

CITY OF YUBA CITY
STAFF REPORT

Date: October 5, 2021
To: Honorable Mayor & Members of the City Council
From: Development Services Department
Presentation By: Benjamin Moody, Development Services Director

Summary

Subject: Alternative City Council Use Permit and Development Plan Review Process

Recommendation: Introduce an Ordinance to amend the Yuba City Municipal Code to allow for direct City Council review of Use Permits, as well as to add direct review of Development Plans, by amending sections 8-5.7001, and 8-5.7003 of Article 70 of Chapter 5 of Title 8; and Section 8-5.7101 of Article 71, of Chapter 5 of Title 8; of the Yuba City Municipal Code and waive the first reading

Fiscal Impact: No fiscal impact

Purpose:

Amend the Yuba City Municipal Code to allow for optional direct City Council review of Use Permits and Development Plans.

Background:

At the January 21, 2020 City Council meeting, Council provided direction to initiate an option for Council to directly review and consider use permit entitlements in order to expedite projects that the Council believes has a level of significance and community impact.

In March 2020, Council adopted the Ordinance with a one-year timeline as a trial of implementation. Since the one year has passed there is a desire to memorialize the process and update the Ordinance to include Development Plans.

On September 22, 2021 the Planning Commission declined recommendation for the proposed Ordinance to the City Council. The Commissioners noted that the proposal may reduce the level of consistency for project review and should include criteria for when a specific project is selected for the alternative review process.

Analysis:

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

Conditional Use Permit

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

Level of Review:

- Planning Commission Discretionary Review
 - Appeal to the City Council

Development Plans

Similar to Conditional Use Permits, the Yuba City Zoning Ordinance includes regulations concerning when a Development Plan is required for multiple-family, commercial and industrial uses. Level of review is dependent on size.

Level of Review:

- Small Projects
 - Ministerial Review (staff/over the counter)
- Mid-Size Projects
 - Planning Commission – Discretionary Review
 - Appeal to the City Council
- Large Projects
 - Planning Commission – Review/Recommendation
 - City Council – Discretionary Review
 - No Appeal

Proposed Alternative Process

An amendment to the Municipal Code is being proposed to add an Alternative City Council Use Permit and Development Plan Review Process that would allow the project to bypass the City Planning Commission Public Hearing process and be heard directly by the City Council. Below are the proposed changes to Municipal Code Section 8-5.7003:

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

- A. Once a use permit application is final, and prior to commencing any other level of the review process, the Development Services Director will provide the general description and location of the project to the City Council.
- B. Within 7 calendar days thereafter, any member of the City Council may direct the City Manager to add an item on the Agenda, at the next reasonably available meeting of the City Council, for consideration to use the alternative City Council use permit review process. If no request is made within 7 calendar days, the Development Services Director shall proceed with the level of review otherwise set forth in Section 8-5.7003(a)).
- C. No less than 7 calendar days prior to the matter being considered by the City Council, the

Development Services Director shall give notice to the applicant that the City Council will be considering whether to proceed with the alternative review process. Notice shall include the date, time and place of the City Council meeting, a general explanation of the matter to be considered, and a general description of the location of the property for which the use permit is proposed. Notice of the meeting shall also be mailed, emailed or otherwise provided at least 7 days prior to the meeting to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is subject to the meeting. In the alternative, if the nature of the use is such that more than 250 parcels of real property would be within 300 feet of the proposed use, then the notice may be published in a newspaper of general circulation. The failure of any person or entity to receive notice given pursuant to this subsection shall not constitute grounds for invalidating any action for which the notice was given.

- D. At the next reasonably available meeting of the City Council, the City Council may consider whether to proceed with the alternative City Council use permit review process. Factors for proceeding with the alternative review process can include likelihood of an appeal to the City Council if another review process is used, the public interest in expediting the review process, and other items related to public health, safety and welfare. The City Council may not consider the merits of, or whether to approve or deny the use permit, but shall have sole discretion whether to utilize the alternative review process for the use permit.
- E. The alternative City Council use permit review process may not be used unless approved by a majority of the City Council. If so approved, the City Council use permit review process shall be the same as established for the Planning Commission use permit review. No advisory recommendation from the Planning Commission is required, but may be requested by the City Council. If so requested, the Planning Commission, following a public hearing, shall make an advisory recommendation to the City Council within 40 days of first hearing the matter. Following the Planning Commission's recommendation, or if none is requested, the Council shall conduct a public hearing. The use permit shall be decided based on the same findings as subsection (d) of this Section.
- F. The decision of the City Council shall be final; there is no right of appeal.
- G. If the alternative City Council use permit review process is not approved by a majority of the City Council, or if no decision is rendered by the City Council within 20 days of the first meeting, then it shall not be used and an applicable level of review as set forth in subsection (a) shall be instead applied.

A similar process is proposed for development plan alternative review process by the City Council.

The draft ordinance would not have a sunset provision. The ordinance also confirms the City Council's authority to waive fees for appeals of either a use permit or development plan, and implements direct review by the City Council for projects whose conditions of approval require such review.

Alternatives:

Modify or deny the proposed Ordinance update.

Recommendation:

Introduce an Ordinance to amend the Yuba City Municipal Code to allow for direct City Council review of Use Permits, as well as to add direct review of Development Plans, by amending sections 8-5.7001, and 8-5.7003 of Article 70 of Chapter 5 of Title 8; and Section 8-5.7101 of Article 71, of Chapter 5 of Title 8; of the Yuba City Municipal Code and waive the first reading.

Attachments:

1. Ordinance amending the Yuba City Municipal Code to allow for direct City Council review of Use Permits and Development Plans

Prepared By:

/s/ Ashley Potocnik
Ashley Potočnik
Assistant Planner

Submitted By:

/s/ Dave Vaughn
Dave Vaughn
City Manager

Reviewed by:

Department Head

BM

City Attorney

SLC by email

ATTACHMENT 1

ORDINANCE NO. XX-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY TO RE-ENACT UPDATES TO THE YUBA CITY MUNICIPAL CODE TO ALLOW FOR DIRECT CITY COUNCIL REVIEW OF USE PERMITS, AS WELL AS TO ADD DIRECT REVIEW OF DEVELOPMENT PLANS, BY AMENDING SECTIONS 8-5.7001, AND 8-5.7003 OF ARTICLE 70 OF CHAPTER 5 OF TITLE 8; AND SECTION 8-5.7101 OF ARTICLE 71, OF CHAPTER 5 OF TITLE 8; OF THE YUBA CITY MUNICIPAL CODE

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

WHEREAS, as part of this process, on January 21, 2020, the City Council initiated an amendment to the Yuba City Municipal Code to allow for direct City Council review of certain entitlements; and

WHEREAS, the Planning Commission subsequently held a public hearing on February 8, 2020, to consider the update to the Yuba City Municipal Code initiated by the City Council, including whether the project was subject to the California Environmental Quality Act (CEQA); and

WHEREAS, the Ordinance (Ordinance No. 007-20) was presented to the Council for a public hearing and consideration at its regular meeting of March 3, 2020; and

WHEREAS, the Ordinance was again presented to the City Council for a public hearing and consideration at its regular meeting of March 17, 2020 and at that time the City Council adopted the Ordinance, which went into effect after 30 days; and

WHEREAS, the adopted Ordinance No. 007-20 at Section 8 provided that the Ordinance “shall automatically expire and have no further effect as of the 366th day after its effective date unless otherwise renewed or extended by act of the City Council”; and

WHEREAS, the City Council now desires to reenact the proposed Ordinance without an automatic expiration date, as well as to provide for a similar alternative review process for certain development plans.

NOW, THEREFORE, the City Council of the City of Yuba City does ordain as follows:

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

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

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

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

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

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

| Land Use ⁽¹⁾ | Review Criteria | Development Plan Review | | |
|---|--------------------------------------|-------------------------|------------------------------------|--------------|
| | | Ministerial | Planning Commission ⁽²⁾ | City Council |
| Multiple-Family | # of Units | 1—25 | 26—100 | 101+ |
| Office | Gross floor area (sf.) | 1—35,000 | 35,001—100,000 | 100,001+ |
| Retail & Service Indoor Outdoor | Square footage <u>(indoor)</u> | 1—25,000 | 25,001—100,000 | 100,001+ |
| | Square footage <u>(outdoor)</u> | 1—35,000 | 35,001—125,000 | 125,001+ |
| Industrial Warehouse & Outdoor Storage | Square footage <u>(warehouse)</u> | 1—35,000 | 35,001—100,000 | 100,001+ |
| | Square footage <u>(outdoor)</u> | 1—50,000 | 50,001—150,000 | 150,001+ |

| | | | | |
|--|-------------------------------|--------------|----------------|----------|
| Conversion of an Existing Facility to a Different Category of Use | Square footage of usable area | 1—35,000 | 35,001—100,000 | 100,001+ |
| Conversion of Commercial or Industrial Sites to Same Category of Use | Tenant Improvements | All projects | | |
| Central City Specific Plan | | All projects | | |

(1) Expansion of facilities have the same level of review as a new project (considering expansion area only) provided it has been two years or more between original completion and beginning of the next expansion. Otherwise the total square footage is figured as cumulatively.

(2) May be subject to an alternative review process by the City Council per Section 8-5-7001(e).

(b) *Ministerial development plan review.*

- (1) Those projects determined to be ministerial shall be reviewed and decided upon by the Planning Director. No public hearing is required for this level of review.
- (2) Following receipt of a complete application and review of the application, the Planning Director shall do one of the following:
 - (i) Approve the application if it is determined that the proposal will comply with all applicable requirements of this chapter and other City standards. Applications for all residential uses are required to satisfy at least one of the findings found in Title 6, Chapter 9, Article 6 of the Municipal Code. The term to begin and complete construction for an approved development plan shall be the same as the building permit.
 - (ii) Deny the application if it is determined that the proposal will not comply with all applicable standards of this chapter and all other City standards.
 - (iii) Request further information as needed in order to make the determination to approve or deny the application.
- (3) *Appeals.* The decision of the Planning Director may be appealed to the Planning Commission (Section 8-5.7104(a)). Upon request of the appealing party, the City Council may waive any fee required for an appeal to the City Council, in whole or in part, to the appealing party.

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

- (1) *Process.* Following acceptance of a complete development plan application, the proposal shall be distributed by the Planning Department to other City departments and other relevant public agencies for review and comment. The City Council shall also be provided with a general description of the proposed project and location. Following review by City staff and recommendation by the Planning Department,

the Planning Commission shall conduct a public hearing on the proposal. Procedures contained in Article 71 of this chapter are applicable to the Planning Commission development plan review unless the alternative City Council development plan review process is required per Section 8-5.7001(e).

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

(e) Alternative City Council development plan review process. Notwithstanding any other provision of this Section, the City Council may review a development plan pursuant to an alternative City Council development plan review process. That process shall follow the same process as the City Council use permit review process in Section 8-5.7003(m), except that it shall only apply to development plan reviews that would otherwise be subject to 8-5.7001(c) (Planning Commission development plan review) and (d) City Council development plan review, and if the alternative City Council development plan review process is no approved by a majority of the City Council, or if not decision is rendered by the City Council within 20 days of the first meeting, then it shall not be used and an applicable level of review as set forth in 8-5.7001(c) and (d) shall be applied instead.

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

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

Sec. 8-5.7003. - Use permits.

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

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

Council will be considering whether to proceed with the alternative review process. Notice shall include the date, time and place of the City Council meeting, a general explanation of the matter to be considered, and a general description of the location of the property for which the use permit is proposed. Notice of the meeting shall also be mailed, emailed or otherwise provided at least 7 days prior to the meeting to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is subject to the meeting. In the alternative, if the nature of the use is such that more than 250 parcels of real property would be within 300 feet of the proposed use, then notice may be published in a newspaper of general circulation. The failure of any person or entity to receive notice given pursuant to this subsection shall not constitute grounds for invalidating any action for which the notice was given.

(iv) At the next reasonably available meeting of the City Council, the City Council may consider whether to proceed with the alternative City Council use permit review process. Factors for proceeding with the alternative review process can include likelihood of an appeal to the City Council if another review process is used, the public interest in expediting the review process, and other items related to public health, safety and welfare. The City Council may not consider the merits of, or whether to approve or deny, the use permit, but shall have sole discretion whether to utilize the alternative review process for the use permit.

(iv) The alternative City Council use permit review process may not be used unless approved by a majority of the City Council. If so approved, the City Council use permit review process shall be the same as established for the Planning Commission use permit review. No advisory recommendation from the Planning Commission is required, but may be requested by the City Council. If so requested, the Planning Commission, following a public hearing, shall make an advisory recommendation to the City Council within 40 days of first hearing the matter. Following the Planning Commission's recommendation, or if none is requested, the Council shall conduct a public hearing. The use permit shall be decided based on the same findings as subsection (d) of this Section.

(v) The decision of the City Council shall be final; there is no right of appeal.

(vi) If the alternative City Council use permit review process is not approved by a majority of the City Council, or if not decision is rendered by the City Council within 20 days of the first meeting, then it shall not be used and an applicable level of review as set forth in subsection (a) shall be instead applied

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

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

Amendments to permits may be granted as follows:

- (a) Minor revisions for which the resulting project is considered by the Planning Director to be substantially the same as originally approved, may be approved by the Planning Director unless otherwise required by a condition of approval requiring review by the City Council.
- (b) All other revisions must be reviewed and decided upon by the body having the authority to decide upon the original application, unless otherwise required by a condition of approval requiring review by the City Council, or as otherwise may be warranted by

either the City Council use permit review process. Upon application for an amendment to a permit, the permit procedures and requirements set forth in this chapter shall be complied with.

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

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

Section 8. This ordinance shall take effect and be in full force and effect from and after 30 days after its final passage and adoption.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the 5th day of October 2021, and passed and adopted at a regular meeting held on the ____ day of ____ 2021.

AYES:

NOES:

ABSENT:

ATTEST:

Marc Boomgaarden, Mayor

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

SHANNON CHAFFIN, City Attorney
Aleshire & Wynder, LLP