shall be developed and maintained by the Planning Department.
- B. Application fee. A rezoning/zoning text amendment application fee shall be paid at the time of application submission to the Planning Department. The variance application fee shall be set by City Council resolution.
- C. The application shall be submitted to the Planning Department for review. The Planning Department shall have 30 calendar days to review the application:
 - 1. If the Planning Department determines that the application is incomplete, the Department shall notify the applicant of the application deficiencies. The applicant will have a maximum of 90 calendar days from the date of the notification letter to correct the deficiencies. If no response or correction are presented the application shall be deemed denied at the conclusion of the 90th-day.

2. If the Planning Department determines that the application is complete, the proposed variance shall be reviewed for environmental compliance with the California Environmental Quality Act (CEQA). Upon completion of the environmental review, the Planning Department shall schedule a public hearing with the Planning Commission no more than 15 days after determining environmental compliance.

16.57.050 Public Hearing Procedures

A public hearing by the Planning Commission shall be held and noticed in compliance with Government Code Sections 65090 through 65096.

16.57.060 Planning Commission action on private party application.

The Commission shall consider whether the existing zone or regulations are inadequate or otherwise contrary to the public interest, and may approve, modify, or disapprove the application. In case of approval or modified approval, the Commission shall forward its recommendation to the City Council for appropriate action.

16.57.070 City Council action on private party application.

The City Council shall hold a public hearing in the same manner as Section 16.57.050 within 15 days of the Planning Commission approval or modified approval. The City Council may approve, modify, or disapprove the application.

16.57.080 Appeals

In case the applicant or other affected are not satisfied with the action of the Planning Commission they may, within ten (10) calendar days after the rendition of the decision thereon by the Commission, appeal in writing to the City Council pursuant Section 16.14.030.



CITY OF YREKA
PLANNING COMMISSION AGENDA MEMORANDUM

Prepared by: Juliana Lucchesi, AICP Planning Director
Agenda Title: D. Zoning Ordinance Amendment: Chapter 16.58 "Variances"
Meeting date: March 16, 2022

Recommended Action:

- 1. Open public hearing, hear public comment, and close public hearing**
- 2. Motion to approve proposed amendments to Chapter 16.58 for City Council consideration.**

Summary:

The Planning Department staff have identified four standard planning and zoning activities that need updating to clarify findings, establish sound due process procedures, and comply with current state and federal case law on the application of conditional use permits, nonconforming status, variances, and rezonings.

Background:

A variance is a form of administrative relief from zoning regulations. A relief is a legal term for types of benefits a person can receive. For example, a relief granted through a variance could be adjusted lot setbacks. A variance is granted where the strict application of a zoning ordinance results in a hardship for a property owner. A hardship, that should be relieved with a variance, is when a highly unusual circumstance occurs that prevents a property owner from securing a reasonable return from or making a reasonable use of their property. Oddly shaped or sloped lots, for example, may make it difficult for a property owner to meet setbacks or height requirements. A variance granted by the city stays with the land and passes to the next purchaser.

Variances are rarely granted. There are several other methods and tools that can be used to allow an individual the ability to use their property in a way that is not allowed under the zoning code. For instance, a rezoning is more appropriate to address a use that is not allowed in a specific zoning district. If the use is deemed appropriate by the community, then the Planning Commission should consider evaluating and updating the zoning to allow the proposed use as a use by right or conditional use. Numerous requests for variances in a specific area or zone may indicate that there is something wrong with the code and its application.

Instead of granting several variances for a similar issue, the Planning Commission should amend the code to allow widespread relief.

Another example of when a variance could be granted could be the presence of a mining shaft. If a property owner begins to develop their property and finds the opening to an old mining shaft, the City may grant a variance that would allow the property owner to avoid the opening and develop the property as previously intended. There are two specific types of variances that the city can grant; use and area.

Use Variance

A use variance is requested when a zoning ordinance prohibits a particular use (e.g., a commercial building in a residential area). A use variance is the most difficult for a Planning Commission to grant in the United States and is strictly prohibited in the state of California (Government Code Section 65906). The rationale for the prohibition was that proposed uses not explicitly stated in the zoning code are incompatible with that zoning district and therefore it can threaten adjacent land or the character of the neighborhood.

There are other methods and regulations that would accommodate changes in use. The city may amend the General Plan, zoning code, or issue a rezoning of the property to allow for a proposed use not explicitly listed in the zoning code.

Area Variance

An area variance is requested when a zoning district has specific lot and building regulations like height, setbacks, or development standards. There are three elements to granting an area variance: (1) prove necessary hardship; (2) denote the section of the code that if relaxed would alleviate the hardship; and (3) weigh various factors for why the hardship exists and that the proposed relaxation of the code is the lowest barrier to develop and use the property. There are many factors to be considered for granting an area variance; rather, the Planning Commission would focus on balancing the potential negative effects of granting the variance with the benefit to the applicant.

Criteria for Granting a Variance

Planning Commission is delegated the authority to grant variances by the state. Although the authority is highly constrained by limitations placed by the state. For example, use variances as discussed above are not allowed in California. In addition to when a variance can be granted, the relief given must be kept to the minimum level. This means that a Planning Commission could not grant a property owner more than what is necessary to utilize the property. For example, if a

property owner has a mining shaft on their property and requests a variance to build above the maximum height for the zoning district. The Planning Commission could not grant the property owner a four-story building when a two-story building would allow the property owner to utilize the property and still exceed the single-story height maximum.

The granting of a variance requires the applicant to show unnecessary hardship. Establishing such hardship typically requires proving that the land in question cannot realize a reasonable return, that the hardship relates to circumstances unique to the parcel of land, and that granting of that variance would not adversely affect the neighborhood. Each element must be satisfied for a variance to be granted.

Conditions on Variances

Conditions of approval, similar to use permit, are allowed on variances to minimize the potential impacts to the surrounding uses. Conditions must be used to reduce any adverse impacts of the land use, such as protecting nearby property. The Commission cannot impose conditions that are not rationally related to minimizing the adverse impacts of granting the variance.

Environmental Review:

The proposed ordinance changes have been reviewed for environmental compliance with the California Environmental Quality Act (CEQA). The proposed amendments were found to not have any foreseeable direct or indirect impacts to the environment; therefore, the proposed amendments would not be considered a “project” under CEQA. This is called a General Rule exemption under CEQA Guidelines Section 15061(b)(3).

Review by Public & Outside Agencies:

The proposed amendments were noticed to meet Government Code Section 65090. The Planning Department received one request for review of the proposed variance ordinance changes. There have been no public comments submitted at the time of this packet release.

Commission Actions:

All proposed zoning code creation and amendments require at least one public hearing at the Planning Commission level. The Planning Commission should hold the public hearing to comply with Government Code Section 65854.

The Planning Commission may take one of the following actions regarding ordinance updates:

1. **No Action** – Planning Commission may choose to take no action on the proposed amendments. In this case there is an existing ordinance which regulates variances. That previous ordinance would remain in effect if Planning Commission took no action.
2. **Approve as Submitted** – Planning Commission may adopt the proposed amendments as submitted by City Staff. In this case, the amendments in Attachment 3 would be presented to the City Council for a first reading.
3. **Amend Proposed Language and Approve as Amended** – Planning Commission may propose amendments to the presented ordinance changes. Planning Commission should state why they wish to make the change and the preferred language. Planning Commission may then approve the proposed amendments for City Council consideration as amended or table the item to the next meeting to allow Staff time to make changes in the ordinance for another round of Planning Commission review.
4. **Table Item for More Consideration** – Planning Commission may make a motion to table the item to the next meeting to allow more time for review and consideration.
5. **Give Staff Direction** – Planning Commission may want more public input or information to feel more comfortable with the proposed amendments. Planning Commission should be specific to the information request or why they would like more information and/or public input.

Staff Recommendation:

City Staff recommend approval of the proposed amendments as submitted due to strict legal nature of the ordinance procedures established by case law. The proposed amendments accomplish the following:

- Creates a clear purpose and applicability for the variance ordinance that clarifies why the city would allow and regulate variances.
- Refines the application and review process to ensure clear expectation of applicants and create timeframes for reasonable review and submission of application materials. These timeframes were established statewide under the “Permit Streamlining Act” enacted in 1977 (Government Code Section 65921).
- Establishes new findings to grant a variance that comply with land use case law. A land use ordinance cannot be so vague or uncertain that a person of common intelligence and understanding must guess as to its meaning this would violate due process of the law (*People v. Gates*, 41 Cal. App 3d 590 (1974)). Vagueness and subjectivity are two elements that a city wants to avoid in its findings; therefore, the terms “morales” and “peaceful” are

removed from the findings. These terms have been found to be incredibly subjective and not enforceable under the law. The terms health, safety, and welfare have been litigated close to death and have well established meanings and definitions.

- Establishes clear standards for the application of conditions for a variance to minimize impacts on surrounding uses.
- Establishes a legally defensible appeals process to meet the requirements of due process.

City Staff can accommodate Planning Commission comments and proposed amendments to the extent that they are legally defensible under national and California laws.

Attachments:

- 1. Original Chapter 16.58 “Variances”**
- 2. Tracked Changes Proposed by the Planning Department**
- 3. Proposed Amendments to Chapter 16.58 “Variances”**

Chapter 16.58 VARIANCES

Sections:

16.58.010 Variances.

- A. The approving authority may approve variances from the terms of this title only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this title deprives such property of privileges enjoyed by the other property in the vicinity and under identical zoning classification.
- B. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
- C. A variance shall not be granted for a parcel of property that authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.
- D. The provisions of this section shall not apply to conditional use permits.

(Ord. 775 (part), 2004).

16.58.020 Application.

- A. Application for a variance shall be made to the Planning Commission in writing on a form prescribed by the Planning Commission, and shall be accompanied by a detailed statement justifying a variance and plans and elevations necessary to show the detail of the proposed variance. Such application shall be accompanied by a fee set by the City Council.

(Ord. 775 (part), 2004).

16.58.030 Public hearing.

- A. A public hearing by the Planning Commission shall be held within forty-five (45) days after the filing of the application for the variance provided that compliance with the California Environmental Quality Act has been completed. Notice of the hearing shall be given in the manner set forth in § 16.14.010.

(Ord. 775 (part), 2004).

16.58.040 Action by Commission.

- A. In order to grant any variance, the findings of the Planning Commission shall be:
 - 1. Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
 - 2. That the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

-
3. The variance does not authorize a use or activity that is not otherwise expressly authorized by the zone regulation governing the parcel of property.
 4. The variance is not for a conditional use permit.

(Ord. 775 (part), 2004).

16.58.050 Revocation of variances.

- A. Any variance granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval, or in the event the variance is abandoned or not utilized for a period of one year.
- B. Any variance granted in accordance with the terms of this title may be revoked if any of the conditions or terms of such variance are violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds, that the continuance of the variance will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within thirty (30) days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

(Ord. 775 (part), 2004).

16.58.060 Variances within any historic district, landmark, or landmark site.

Any application for a variance required or permitted pursuant to the terms of this title which relates to any real property located within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code, shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the Planning Commission. Any such application received prior to the first of any calendar month shall be reviewed by the Historic District and Landmarks Commission at its next regular meeting and said Commission shall immediately thereafter forward to the Planning Commission its report and recommendations in regard to said application, taking into consideration the effect of such application upon the historic district, landmark, or landmark site. In the event said Commission does not act within the time pursuant to this section, the Planning Commission may proceed on the basis that the Historic District and Landmarks Commission does not object to said application.

(Ord. 775 (part), 2004).

Chapter 16.58 VARIANCES

16.58.010 Purpose

The variance is established to permit modification of development standards as they apply to particular development when practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of the zoning code, develop through the strict literal interpretation and enforcement of such provisions. Any variance granted shall be subject to conditions that will ensure that the variance does not constitute a granting of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is situated.

16.58.020 Variances. Applicability

A. —A variance may be granted by the Planning Commission to permit modification of the following where mandated by this Title 16:

1. Building line setbacks, yards, open space, and buffer areas.
2. Height, lot coverage, density, and bulk regulations.
3. Off-street parking spaces, maneuvering areas and driveway width, and paving standards.
4. Landscaping requirements.
5. Wall, fencing, and screening requirements.
6. Street and highway dedication and improvement standards.
7. Lot area and width requirements.
8. Operating conditions such as hours or days of operation, number of employees, and equipment limitations.
9. Sign regulations other than outdoor advertising.
10. Distance-separation requirements.~~The approving authority may approve variances from the terms of this title only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this title deprives such property of privileges enjoyed by the other property in the vicinity and under identical zoning classification.~~

B. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

C. A variance shall not be granted for a parcel of property that authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

~~D. The provisions of this section shall not apply to conditional use permits.~~

16.58.0320 Application and Review Procedures:

A. ~~Application for a variance shall be made to the Planning Commission in writing on a form prescribed by the Planning Commission, and shall be accompanied by a detailed statement~~

~~justifying a variance and plans and elevations necessary to show the detail of the proposed variance. Such application shall be accompanied by a fee set by the City Council. Application Checklist. The application submittal shall contain all of the materials required by the variance checklist. The variance checklist shall be developed and maintained by the Planning Department.~~

~~B. Application fee. A variance application fee shall be paid at the time of application submission to the Planning Department. The variance application fee shall be set by City Council resolution.~~

~~C. The application shall be submitted to the Planning Department for review. The Planning Department shall have 30 calendar days to review the application:~~

~~1. If the Planning Department determines that the application is incomplete, the Department shall notify the applicant of the application deficiencies. The applicant will have a maximum of 90 calendar days from the date of the notification letter to correct the deficiencies. If no response or correction are presented the application shall be deemed denied at the conclusion of the 90th-day.~~

~~2. If the Planning Department determines that the application is complete, the proposed variance shall be reviewed for environmental compliance with the California Environmental Quality Act (CEQA). Upon completion of the environmental review, the Planning Department shall schedule a public hearing with the Planning Commission no more than 15 days after determining environmental compliance.~~

16.58.0430 Public Hearing Procedurehearing.

~~A. A public hearing by the Planning Commission shall be held and noticed in compliance with Government Code Sections 65090 through 65096. A public hearing by the Planning Commission shall be held within forty-five (45) days after the filing of the application for the variance provided that compliance with the California Environmental Quality Act has been completed. Notice of the hearing shall be given in the manner set forth in § 16.14.010.~~

16.58.0540 Action by Commission Findings

A. In order to grant any variance, the findings of the Planning Commission shall be:

~~1. Because of special circumstances or exceptional characteristics applicable to the property, the strict application of the City Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.~~

~~2. The modification authorized will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.~~

~~3. Strict application of zoning regulations as they apply to such property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations and standards.~~

~~4. Such adjustment will not be materially detrimental to the public health, safety, or general welfare, or to the use, enjoyment, or valuation of property of other persons located in the vicinity. 1. Because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance~~

~~deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.~~

~~2. That the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.~~

~~3. The variance does not authorize a use or activity that is not otherwise expressly authorized by the zone regulation governing the parcel of property.~~

~~4. The variance is not for a conditional use permit.~~

16.58.0650 Conditions of Approval

A. The Commission may impose conditions to ensure that the approval will be in accordance with the findings required in Section 16.58.050. Such conditions may involve any pertinent factors affecting the establishment, operation and maintenance of the use for which such variance is requested.

B. The application may be approved contingent upon compliance with applicable provisions of other ordinances and any other federal, State, or County requirements.

16.58.070 Revocation of variances.

- A. Any variance granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval, ~~or in the event the variance is abandoned or not utilized for a period of one year.~~
- B. Any variance granted in accordance with the terms of this title may be revoked if any of the conditions or terms of such variance are violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds, that the continuance of the variance will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within thirty (30) days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

16.58.0860 Variances within any historic district, landmark, or landmark site.

Any application for a variance required or permitted pursuant to the terms of this title which relates to any real property located within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code, shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the Planning Commission. ~~Any such application received prior to the first of any calendar month shall be reviewed by the Historic District and Landmarks Commission at its next regular meeting and said Commission shall immediately thereafter forward to the Planning Commission its report and recommendations in regard to said application, taking into consideration the effect of such application upon the historic district, landmark, or landmark site. In the event said Commission~~

~~does not act within the time pursuant to this section, the Planning Commission may proceed on the basis that the Historic District and Landmarks Commission does not object to said application.~~

16.58.090 Appeals

In case the applicant or other affected are not satisfied with the action of the Planning Commission they may, within ten (10) calendar days after the rendition of the decision thereon by the Commission, appeal in writing to the City Council pursuant Section 16.14.030.

16.58.100 Changed Plans

A request for changes in conditions of approval of a variance or a change of site plans that would affect a condition of approval shall be treated as a new application, except those changes determined to be minor, in the opinion of the Planning Director, may be approved administratively by the Director.

Chapter 16.58 VARIANCES

16.58.010 Purpose

The variance is established to permit modification of development standards as they apply to particular development when practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of the zoning code, develop through the strict literal interpretation and enforcement of such provisions. Any variance granted shall be subject to conditions that will ensure that the variance does not constitute a granting of special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zoning district in which the property is situated.

16.58.020 Applicability

- A. A variance may be granted by the Planning Commission to permit modification of the following where mandated by this Title 16:
 - 1. Building line setbacks, yards, open space, and buffer areas.
 - 2. Height, lot coverage, density, and bulk regulations.
 - 3. Off-street parking spaces, maneuvering areas and driveway width, and paving standards.
 - 4. Landscaping requirements.
 - 5. Wall, fencing, and screening requirements.
 - 6. Street and highway dedication and improvement standards.
 - 7. Lot area and width requirements.
 - 8. Operating conditions such as hours or days of operation, number of employees, and equipment limitations.
 - 9. Sign regulations other than outdoor advertising.
 - 10. Distance-separation requirements.
- B. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
- C. A variance shall not be granted for a parcel of property that authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

16.58.030 Application and Review Procedures

- A. Application Checklist. The application submittal shall contain all of the materials required by the variance checklist. The variance checklist shall be developed and maintained by the Planning Department.
- B. Application fee. A variance application fee shall be paid at the time of application submission to the Planning Department. The variance application fee shall be set by City Council resolution.

- C. The application shall be submitted to the Planning Department for review. The Planning Department shall have 30 calendar days to review the application:
1. If the Planning Department determines that the application is incomplete, the Department shall notify the applicant of the application deficiencies. The applicant will have a maximum of 90 calendar days from the date of the notification letter to correct the deficiencies. If no response or correction are presented the application shall be deemed denied at the conclusion of the 90th-day.
 2. If the Planning Department determines that the application is complete, the proposed variance shall be reviewed for environmental compliance with the California Environmental Quality Act (CEQA). Upon completion of the environmental review, the Planning Department shall schedule a public hearing with the Planning Commission no more than 15 days after determining environmental compliance.

16.58.040 Public Hearing Procedure

A public hearing by the Planning Commission shall be held and noticed in compliance with Government Code Sections 65090 through 65096.

16.58.050 Findings

- A. In order to grant any variance, the findings of the Planning Commission shall be:
1. Because of special circumstances or exceptional characteristics applicable to the property, the strict application of the City Code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
 2. The modification authorized will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.
 3. Strict application of zoning regulations as they apply to such property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations and standards.
 4. Such adjustment will not be materially detrimental to the public health, safety, or general welfare, or to the use, enjoyment, or valuation of property of other persons located in the vicinity.

16.58.060 Conditions of Approval

- A. The Commission may impose conditions to ensure that the approval will be in accordance with the findings required in Section 16.58.050. Such conditions may involve any pertinent factors affecting the establishment, operation and maintenance of the use for which such variance is requested.
- B. The application may be approved contingent upon compliance with applicable provisions of other ordinances and any other federal, State, or County requirements.

16.58.070 Revocation of variances.

- A. Any variance granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within one year from the date of approval.
- B. Any variance granted in accordance with the terms of this title may be revoked if any of the conditions or terms of such variance are violated or if any law or ordinance is violated in connection therewith, or if the Planning Commission finds, that the continuance of the variance will endanger the public health, safety or welfare.
- C. The Planning Commission shall hold a hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing. The permittee may at such hearing add any relevant evidence or testimony in opposition to the proposed revocation. The Planning Commission shall render its decision within thirty (30) days of said public hearing and shall make written findings in the event the permit is revoked. The decision of the Planning Commission may be appealed as provided in Section 16.14.030.

16.58.080 Variances within any historic district, landmark, or landmark site.

Any application for a variance required or permitted pursuant to the terms of this title which relates to any real property located within a historic district, landmark, or landmark site established pursuant to Title 17 of the Yreka Municipal Code, shall first be reviewed and considered by the Historic District and Landmarks Commission prior to consideration thereof by the Planning Commission.

16.58.090 Appeals

In case the applicant or other affected are not satisfied with the action of the Planning Commission they may, within ten (10) calendar days after the rendition of the decision thereon by the Commission, appeal in writing to the City Council pursuant Section 16.14.030.

16.58.100 Changed Plans

A request for changes in conditions of approval of a variance or a change of site plans that would affect a condition of approval shall be treated as a new application, except those changes determined to be minor, in the opinion of the Planning Director, may be approved administratively by the Director.