

CHAPTER 4
PROCEDURES
SECTIONS 870 - 884
of

The Ordinance Code of the County of Fresno

Part VII

LAND USE REGULATION AND PLANNING

DIVISION VI

ZONING DIVISION

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CHAPTER 4
PROCEDURES

SECTION 870
PROCEDURES

The following procedures, where applicable, shall apply in all districts.

(Deletion: Sec. 871 by Ord. 490.174 re-adopted 5-8-79)

SECTION 872

USES PERMITTED SUBJECT TO DIRECTOR REVIEW AND APPROVAL

The following procedures shall apply to all uses permitted subject to review and approval by the Director, except as provided in Section 872-I below.

(Amended by Ord. T-252 adopted 12-9-80, Amended by Ord. T-071-340 adopted 5-21-02)

- A. It shall be the duty of the Director to review the proposed use to ascertain all facts pertinent to it, and in writing to state approval, approval with conditions, or disapproval of the proposed use, together with his findings and reasons for such decision. At his discretion, the Director may refer the proposed use directly to the Commission for a public hearing and decision. If the proposed use is referred to the Commission, the noticing, hearing, and Board appeal procedures of Section 873, Conditional Use Permit, shall be followed. Those applications which are referred directly to the Commission by the Director and which are filed and heard concurrently with any application requiring a Board hearing, shall after the Commission decision be heard by the Board together with that concurrent application.

(Amended by Ord. 490.100 adopted 7-16-74; Ord. 490.101 adopted 9-10-74; Ord. T-252 adopted 12-9-80; Ord. T-035-300 adopted 1-10-89)

B. NOTICE OF APPLICATION

Within fifteen (15) days of the Director's acceptance of an application, owners of property within a radius of three hundred (300) feet of the exterior boundaries of the property, shall be notified in writing of the application. Notified persons shall be provided the opportunity to submit written comments within 15 days following the date of the notice. Such notices shall be by mail; and the owner, for the purposes of such notices, shall be deemed to be the person or persons to whom the properties were assessed on the last assessment roll. The address to which such written notice shall be mailed shall be that shown upon such assessment roll. The Notice of Application shall not apply when an application is referred directly to the Commission for a decision.

(Added by Ord. T-035-300 adopted 1-10-89)

C. FINDINGS

The Director, in approving a use, shall find as follows:

(Amended by Ord. T-252 adopted 12-9-80; Ord. T-035-300 adopted 1-10-89)

1. That the site of the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this Division, to adjust said use with land and uses in the neighborhood.
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.
3. That the proposed use will not be detrimental to the character of the development in the immediate neighborhood or the public health, safety, and general welfare.

(Amended by Ord. 490.92 adopted 9-25-73; Ord. T-035-300 adopted 1-10-89)

4. That the proposed development be consistent with the General Plan.

(Added by Ord. 490.162 adopted 10-2-78)

Said findings and conditions shall be sent to the applicant and kept on file in the Planning & Resource Management Department.

(Amended by Ord. 490.100 adopted 9-10-74; Ord. T-252 adopted 12-9-80; Ord. T-035-300 adopted 1-10-89)

(Sec. 872-B amended by Ord. 490.100 adopted 9-10-74)

D. NOTICES

1. When an application is approved by the Director, written notice of the decision shall be mailed in accordance with Section 872-B.

(Amended by Ord. 490.100 adopted 9-10-74; Ord. T-252 adopted 12-9-80; Ord. T-035-300 adopted 1-10-89)

2. When an application relating to mobilehome park services is approved by the Director, the following procedures shall apply.

(Amended by Ord. 490.100 adopted 9-10-74; Ord. T-252 adopted 12-9-80; Ord. T-035-300 adopted 1-10-89)

- a. The applicant (property owner or his representative) shall provide a list of tenants within the park.

- b. Those tenants within 300 feet of the site of the proposed use shall be notified in lieu of property owners identified in Section 872-D. 1.

(Added by Ord. 490.188 adopted 10-29-79)

E. APPEALS

1. No decision of the Director shall be effective until a period of fifteen (15) days has elapsed following the date of mailing written notice of his decision.

(Amended by Ord. 490.100 adopted 9-10-74; Ord. T-252 adopted 12-9-80)

2. During this period any property owners notified herein or the applicant may file an appeal to the Commission. This appeal shall be filed in writing and set forth the reason for such appeal.

3. All applications for projects located on properties within the AL Zone District and within the sphere of influence of a city, or any Unclassified Director Review and Approval involving a ham radio tower shall be appealable to the Board of Supervisors.

(Added by Ord. T-056-324 adopted 6/27/95; Amended by Ord. T-063-334 adopted 5-23-00)

4. Commission Public Hearing Date and Notice

- a. The Commission shall hear such appeal of the said Director's decision within forty (40) days after the date of the filing of such appeal.
- b. Notice of all public hearings shall be given by mail as hereinafter provided and shall contain the time and place of the hearing and other pertinent data presented in the application.

(Added by Ord. T-241 adopted 7-28-80)

- c. Notice shall be mailed not less than ten (10) days before the date set for the hearing to owners of property within a radius of three hundred (300) feet of the external boundaries of the property described in the application, using for this purpose the last known name and address of such owners as are shown on the latest adopted tax roll of the County.

(Added by Ord. T-241 adopted 7-28-80)

5. Commission Public Hearing and Decision

- a. The Commission shall render a decision within forty (40) days after the hearing of such appeal, and the Commission's decision shall be final, unless an appeal therefrom is filed with a court of competent jurisdiction within ninety (90) days after the Commission renders its decision.

(Amended by Ord. 490.92 adopted 9-25-73; Ord. T-035-300 adopted 1-10-89)

- b. The Commission may by resolution approve, approve with conditions, or disapprove the decision of the said Director. A tie vote shall constitute a denial.

(Amended by Ord. 490.92 adopted 9-25-73; Ord. 490.171 re-adopted 4-24-79)

- c. The applicant shall be notified in writing at the address shown on the application of said Director's decision and of the Commission's decision if such an appeal is made.

(Amended by Ord. 490.100 adopted 7-16-74)

- d. If an application is disapproved by the Director, or by the Commission if appealed, a record of such disapproval shall be made and kept on file by the Planning & Resource Management Department.

(Amended by Ord. 490.92 adopted 9-25-73; Ord. T-035-300 adopted 1-10-89; Ord. T-063-334 adopted 5-23-00)

- e. The appeal of a Commission decision on any application filed and heard concurrently with other applications shall require a Board hearing of each of those applications.

(Added by Ord. 490.101 adopted 9-10-74)

- f. The appeal of a Commission decision on any application within the AL Zone District within a city's sphere of influence or of an Unclassified Director Review and Approval application involving a ham radio tower shall require a Board hearing in accordance with procedures set forth in Section 872-E.

(Added by Ord. T-056-324 adopted 6/27/95, amended by Ord. T-063-334 adopted 5-23-00)

F. TIME LIMIT FOR DEVELOPMENT

Each DRA approved after the effective date of this amendment shall become void when:

1. There has not been substantial development within two years after the approval of said DRA; or
2. There is cessation in the occupancy or use of land of structures authorized by said DRA for a period in excess of two years.

(Amended by Ord. 490.92 adopted 9-25-73; Ord T-035-300 adopted 1-10-89)

G. REVOCAIQN

1. The Director or Commission granting said use may revoke the permit for non-compliance with the conditions set forth in granting said permit.

(Amended by Ord. T-252 adopted 12-9-80)

2. If an established time limit for development expires, the Director Review and Approval permit shall be considered void.

(Added by Ord. T-241 adopted 7-28-80)

H. REAPPLICATION

No person, including the original; applicant, shall re-apply for a similar use on the same land, building or structure within a period of one (1) year from the date of the final decision on such previous application, unless such decision is a denial without prejudice.

I. LARGE DAY NURSERY OPERATIONS

The following procedures shall apply to all large day nursery operations subject to review and approval by the Director.

1. Any person seeking approval of a DRA for a large day nursery shall submit an application for such permit to the Planning & Resource Management Department setting forth any such reasonably required information which the Planning & Resource Management Department shall request.
2. It shall be the duty of the Director to review the proposed use to ascertain all facts pertinent to it, and in writing to state approval, approval with conditions, or disapproval of the proposed use, together with his/her reasons for such decision. If a hearing is requested pursuant to Section 872-I.3 below, the Director shall refer the proposed use directly to the

Commission for a public hearing and decision. If the proposed use is referred to the Commission, the hearing and Board appeal procedures of Section 873, Conditional Use Permit shall be followed. Noticing for said hearing shall be pursuant to Section 872-I.3. Those applications which are referred directly to the Commission by the Director shall be appealable to the Board. Those applications which are filed and heard concurrently with any application requiring a Board hearing, shall after the Commission decision, be heard by the Board together with that concurrent application.

3. NOTICE OF APPLICATION

Not less than 10 days prior to the date on which the decision will be made on the application, the Director shall give written notice of the proposed use by mail or personal delivery to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large day nursery home. Notified persons shall be provided the opportunity to submit a written request for a public hearing on the application within 15 days following the date of the notice.

4. NOTICES

When an application is approved by the Director, written notice of the decision shall be mailed in accordance with Section 872-I.3.

5. APPEALS

The provisions of 872-E shall apply.

6. TIME LIMIT FOR DEVELOPMENT

The provisions of 872-F shall apply.

7. REVOCAION

The provisions of 872-G shall apply.

8. REAPPLICATION

The provisions of 872-H shall apply.

9. LARGE DAY NURSERY OPERATION STANDARDS

The Director shall grant a DRA for a large day nursery provided the proposal meets the following standards:

- a. Compliance with all County restrictions and regulations on yards, building height, setback and lot coverage standards in the zone in which the residence is located;
- b. Is either situated on a lot zoned for single-family dwellings or for multi-family dwellings meets a minimum standard of 75 square feet of outdoor activity space for each child who is ambulatory. The outdoor area must be owned or leased by the applicant and cannot be shared with other property owners unless permission is granted by the joint owners. This space requirement can be waived if the applicant can demonstrate that

there is a public park or other public open space area which is within one-quarter (1/4) mile of the large day nursery;

- c. Provides parking in accordance with Section 855-I.2.f.
- d. Provides adequate access to the facility with minimal disruption to local traffic and circulation.
- e. Locates all outdoor play equipment at least five feet from the adjacent property line.
- f. Within urban residential areas, provides a minimum six-foot high solid wall or barrier to enclose all outdoor play areas.
- g. Is located at least 800 feet from any other large day nursery institutional or commercial day nursery or any other discretionary residential use involving single-family dwellings. However, the Director may allow the proposed large day nursery to be located closer than 800 feet if the following is determined:
 - (1). Such closer location will not have an adverse effect on surrounding properties or on vehicular or pedestrian safety in the area; and
 - (2). The proposal for such closer location seeks by design and layout of the site, to minimize noise which may be a nuisance to neighbors; and
 - (3). The proposal for such closer location does not materially reduce the privacy otherwise enjoyed by the residents of adjoining property.

10. CONDITIONS OF APPROVAL

As conditions of approval, the applicant shall be required to:

- a. Comply with Health and Safety Code 1597.46(d), including compliance with any statewide standards that have or may hereafter be adopted by the State Fire Marshal specifically relating to the subject of fire and life safety in large family day care homes, including those standards currently set forth in the California Building Code; and
- b. Comply with any conditions imposed by the Director, Planning Commission or Board of Supervisors deemed necessary to satisfy the requirements of 872-I.9 above.

(Added by Ord. T-071-340 adopted 5-21-02)

SECTION 873

USES PERMITTED SUBJECT TO CONDITIONAL USE PERMIT

A. APPLICATION

1. Filing

An application for a Conditional Use Permit shall be filed by the owner or lessee of the property for which the permit is sought, or by the authorized representative of either the owner or lessee.

2. Form and Contents

Application shall be made to the Commission on forms furnished by the Public Works & Development Services Department and shall be full and complete, including such data as may be prescribed by the Commission to assist in determining the validity of the request.

(Amended by Ord. T-252 adopted 12-9-80)

3. Verification

The Public Works & Development Services Department shall verify the accuracy and completeness of the application. The date of verification shall be noted on the application. Such verification shall be made within ten (10) days of the filing of such application.

(Amended by Ord. T-252 adopted 12-9-80)

In cases where the Director considers the reasons and conditions as set forth in the application not within the scope of the Conditional Use Permit procedure, the applicant shall be so informed; whereupon, if the application is filed and the fees are accepted, said application shall be signed by the applicant to the effect that he was so informed.

(Amended by Ord. T-252 adopted 12-9-80)

4. Formal Acceptance

If the application is found to be accurate and complete, it shall be formally accepted. The date of formal acceptance shall be noted on the application. Acceptance of the application does not constitute an indication of approval.

B. FILING FEE

When the application for a Conditional Use Permit is filed, a fee as provided in Section 879 shall be paid for the purpose of defraying the costs incidental to the proceedings.

C. DEPARTMENT INVESTIGATION

The Public Works & Development Services Department shall investigate the facts bearing on the case to provide information necessary for action consistent with the intent of this Division and the General Plan.

(Amended by Ord. T-252 adopted 12-9-80)

D. NOTICE OF COMMISSION PUBLIC HEARING

1. The hearing date shall be set by the Director for not less than ten (10) nor more than forty (40) days after the formal acceptance of an application.
2. Notice of all public hearings shall be given and shall contain the name and place of the hearing and other pertinent data presented in the application.
3. Notice shall be mailed not less than ten (10) days before the date set for the hearing to owners of property within a radius of three hundred (300) feet of the external boundaries of the property described in the application, using for this purpose the last known name and address of such owners as are shown on the latest adopted tax roll of the County.
4. Notices may be posted not less than ten (10) days before the date set for the hearing on all streets within five hundred (500) feet of the external boundaries of the subject property when such notices are requested by the Commission.

E. COMMISSION PUBLIC HEARING AND DECISION

1. The Commission shall, not less than ten (10) days after the legal notice of a public hearing on a Conditional Use Permit application, hold said public hearing.
2. The Commission shall approve, approve with conditions, or disapprove the application. The Commission action is final unless appealed, except Conditional Use Permits filed concurrent with other applications required to be heard by the Board of Supervisors or Conditional Use Permits for development of Agricultural Commercial and Rural Commercial Centers under Section 867. A tie vote shall constitute denial.
3. The Commission shall announce the result of its action by resolution within ten (10) days after the conclusion of the public hearings. Said resolution shall set forth the findings of the Commission and any recommended conditions, including the time limit, deemed necessary to protect the health, safety and welfare of persons in the neighborhood and in the community as a whole. The resolution shall be filed with the Clerk of the Board and mailed to the applicant at the address shown in the application.

(Sec. 873-E amended by Ord. 490.101 adopted 9-10-74; 490.171 re-adopted 4-24-79)

F. COMMISSION FINDINGS AND CONDITIONS

The Commission, in approving or recommending approval of a Conditional Use Permit, shall find as follows:

1. That the site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this Division, to adjust said use with land and uses in the neighborhood.
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.
3. That the proposed use will have no adverse impact on abutting property and surrounding neighborhood or permitted use thereof.

(Amended by Ord. 490.127 adopted 1-11-77)

4. That the proposed development is consistent with the General Plan.

(Amended by Ordinance 490.127 adopted 1-11-77)

5. That the conditions stated in the resolution are deemed necessary to protect the public health, safety and general welfare. Such conditions may include:
 - a. Special yards, spaces and buffers.
 - b. Fences and walls.
 - c. Surfacing or parking areas subject to specifications.
 - d. Requiring street dedications and improvements (or bonds) subject to the provisions of "Site Plan Review," Section 874, including service roads or alleys when practical.
 - e. Regulation of points of vehicular ingress and egress.
 - f. Regulation of signs.
 - g. Requiring landscaping and maintenance thereof.
 - h. Requiring maintenance of the grounds.
 - i. Regulation of noise, vibration, odors, etc.
 - j. Regulation of time for certain activities.
 - k. Time period within which the proposed use shall be developed (See Section 873-I).
 - l. A bond for removal of such use within a specified period of time.
 - m. A request for a site plan for purposes of review, said site plan to be submitted by the applicant.
 - n. And such other conditions as will make possible the development of the County in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Division.

(Sec. 873-F amended by Ord. 490.196 adopted 3-11-80)

G. APPEAL OF COMMISSION DECISION

1. The applicant, any person aggrieved, a County Department Director, or a member of the Board, may appeal any decision of the Commission to the Board by filing a written notice of appeal with the Clerk of the Board within fifteen (15) days of the Commission's action. Such appeal shall set forth the reasons therefor.
2. The appeal of a Commission decision on any application filed and heard concurrently with other applications shall require a Board hearing of each of those applications.

3. The hearing date for appeals shall be set by the Clerk of the Board for not less than fifteen (15) nor more than forty (40) days after the expiration date for the filing of an appeal pursuant to Section 873-G-1 or the filing of an appeal pursuant to 873-G-2. Notice shall be given as provided in Section 873-D, above.

(Amended by Ord. 490.196 adopted 3-11-80)

H. BOARD PUBLIC HEARING AND DECISION

1. The Board shall, not less than ten (10) days after the legal notice of public hearing on a Conditional Use Permit, hold said public hearing. Appeal hearings shall be de novo, except where the appeal is to a condition imposed or not imposed in which event the hearing and the decision of the Board shall relate only to such condition.
2. The Board may approve, approve with stated conditions, or disapprove the Conditional Use Permit application by resolution. The Board may add to or delete any of the conditions recommended or approved by the Commission. Such decision shall be made within forty (40) days of the hearing. A copy of the Board resolution shall be mailed to the applicant at the address shown on the application.
3. A copy of the Board resolution shall be mailed to the applicant at the address shown on the application.
4. The decision of the Board shall be final unless an appeal therefrom is filed with a court of competent jurisdiction within fifteen (15) days after the Board resolution date.

(Added by Ord. T-241 adopted 7-28-80)

I. TIME LIMIT FOR DEVELOPMENT

Each Conditional Use Permit approved either before or after the effective date of this amendment shall become void when:

1. There has not been substantial development within two years after the approval of said Conditional Use Permit or the effective date of this amendment, whichever date is later. However, in the case of a Conditional Use Permit authorizing a tentative map, expiration of said permit shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map; or

(Amended by Ord. T-241 adopted 7-28-80; Ord. T-026-287 adopted 11-12-85)

2. There is a cessation in the occupancy or use of land or structures authorized by said Conditional Use Permit for a period in excess of two years; except where the structure or land is limited to a single purpose use.
3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 873-I.1, the Commission may grant a maximum of two, one (1) year extensions. Application for such time extension must set forth in writing, including the reasons for the extension, and be filed with the Public Works & Development Services Department before the expiration of the Conditional Use Permit. Such request shall be acted upon by the Commission at a public hearing. The Commission's decision shall be appealable to the Board of Supervisors. The

required public hearing(s) shall be subject to the public notice requirements and procedures set forth in Section 873-D, E, G, and H.

(Amended by Ord. T-055-325 adopted 4-18-95)

J. APPEAL OF DIRECTOR'S DECISION AND BOARD PUBLIC HEARING AND DECISION

(Added by Ord. T-241 adopted 7-28-80)

1. Where a determination is caused to be made by the Director of Public Works & Development Services that there either has or has not been substantial development within two years after the approval of said Conditional Use Permit, a notice of such determination shall be mailed to the applicant and to owners of property adjacent the external boundaries of the property described in the application. The applicant or an adjacent property owner may appeal this decision to the Board of Supervisors by filing a written notice of appeal with the Clerk of the Board within fifteen (15) days after the mailing of notice of such decision. Such appeal shall set forth the reasons therefore.
2. The Clerk of the Board upon receipt of such appeal shall set the hearing date for not less than fifteen (15) days nor more than forty (40) days after the filing of an appeal.
3. The Board shall not less than ten (10) days after the legal notice of a public hearing on an appeal, hold said public hearing.
4. The Board may approve, approve with stated conditions, or deny the appeal by resolution. A copy of the Board resolution shall be mailed to the applicant at the address shown on the application.
5. The decision of the Board shall be final unless an appeal therefrom is filed with a court of competent jurisdiction within fifteen (15) days after the Board resolution date.

K. REVOCAION OF CONDITIONAL USE PERMIT

1. The Board, on its own motion, at a public hearing, with or without a recommendation from the Commission, may revoke any Conditional Use Permit for noncompliance with the conditions set forth in granting said permit.
2. If an established time limit for development expires and no extension has been granted, the Conditional Use Permit shall be considered void.

L. MAPPING

Within thirty (30) days after the granting of a Conditional Use Permit, the Public Works & Development Services Department shall indicate on the zone map the lot or lots affected by such Conditional Use Permit. Such indication shall show the file number of such permit.

(Amended by Ord. T-252 adopted 12-9-80)

M. REAPPLICATION FOR CONDITIONAL USE PERMIT

No person, including the original applicant, shall reapply for a similar Conditional Use Permit on the same land, building or structure within a period of one (1) year from the date of the final decision on such previous application unless such decision is a denial without prejudice.

SECTION 874

SITE PLAN REVIEW

When a site plan review is required by this Division or Chapters 17.72 or 17.30 of the Fresno County Ordinance Code, the following procedure shall apply:

A. SITE PLAN

The purpose of the site plan is to enable the Director to make a finding that the proposed development is in conformity with the intent and provisions of this Division and to guide the Development Services Division in the issuance of permits.

(Amended by Ord. T-252 adopted 12-9-80)

1. The applicant shall submit eleven (11) prints of the site plan to the Public Works & Development Services Department. The site plan shall be drawn to scale and shall indicate clearly and with full dimensioning the following information:

(Amended by Ord. 490.100 adopted 7-16-74; Ord. T-252 adopted 12-9-80)

- a. Lot dimensions.
- b. All buildings and structures: Location, elevations, size, height, and proposed use.
- c. Yards and space between buildings.
- d. Walls and fences: Location, height and materials.
- e. Off-street parking: Location, number of spaces and dimensions of parking area, and internal circulation patterns.
- f. Access: Pedestrian and vehicular service: Points of ingress and egress and internal circulation.
- g. Signs: Location, size and height.
- h. Loading: Location, dimensions, number of spaces and internal circulation.
- l. Lighting: Location and general nature and holding devices.
- j. Utilities: Location of existing and proposed utilities.

(Added by Ord. T-026-287 adopted 11-12-85)

- k. Street dedications and improvements, as provided in Section 874-B.
- l. In the "RCC," "C-P," "C-1," "C-2," "C-3," and "C-R" Districts, the location of the landscaping shall be shown.

(Amended by Ord. 490.193 adopted 1-7-80)

- m. And such other data as may be required to permit the Director to make the required findings.

(Amended by Ord. T-252 adopted 12-9-80)

- 2. Within fifty (50) days after submission of the site plan, the Director shall approve, approve with conditions deemed necessary to protect the public health, safety and welfare, or disapprove the site plan. At his discretion, the Director may refer the proposed plan directly to the Commission for a public hearing and decision. If the proposed plan is referred to the Commission, the procedure of Section 873, Conditional Use Permit, shall be followed. Those applications which are referred directly to the Commission by the Director and which are filed and heard concurrently with any application requiring a Board hearing, shall after the Commission decision, be heard by the Board together with that concurrent application. In approving the plan, the decision-maker shall find that:

(Amended by Ord. T-252 adopted 12-9-80; Ord. T-026-287 adopted 11-12-85)

- a. All provisions of this Division are complied with.
- b. The following are so arranged that traffic congestion is avoided and pedestrian and vehicular safety and welfare are protected, and there will be no adverse effect on surrounding property:
 - (1) Facilities and improvements.
 - (2) Vehicular ingress, egress, and internal circulation.
 - (3) Setbacks.
 - (4) Height of buildings.
 - (5) Location of service.
 - (6) Walls.
 - (7) Landscaping.
 - (8) Compatibility with surrounding development when required as a condition of a use permit or zoning.

(Added by Ord. T-026-287 adopted 11-12-85)

- c. Proposed lighting is so arranged as to reflect the light away from adjoining properties.
- d. Proposed signs will not by size, location, color or lighting, interfere with traffic or limit visibility.

The said Director's decision shall be final unless appealed to the Planning Commission.

(Amended by Ord. 490.100 adopted 7-16-74; Ord. T-026-287 adopted 11-12-85)

- 3. Appeal to the Planning Commission

The applicant or any aggrieved person may appeal, in writing, setting forth the reasons for such appeal to the Planning Commission. Such appeal shall be filed with the Director within fifteen (15) days after the mailing of notice of such decision. The Commission shall hear such appeal of the Directors decision within forty (40) days after the date of the filing of such appeal. The Commission shall review the site plan and shall approve, approve with conditions, or disapprove based on the findings listed in Section 874-A.2, above. The decision of the Commission shall be final unless appealed to the Board of Supervisors.

(Amended by Ord. 490.100 adopted 7-16-74; Ord. T-252 adopted 12-9-80; Ord. T-026-287 adopted 11-12-85)

4. Appeal to the Board of Supervisors

The applicant or any aggrieved person may appeal in writing, setting forth the reasons for such appeal to the Board of Supervisors. Such appeal shall be filed with the Clerk of the Board within fifteen (15) days after the Commission's decision. The appeal shall be placed on the agenda of the Board's next regular meeting after the appeal is filed. The Board shall review the site plan and shall approve, approve with conditions, or disapprove based on the findings listed in Section 874-A.2. The decision of the Board shall be final.

5. The approved site plan, with any conditions shown thereon or attached thereto, shall be dated and signed by the Director. One copy of said site plan and conditions shall be mailed to the applicant.

(Amended by Ord. T-252 adopted 12-9-80)

6. Revisions by the applicant to an approved site plan shall be made pursuant to the procedure set forth in this Section.

7. Expiration of Site Plan Approval

An approved Site Plan Review shall become void in the event there has not been substantial development of the site, or a portion of the site for an approved phased development, within two years after the approval of the site plan. Substantial development of one or more increments of a phased development shall extend the expiration date of the site plan for the remaining phases, except that the final phase shall be substantially developed within five years. The expiration date of a Site Plan Review approved in conjunction with an approved vesting tentative map or conditional use permit shall be concurrent with the expiration date of the vesting map or conditional use permit and may be extended in the same manner as said map or conditional use permit.

(Added by Ord. 490.80 adopted 10-24-72; amended by Ord. 490.147 adopted 3-14-78, Ord. 490.164 adopted 11-14-78, Ord. T-026-287 adopted 11-12-85, Ord. T-055-325 adopted 4-18-95)

A project shall be considered indivisible unless the Director approves a request by the applicant that the project be developed in phases or the Director requires phase development. Such determination shall be based on the finding that upon construction of the required on-site and off-site improvements serving each phase, it can function independently of later phases.

(Amended by Ord. 490.164 adopted 11-14-78; Ord. T-252 adopted 12-9-80)

An occupancy permit for a building, structure, or use as shown upon an approved site plan shall not be issued until all proposed buildings, structures, and other stated improvements in an indivisible project or phase of a divisible project are completed, or the Director authorizes its issuance upon making a finding that all on-site and off-site conditions relating to such building, structure, or use have been or will be met.

(Added by Ord. 490.100 adopted 7-16-74; amended by Ord. 490.147 adopted 3-14-78; Ord. 490.164 adopted 11-14-78; Ord. T-252 adopted 12-9-80)

8. Appeal of Director's Decision and Board Public Hearing and Decision

(Added by Ord. T-241 adopted 7-28-80)

- a. Where a determination is caused to be made by the Director that there either has or has not been substantial development within two years after the approval of said site plan review, a notice of such determination shall be mailed to the applicant and to owners of property adjacent the external boundaries of the property described in the application. The applicant or an adjacent property owner may appeal this decision to the Board of Supervisors by filing a written notice of appeal with the Clerk of the Board within fifteen (15) days after the mailing of notice of such decision. Such appeal shall set forth the reasons therefore.
- b. The Clerk of the Board upon receipt of such appeal shall set the hearing date for not less than fifteen (15) nor more than forty (40) days after the filing of an appeal.
- c. The Board shall, not less than ten (10) days after the legal notice of a public hearing on an appeal, hold said public hearing.
- d. The Board may approve, approve with stated conditions, or deny the appeal by resolution. A copy of the Board resolution shall be mailed to the applicant at the address shown on the application.
- e. The decision of the Board shall be final unless an appeal therefrom is filed with a court of competent jurisdiction within fifteen (15) days after the Board resolution date.

B. STREET DEDICATIONS AND IMPROVEMENTS REQUIRED

Because of changes that may occur in the local neighborhood due to increases in vehicular traffic generated by facilities requiring a site plan review, and upon the principle that such development should be required to provide street dedications and improvements near as practicable in proportion to such increased vehicular traffic, but should not be required to provide such street facilities for non-related traffic, the following dedications and improvements may be deemed necessary by the Director and may be required by him as a condition to the approval of any site plan:

(Amended by Ord. 490.100 adopted 7-16-74; amended by Ord. T-252 adopted 12-9-80)

1. When the Development Borders or is Traversed by an Existing Street

- a. Minor Streets, Local Streets and Cul-De-Sacs

Dedicate all necessary right-of-way to widen street to its ultimate width as shown on any master or precise plan of streets and highways; install curbs, gutters, drainage, sidewalks, street trees, street signs, street lights, required utilities; and grade and improve from curb to existing pavement.

b. Major and Collector Streets

Dedicate all necessary rights-of-way to widen the street to its ultimate width as established by any precise plan, Precise Plan of Streets and Highways or where the ultimate right-of-way lines are otherwise determinable and the grades have been established or can be determined; install curbs, gutters, drainage facilities, sidewalks, street trees, street signs, required utilities; and grade and improve the shoulder and one traffic lane abutting the development. In no case shall a person be required to dedicate or improve the right-of-way for a distance in excess of thirty (30) feet as measured from said ultimate right-of-way line, unless as otherwise provided for in the Fresno County Ordinance Code.

(Amended by Ord. 490.26 adopted 4-19-66; Ord. T-026-287 adopted 11-12-85)

c. Major Thoroughfares (Expressways, Freeways, the State Highways)

Dedicate all necessary rights-of-way to widen the thoroughfare to its ultimate width as established by any precise plan, Specific Plan of Streets and Highways or where the ultimate right-of-way lines are otherwise determinable and the grades have been established or can be determined, except in cases where access does not exist. Setback all facilities the required distance from the ultimate property line as shown on any master or specific plan; install curbs, gutters, drainage, sidewalks, street trees, street signs, street lights, and required utilities. In no case shall the required improvements or right-of-way dedication apply for distances in excess of thirty (30) feet as measured from said ultimate right-of-way line, unless as otherwise provided for in the Fresno County Ordinance Code.

(Amended by Ord. T-272 adopted 6-21-83; Ord. T-026-287 adopted 11-12-85)

d. Street Setbacks

Setback all buildings, structures, and facilities the required distance from the ultimate property line as established for streets shown on any proposed, master, or specific plan, or where the ultimate property lines are otherwise determinable.

(Added by Ord. T-026-287 adopted 11-12-85)

2. Frontage and Other New Roads

All frontage roads or new roads of any class made necessary by the development shall be dedicated and fully graded and improved with curbs, gutters, drainage, sidewalks, street trees, street signs, street lights, required utilities, grading and paving; provided, that where the street involved is indicated as an eventual major street or major thoroughfare upon any master or precise plan of streets and highways, the amount of grading and paving shall not exceed that required for such existing streets under (1.) above. Where a frontage road is provided and improved, the improvements in Section 874-B-1.b and c, will not be required.

3. All improvements shall be to County Standards.

(Added by Ord. 490.25 adopted 2-21-66)

C. BUILDING PERMIT

Before a building permit shall be issued for any such building or structure, the Director shall determine that:

(Amended by Ord. T-252 adopted 12-9-80)

1. The proposed building is in conformity with the site plan and approved conditions; and

(Amended by Ord. T-252 adopted 12-9-80)

2. All required on-site (outside the County right-of-way) and off-site (within the County right-of-way) improvements shall have either been completed, or if not completed, the permittee shall have entered into an agreement with the County to complete said work within six months from the date of the issuance of the permit. The Director may extend the completion date for one additional six-month period upon written request of the permittee upon a showing of good cause therefor. Such an agreement shall be secured either by cash deposited with the County, a cash deposit in an irrevocable escrow approved by the Director, or other financial security approved by the Director as the equivalent thereof. Such security shall be in the amount of one hundred (100) percent of the estimated cost of completion to be determined by the said Director. In the event such work is not completed within the period provided or any extension thereof, the County shall be authorized to take all necessary action to enforce the agreement including the use of said security to cause the completion of all required improvements. Monies deposited with the County or in escrow may be partially released to the depositor by said Director during the progress of the work so long as the same ratio of security is maintained on deposit to secure all uncompleted work.

(Amended by Ord. 490.25 adopted 2-21-66; Ord. T-252 adopted 12-9-80)

3. All of the required dedications have been given.

SECTION 875

ELECTRIC UTILITIES AND SERVICES

A. APPLICABILITY

The following procedure, which is intended to provide the County with a formal means of project review and comment, shall apply to all electric transmission facilities and electric utility facilities which are subject to approval by the California Public Utilities Commission or California Energy Commission, as such facilities are described below.

(Amended by Ord. T-053-320 adopted 6-7-94)

1. The provisions of this Division shall not be construed as to limit or interfere with the construction, installation, operation and maintenance of any use coming under the jurisdiction of the Public Utilities Commission or the California Energy Commission.

(Amended by Ord. 490.180 adopted 8-7-79; Amended by Ord. T-053-320 adopted 6-7-94)

2. This section shall not apply to projects otherwise subject to land use permitting authority of the County of Fresno. Such projects shall include, but are not limited to public utility business offices, service centers, and electric transmission lines associated with development projects under discretionary review by the County.

(Added by Ord. T-053-320 adopted 6-7-94)

B. DEFINITIONS:

1. Electric transmission facilities shall include both transmission and distribution substations and switching stations, and those lines which are designed, constructed and/or operated at 50 kv and above, and are intended to transmit electrical energy from:

- a. The source of such energy to a transmission substation or an existing transmission line.

- b. A transmission or distribution substation to another transmission or distribution substation.

- c. An existing transmission line or substation to an energy user.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. Electric utility facilities shall include, but are not limited to, the following types of uses:

- a. Microwave and other telecommunications structures and facilities which serve as an integral part of the utility operations.

- b. Electric generation facilities, except hydro-electric generation facilities subject to the jurisdiction of the Federal Energy Regulatory Commission.

(Added by Ord. T-053-320 adopted 6-7-94)

C. REVIEW OF ELECTRIC TRANSMISSION FACILITIES

The routes of proposed electric transmission facilities shall be submitted to the Director for County review either prior to filing an application with a State agency or prior to any property right acquisition or condemnation proceedings; or at least 100 days prior to construction.

(Amended by Ord. 490.180 adopted 8-7-79; Amended by Ord. T-053-320 adopted 6-7-94)

1. The following plans and information shall be submitted to the Director for review in accordance with the procedures specified in Section 875-E through G, below:
 - a. The location of the proposed route.
 - b. The width of proposed rights-of-way.
 - c. The location of existing rights-of-way and easements in the immediate vicinity of the proposed routes.
 - d. Description of facilities, average span length of towers and/or poles and number of three-wire circuits.
 - e. Approximate height of towers and/or poles.
 - f. Maximum designed operating voltage of the proposed facilities.
 - g. The location of the proposed substation or switching station, including a description of existing and proposed adjacent land uses and zoning.
 - h. Appropriate drawings of the proposed substation or switching station, showing all of the elements of the facility. Drawings should include a site plan, landscaping plans, sketches and elevations and/or sections as needed, and at the appropriate scale, to provide a thorough understanding of the spatial arrangement of the proposed facility.
 - i. The number and size of transformers or other electrical hardware at ultimate site development of the substation or switching station.
 - j. A description of the operational and maintenance requirements of the line or facility.
 - k. Other pertinent data. Much relevant information needed for consideration is included in, but may not be limited to environmental impact assessment summaries, and similar documents.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. The submittal shall be accompanied by a filing fee as provided in Section 879 for the purpose of defraying the costs incidental to the review.

D. REVIEW OF ELECTRIC UTILITY FACILITIES

The location of proposed electric utility facilities shall be submitted to the Director for County

review either prior to filing an application with a state agency or prior to property right acquisition or any condemnation proceedings; or at least 100 days prior to construction.

1. The following plans and information, as applicable, shall be submitted to the Director for review in accordance with the procedures specified in Section 875-E through H below:
 - a. The location of the proposed facility, including a description of existing and proposed adjacent land uses and zoning.
 - b. Appropriate drawings of the proposed facility, showing all of the elements of the facility. Drawings should include a site plan, landscaping plans, sketches and elevations, and/or sections as needed, and at the appropriate scale, to provide a thorough understanding of the spatial arrangement of the proposed facility.
 - c. Approximate height of towers and/or poles, both electrical and for telecommunications use.
 - d. Elevation view drawings of communication towers and/or poles with associated dishes, reflectors, antennae, etc.
 - e. A description of the operational and maintenance requirements of the facility.
 - f. Other pertinent data. Much relevant information needed for consideration is included in, but may not be limited to environmental impact assessment summaries, and similar document.
2. The submittal shall be accompanied by a filing fee as provided in Section 879 for the purpose of defraying the costs incidental to review.

(Section 875-D added by Ord. T-053-320 adopted 6-7-94)

E. ACTION BY THE DIRECTOR

1. The Director shall review the proposed electric transmission facility or electric utility facility for compatibility with all adopted plans, existing zoning and land use. The Director may, when in the public interest, recommend such modifications as deemed necessary to protect the health, safety and welfare.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. The Director shall prepare a report of all findings, including support for recommended modifications. Support for recommended modifications, based upon the premise that the location should provide the greatest public good and least private injury, shall give consideration to the following factors:
 - a. Community values.
 - b. Recreational and park areas.
 - c. Historical and aesthetic values.

d. Influence on environment

3. The Director's report shall be completed not less than ten (10) nor more than forty (40) days after filing of the plans and data.

(Amended by Ord. T-053-320 adopted 6-7-94)

4. The Director shall take the following action for projects involving electric transmission facilities which are designed, constructed and/or operated at 50 kv and above, (except for those facilities described in E-5 below) and for those electric utility facilities involving generation plants:

The Director's report shall be presented to the Planning Commission not less than ten (10) nor more than forty (40) days after completion of the Director's report. Following the Commission hearing, the Director's report shall be presented to the Board of Supervisors as specified in Section 875-H below.

(Added by Ord. T-053-320 adopted 6-7-94)

5. The Director shall take the following action as appropriate for projects involving electric transmission facilities which are constructed to provide 50 kv to 200 kv operating voltage service to an individual customer, and electric utility facilities, except electric generation plants:

- a. Not more than ten (10) days after completion of the Director's report, written notice shall be given to all affected property owners, as specified in 875-F.2 below, indicating that the report represents the official position of the County and that the project report will be submitted to the California Public Utilities Commission or Energy Commission unless a request for a hearing is received within fifteen (15) days following the date of mailing the written notice.
- b. If there is no request for a hearing, the report shall be submitted to the California Public Utilities Commission or Energy Commission not more than ten (10) days following the close of the hearing request period.
- c. If a request for a hearing is received within the prescribed period, the Director shall forward the project report to the Planning Commission not less than ten (10) nor more than forty (40) days after the date of the filing of the request for hearing. Following the Commission hearing, the Director's report shall be presented to the Board of Supervisors as specified in Section 875-H below.

(Added Section 875-E.5 by Ord. T-053-320 adopted 6-7-94)

F. NOTICE OF PUBLIC HEARING

1. Notices shall be mailed not less than ten (10) days before the date set for the hearing.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. Mailed notices shall be sent to owners of property, the nearest boundaries of which are within three hundred (300) feet of the proposed centerlines of the proposed electric transmission line corridors or from the edge of the site proposed for development. Notices shall be mailed to the owners as shown on the latest equalized assessment roll

or parcel number index.

(Added by Ord. 490.180 adopted 8-7-79; Amended by Ord. T-053-320 adopted 6-7-94)

G. COMMISSION PUBLIC HEARING AND ACTION

1. The Commission shall, not less than (10) days, after the legal notice of a public hearing on a proposed electric transmission facility or electric utility facility hold said public hearing.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. The Commission shall consider the proposal, the Director's recommendations, and all testimony given and shall make recommendations. The recommendations shall include the basis for modifications not previously supported by the Director.
3. The Commission actions shall be announced in a resolution not later than thirty (30) days after the conclusion of the hearings. Such resolution shall be filed with the Board of Supervisors and a copy thereof shall be mailed to the proponent of the electric transmission facility or electric utility facility.

(Amended by Ord. T-053-320 adopted 6-7-94)

H. BOARD OF SUPERVISORS PUBLIC HEARING AND ACTION

1. The hearing date shall be set by the Clerk of the Board for not less than fifteen (15) nor more than forty (40) days after filing of the Commission resolution with the Board of Supervisors. Notice shall be made pursuant to Section 875-F.

(Amended by Ord. T-053-320 adopted 6-7-94)

2. The Board shall, not less than ten (10) days after the legal notice of public hearing, hold said public hearing.
3. The Board may indicate agreement with any one or all of the proposed electric transmission facility or utility facility locations; may identify changes in proposed transmission facility or utility facility locations necessary for the protection of the public health, safety, and welfare; or may indicate opposition to any one or all of the proposed transmission facility or utility facility locations.

(Amended by Ord. T-058-320 adopted 6-7-94)

4. Action by the Board of Supervisors shall be announced by resolution. Copies of the resolution shall be mailed to the proponent of the electric transmission facility or electric utility facility and to the California Public Utilities Commission, or the lead regulatory agency, not later than (10) days following completion of the hearing.

(Amended by Ord. T-053-320 adopted 6-7-94)

5. It is intended that the provisions of this Section not be the type of review subject to requirements of California Government Code, Sections 65920 et. seq.

(Added by Ord. 490.180 adopted 8-7-79)

I. CREATION OF LOTS OR PARCELS FOR ELECTRIC UTILITY USE

The creation of lots or parcels which are substandard as to lot area or lot dimension for public utility use shall be allowed in any zoning district, subject to the provisions of Sections 855-A-2 and 855-B.3 and the California Government Code.

(Amended by Ord. 490.180 adopted 8-7-79; Amended by Ord. T-053-320 adopted 6-7-94)

SECTION 876

NONCONFORMING BUILDINGS AND USES

Nonconforming buildings and uses shall be those buildings and uses lawful when established but which do not conform to subsequently established zoning or zoning regulations. It is the intent and purpose of this Section to declare such buildings and uses to be nonconforming, for the purpose of protecting the public health, safety and general welfare, and to regulate their further use under such nonconformity.

A. NONCONFORMING BUILDINGS

1. Maintenance Permitted

A nonconforming building or structure may be maintained, except as otherwise provided in this Section.

2. Repairs

Repairs may be made to a nonconforming building or structure. However, no structural alterations shall be made to a building or structure which is nonconforming as to use regulations, except those required by law or hereafter provided in this Section.

(Amended by Ord. 490.148 adopted 4-17-78)

3. Additions - Enlargements

a. A building or structure nonconforming as to use or lot area regulations may not be added to or enlarged in any manner except:

(1) Any such nonconforming building or structure may be added to or enlarged if such nonconforming building or structure and the additions and enlargements thereto and the use thereof are all made to conform to the regulations of the district in which it is located.

(2) A nonconforming residential building in a "C" or "M" District, which is ordered to be repaired pursuant to the provisions of Chapter 15.32, Title 15, of the Fresno County Ordinance Code, may be added to or enlarged, modified or repaired to comply with the minimum requirements of the provisions of said Chapter 15.32.

(Amended by Ord. 490.168 re-adopted 4-24-79)

(3) A minor addition to or enlargement of a nonconforming building or structure may be permitted subject to the Director Review and Approval Procedure in Section 872, if the addition does not exceed ten (10) percent of the floor area of the existing nonconforming building. Such addition shall not extend the amortization period for the nonconforming building.

(Added by Ord. 490.148 adopted 4-17-78)

(4) In an "M" District, an addition or enlargement of a nonconforming residence

may be permitted subject to the Director Review and Approval Procedure in Section 872, if the addition does not exceed twenty-five (25) percent of the floor area of the existing nonconforming residence and the floor area contains less than one thousand one hundred (1,100) square feet prior to expansion. A nonconforming residence containing more than one thousand one hundred (1,100) square feet of floor area prior to expansion shall be limited to ten (10) percent and subject to 876-A.3.a(3) above. Such addition shall be based upon the original floor area of the residence and approval of such addition shall not extend the amortization period of the nonconforming use.

(Added by Ord. 490.168 re-adopted 4-24-79)

- b. A building or structure nonconforming as to height regulations shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the district in which it is located; provided, that the total aggregate floor area included in all such separate additions or enlargements shall not exceed fifty (50) percent of the floor area of the ground floor of said building or structure.
- c. A nonconforming building, nonconforming only as to the yard regulations, may not be added to or enlarged in any manner, unless the additions or enlargements conform to all the regulations of the district in which they are located; provided, however, that said additions or enlargements may be located in a required yard if they do not encroach into any portion of any required yard to a greater extent than the existing nonconforming building encroaches therein, but in no event shall any such additions or enlargements reduce the width of a side yard or the depth of a front or rear yard to less than fifty (50) percent of that required by the yard regulations of the district in which the lot is located, and the total of all such additions or enlargements so encroaching into any required yard shall not exceed in height or length, the height or length of that portion of the adjoining nonconforming building which extends into the same required yard.

4. Removal

- a. The following nonconforming buildings shall be completely removed or altered and converted to a conforming building, structure and use when buildings or structures have reached, or may reach, the ages specified in Section 876-A.4.b hereof:
 - (1) Commercial or industrial buildings in residential districts when not specifically permitted therein.

(Amended by Ord. 490.168 re-adopted 4-24-79)
 - (2) Residential buildings in "M" Districts when not specifically permitted therein.
- b. The following time limits shall be applied to the buildings or structures specified in 876-A.4.a:
 - (1) Type I and II construction* - forty (40) years;
 - (2) Type III and IV construction* - thirty (30) years;
 - (3) Type V construction* - twenty (20) years;

* as defined in the Uniform Building Codes.

The period of amortization shall begin on the date the building first became nonconforming on or after the effective date of this Division. The time table is deemed to provide for the amortization of the affected buildings.

- c. When said nonconforming building is removed from the land, at or before the end of the amortization period, every future building and use shall be in conformity with the provisions of this Division.
- d. Repairs necessary to maintain a nonconforming building shall not be construed as lengthening the amortization period set forth in paragraph "b" above.

B. NONCONFORMING USES OF BUILDINGS

1. Continuation and Change of Use

- a. The nonconforming use of a conforming building or structure shall be discontinued within five (5) years after the effective date of this Division, or five (5) years from the date the use becomes nonconforming, whichever date is later.
- b. The use of a nonconforming building may be changed to any other use which is permitted in the same district as the use for which the building or structure is designed and arranged, except as hereinafter provided.
- c. In the "M", "C", or residential districts, the use of any nonconforming building may be changed to any use which is permitted in a more restrictive district. The sequence of said districts, the first being the most restrictive and the last being the least restrictive, is as follows: R-A, R-1-A, R-1-AH, R-1-B, R-1-C, R-1, R-2, R-3, R-4, P, C-P, C-1, C-2, C-3, C-4, C-6, C-R, C-M, M-1, M-2, M-3. When the use of a nonconforming building is changed to a use which is permitted in a more restrictive district, such nonconforming building shall not thereafter be reoccupied by a use which is permitted only in a less restrictive district.

(Amended by Ord. 490.168 re-adopted 4-24-79)

- d. Any nonconforming building which is vacant for a continuous period of more than one (1) year shall not thereafter be occupied except by a use which conforms to the regulations of the district in which such nonconforming building is located.

2. Expansion Prohibited

A nonconforming use of a building or structure which conforms to the use regulations shall not be expanded or extended into any other portion of such conforming building or structure, nor changed, except to a conforming use. If such a nonconforming use or portion thereof is discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the regulations of the district in which such building or structure is located.

C. NONCONFORMING USE OF LAND

1. Continuation - Limitation

- a. The nonconforming use of land shall be discontinued within five (5) years from the effective date of this Division, or within five (5) years from the date the use became nonconforming, in each of the following cases:
 - (1) Where no buildings are employed in connection with such use.
 - (2) Where the only buildings employed are accessory or incidental to such use.
 - (3) Where such use is maintained in connection with a conforming building.
- b. A nonconforming use of land which is accessory or incidental to the nonconforming use of a nonconforming building shall be discontinued on the same date the nonconforming use of the building is discontinued.
- c. Except as provided in paragraphs "a" and "b" above, the nonconforming use of land may be continued, but shall be subject to the following limitations:
 - (1) Such use shall not be expanded or extended in any way either on the same or adjoining land.
 - (2) Such use shall not be changed, except to a use which conforms to the regulations of the district in which such land is located.
 - (3) If such use is discontinued it shall not thereafter be re-established.

D. NONCONFORMING SIGNS AND ADVERTISING STRUCTURES

Signs, billboards or commercial advertising structures which do not conform to this Division but which lawfully existed and were maintained on the effective date of this Division shall, within five (5) years after the effective date of this Division, be removed or made to conform. During the interim five (5) year period, said nonconforming signs, billboards and commercial advertising structures shall be kept in good repair and visual appearance and no structural alteration shall be made thereto.

E. NONCONFORMING FENCES, HEDGES AND WALLS

Fences, hedges and walls which do not conform to the corner cut-off provisions of this Division shall, within three (3) years after the effective date of this Division, be removed or made to conform.

F. NONCONFORMING OFF-STREET PARKING AND LOADING SPACES

Where off-street parking or loading facilities do not conform to the provisions of this Division, or where no such facilities have been provided for buildings constructed prior to the effective date of this Division, such building shall not be expanded nor may additional facilities be provided within said building until after the requirements for off-street parking and loading space shall have been complied with for those facilities added or enlarged. This Section shall not apply to members of a duly formed municipal parking district.

G. REVERSION OF NONCONFORMING USES

Any portion of a nonconforming building or use which is altered or changed to a conforming use shall not thereafter be used for a nonconforming use.

H. RECONSTRUCTION OF A NONCONFORMING BUILDING

The provisions of this Division shall not prevent the reconstruction, repair or rebuilding of any nonconforming building damaged by fire, explosion, or act of God or the enemy, subsequent to the effective date of this Division, provided that the cost of such reconstruction, repairing or rebuilding shall not exceed fifty (50) percent of the reasonable replacement value of the building immediately prior to the damage, as determined by a qualified appraiser. Such reconstruction, repair, or rebuilding, however, shall not be construed as lengthening the amortization period set forth in Section 876-A.4.b, above.

I. ELIMINATION OF TEMPORARY NONCONFORMING RESIDENTIAL BUILDINGS IN THE "R-1" DISTRICTS

Where an accessory structure of a temporary nature or an accessory building being used for dwelling purposes on a temporary basis exists on a lot in any residential district, and where said lot is of record, a dwelling or dwellings as permitted in the district in which said lot is located may be erected on said lot, provided that within thirty (30) days after the granting of an occupancy permit by the County for the use of the newly constructed building, the temporary dwelling shall be made to conform with the provisions of the district or shall be removed.

J. NONCONFORMING USES UNDER VARIANCE, SPECIAL OR CONDITIONAL USE PERMIT, OR DIRECTOR REVIEW AND APPROVAL

Those nonconforming uses and buildings which are legally existing and authorized under a Variance, Special or Conditional Use Permit, or Director Review and Approval granted under this or any previous ordinance shall be permitted to continue under the conditions and regulations imposed in said Permit or Variance, except that any use permitted by Variance shall be considered nonconforming and subject to all the provisions of this Section. This exception is declaration of existing law.

(Amended by Ord. 490.89 adopted 6-12-73; Ord. T-296 adopted 3-24-87)

K. DIRECTOR'S DETERMINATION AND OWNER APPEAL PROVISIONS

1. When a building or use is determined to be nonconforming by the Director, the property owner shall be notified of such determination in writing by certified mail, which notice shall contain the following information:

(Amended by Ord. T-252 adopted 12-9-80)

- a. Identification of the nonconforming building or use, the date that it became nonconforming, and the expiration date of the amortization period.
 - b. The applicable provisions of this Section considered by the Director in fixing the period for amortization of the nonconforming building or use.
 - c. A statement that the landowner may appeal the Director's determination to the Board of Supervisors and the effect of not filing a timely appeal.
2. The determination of the Director shall be final unless a written appeal is filed by the landowner with the Clerk of the Board within sixty (60) days of the date of mailing the notice of the Director's determination.

3. The Board's decision shall be final unless an appeal therefrom is filed with a court of competent jurisdiction within thirty (30) days after the Board renders its decision.
4. The failure of the Director to notify a property owner of a nonconforming building or use, shall not affect the validity, legality or amortization period of such building or use.

(Added by Ord. 490.148 adopted 4-17-78)

SECTION 877

VARIANCES

A. CONDITIONS NECESSARY TO GRANTING OF A VARIANCE

A Variance may be granted only when all of the following conditions exist in reference to the property being considered.

1. There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.
2. Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.
3. The granting of a Variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.
4. The granting of such a Variance will not be contrary to the objectives of the General Plan.

B. PROCEDURE

1. Initiation of Proceedings

A proceeding for the consideration of a Variance may be initiated by the Commission, Board or verified application.

2. Application

a. Filing

Application for a Variance shall be filed by the owner or lessee of the property for which the Variance is sought, or by the authorized representative of either the owner or lessee.

b. Form and Contents

Application shall be made to the Commission on forms furnished by the Public Works & Development Services Department and shall set forth in detail the reasons for the requested Variance, shall show how the conditions set forth in Section 877-A are satisfied, and shall provide other information as may be prescribed by the Commission to assist in determining the validity of the request.

(Amended by Ord. T-252 adopted 12-9-80)

c. Verification

The Director shall verify the accuracy and completeness of the application. The date of verification shall be noted on the application. Such verification shall be made within fifteen (15) days of the filing of such application.

d. Formal Acceptance

If the application is found to be accurate and complete, it shall be formally accepted. The date of formal acceptance shall be noted on the application. Acceptance of the application does not constitute an indication of approval.

3. Filing Fee

When the application for a Variance is filed, a fee as provided in Section 879 shall be paid for the purpose of defraying the costs incidental to the proceedings.

4. Department Investigation

The Public Works & Development Services Department shall investigate the facts bearing on the case to provide information necessary for action consistent with the intent and purpose of this Division.

(Amended by Ord. T-252 adopted 12-9-80)

5. Commission Public Hearing Date and Notice

- a. The hearing date shall be set by the Director for not less than fifteen (15) nor more than forty (40) days after the formal acceptance of an application.
- b. Notice of all public hearings shall be given by mail as hereinafter provided and shall contain the time and place of the hearing and other pertinent data presented in the application.
- c. Notice shall be mailed not less than ten (10) days before the date set for the hearing to owners of property within a radius of three hundred (300) feet of the external boundaries of the property described in the application, using for this purpose the last known name and address of such owners as are shown on the latest adopted tax roll of the County.
- d. For minor deviations not requiring notice, see Section 877-E.

6. Commission Public Hearing and Decision

- a. The Commission shall, not less than ten (10) days after the legal notice of a public hearing on a Variance Application, hold said public hearing.
- b. A decision by a majority vote of the members of the Commission voting shall be final unless the application was filed and heard concurrently with any application requiring a Board hearing or unless the decision is appealed. A tie vote shall constitute denial.

(Added by Ord. 490.171 re-adopted 4-24-79)

- c. The Commission shall announce its decision by resolution within ten (10) days after the conclusion of the hearing. Said resolution shall approve, approve with stated conditions, or disapprove the application. The resolution shall be filed with the Clerk of the Board and mailed to the applicant at the address shown in the application.

(Amended by Ord. 490.171 re-adopted 4-24-79)

C. APPEAL OF COMMISSION DECISION

1. a. An appeal may be made by the applicant, a County Department Director, any member of the Board or by a property owner within three hundred (300) feet of the external boundaries of such property. Exception: Property owners in the R-C (Resource Conservation), TPZ (Timberland Preserve), A-E (Exclusive Agricultural), AL (Limited Agricultural), A-2 (General Agricultural), R-R (Rural Residential), R-A (Single Family Residential-Agricultural), AC (Agricultural Commercial), and RCC (Rural Commercial Center) Districts shall have the right of appeal if any part of their property is within one mile of the external boundaries of the subject property measured along a direct line. The appeal shall be made by filing a written notice of appeal with the Clerk of the Board within fifteen (15) days of the Commission's action stating the reasons therefore. Such hearing shall be de novo, except where the appeal is to a condition imposed or not imposed in which event the hearing and the decision of the Board shall relate only to such condition.

(Amended by Ord. 490.44 adopted 7-2-68; Ord. 490.84 adopted 4-10-73; Ord. 490.171 re-adopted 4-24-79; Ord. 490.196 adopted 3-11-80)

- b. The appeal of a Commission decision on any application filed and heard concurrently with other applications shall require a Board hearing of each of those applications.

(Added by Ord. 490.101 adopted 9-10-74)

2. Board Public Hearing Date and Notice

- a. The hearing date shall be set by the Clerk of the Board and shall be held not less than fifteen (15) nor more than forty (40) days after the expiration date for the filing of an appeal.
- b. Notice shall be given as provided in Section 877-B.5.b and c.

3. Board Public Hearing and Decision

- a. The Board shall, not less than ten (10) nor more than forty (40) days after the legal notice of a public hearing on a Variance Application, hold said public hearing, which hearing shall be de novo and the same conditions set forth in Section 877-A must exist.
- b. Any interested person may appear at said hearing and submit evidence; that such person may include an individual who is not entitled to appeal a decision of the Commission or receive notice of the hearing as provided herein.
- c. The Board decision shall be made within forty (40) days of the hearing and shall be final unless appealed to a court of competent jurisdiction. In the event such action is not appealed within thirty (30) days following the Board decision, it shall be presumed that the petitioner to a court has not acted with the due diligence in asserting his rights and the action of the County shall be deemed to be final.

D. VOIDING OF VARIANCES

1. The Commission may revoke any Variance for noncompliance with the conditions set forth in granting said Variance after notice and hearing. Upon instruction from the Commission, the Public Works & Development Services Department shall cause ten (10) days notice of hearing to be given to the holder of the Variance which is being considered for revocation together with such other persons set forth in Section 877-B.5.b and c. The action of the Commission in revoking any Variance may be appealed to the Board in the same manner and by the same person as an appeal from a decision of the Commission in granting or denying a Variance.

(Amended by Ord. T-252 adopted 12-9-80)

2. Each Variance granted under the provisions of this Section shall become void when:
 - a. The construction authorized by said Variance is not commenced within one (1) year after the granting of said Variance or is not pursued diligently to completion, or
 - b. There is a cessation in the occupancy or use of land or buildings authorized by such Variance for a period in excess of one (1) year.
 - c. The parcels authorized by said Variance are not created within one (1) year after the granting of said Variance or an application for tentative map is not filed within said one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map.

(Added by Ord. T-026-287 adopted 11-12-85)

3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 877-D.2, the Commission may grant an extension of time without a public hearing for a period not to exceed an additional one (1) year period. Application for such extension of time must set forth in writing the reasons for the extension and must be filed with the Public Works & Development Services Department before the expiration of the Variance.

(Amended by Ord. T-252 adopted 12-9-80)

E. VARIANCE PERMITTED INVOLVING MINOR DEVIATION

1. When, in the public interest, the Director may consider and render decisions on applications involving minor deviations from the provisions of this Division, limited to the following:

(Amended by Ord. T-252 adopted 12-9-80)

- a. Area and lot dimension requirements may be reduced by not more than ten (10) percent of that required in the District.

(Amended by Ord. 490.27 adopted 5-31-66)

- b. Yard requirements may be reduced by permitting portions of a building or structure

to extend into and occupy not more than ten (10) percent of the area of a required yard.

(Amended by Ord. 490.16 adopted 11-17-64)

- c. Maximum building height requirements may be increased by not more than ten (10) percent.
- d. The reconstruction or remodeling of nonconforming buildings may be permitted if, in the said Director's judgement, it will bring such buildings and subsequent use into greater conformity with the use permitted in the district.
- e. Wall and fencing requirements in the "C," "M," and "T-P" Districts may be waived, provided that adjacent "R" District parcels are proposed for non-residential use as shown on an adopted general plan.

(Added by Ord. 490.51 adopted 11-19-68)

(Sec. 877-E.1 amended by Ord. 490.44 adopted 7-2-68; Ord. 490.100 adopted 7-16-74; and Ord. 490.101 adopted 9-10-74)

- 2. Such decision shall be based on the provisions of Section 877-A.
- 3. The Director shall make such decisions within fifteen (15) days of the date of the filing of such application.

(Amended by Ord. T-252 adopted 12-9-80)

- 4. The denial by the said Director of an application involving a minor deviation shall not prohibit or affect the right of the applicant to file an application for a Variance under Section 877-B.

F. REAPPLICATION FOR A VARIANCE

No person, including the original applicant, shall re-apply for a similar Variance on the same land, building or structure within a period of one (1) year from the date of the final decision on such previous application, unless such decision is a denial without prejudice.

SECTION 878

ZONING DIVISION AMENDMENT

An amendment to this Zoning Division which changes any property from one (1) district to another or imposes any regulation not heretofore imposed or removes or modifies any such regulations heretofore imposed shall be initiated and adopted by the following procedure, except that any amendment to this Division which does not make such a change or imposition may be initiated and adopted as other ordinances are initiated and adopted.

A. INITIATION

1. The Commission may propose an amendment by a Resolution of Intention.
2. The Board of Supervisors may propose an amendment by a Resolution of Intention.
3. A property owner or the authorized representative of an owner may propose an amendment to change property from one district to another by filing a verified petition with the Commission, provided that such a petition must be signed by owners of at least sixty (60) percent of the area directly affected by such proposed amendment.

(Amended by Ord. 490.181 adopted 8-7-79)

B. PETITIONS

1. Form of Petition

The Commission shall prescribe the form in which applications for changes of zone are made. It may prepare and provide blanks for such purpose and may prescribe the type of data and information to be provided by the petitioner to assist in determining the validity of the request. No application shall be received unless it is full and complete and complies with such requirements.

2. Verification of Petition

The Director shall verify the accuracy and completeness of the application and the date of verification shall be noted on the application.

3. Submission of Supplementary Data

In addition, the applicant may provide to the Director such data and information as will assist the Director to make a recommendation to the Commission. Such data may include:

- a. Economic studies and surveys.
- b. Traffic studies.
- c. Population studies.
- d. Any other information deemed pertinent.

(Amended by Ord. 490.181 adopted 8-7-79)

C. FILING FEE

When a petition to change property from one district to another is filed, a fee as provided in Section 879 shall be paid for the purpose of defraying the costs incidental to the proceeding.

D. DEPARTMENT INVESTIGATION

The Department of Resources and Development shall study the proposed amendment and shall provide information necessary for action consistent with the intent of this Division and the General Plan, except that in the case of amendments to the Zoning Division text and amendments resulting from changes to the General Plan such study and information shall be the responsibility of the Planning Department.

(Amended by Ord. T-252 adopted 12-9-80)

E. NOTICE OF COMMISSION PUBLIC HEARING

1. The Director shall set all proposals for amendments for public hearing before the Commission not less than fifteen (15) nor more than forty (40) days after the verification of the proposal, or after the adoption of a Resolution of Intention by the Board of Supervisors or the Commission.

(Amended by Ord. T-252 adopted 12-9-80)

2. Notice of required public hearings shall contain a description of the property under consideration, nature of the proposed change, the time and place of the hearing and other pertinent data and be given by at least one (1) publication in a newspaper of general circulation in the County at least ten (10) days before the hearing.

When the zoning division amendment involves the reclassification of property, additional notice may be given by either one or both, of the following means:

- a. Posting public notices of the proposed amendment not less than ten (10) days prior to the date of the hearing. Such notices shall be posted on all streets within five hundred (500) feet of the external boundaries of the subject property proposed for reclassification.
 - b. Mailing a notice not less than ten (10) days prior to the date of the hearing to owners of property within a radius of three hundred (300) feet from the external boundaries of the property described in the application using for this purpose the last known name and address of such owners as shown on the latest adopted tax roll of the County.
3. Any failure to post public notices or mail notices as aforesaid shall not invalidate any proceedings taken for zoning division amendments.

F. COMMISSION PUBLIC HEARING, RECOMMENDATION AND NOTICE THEREOF

1. The Commission shall, not less than ten (10) days after the publication of legal notice of a public hearing on an amendment, hold said hearing.
2. If, for any reason, testimony of any case set for public hearing cannot be completed on the day set for such hearing, the Commissioner presiding at such public hearing may, before the adjournment or recess thereof, publicly announce the time and place to, and at which, said hearings will be continued and such announcement shall serve as sufficient notice of

such continuance and without recourse to the form of public notice as provided for in Section 878-E.2.

3. Upon the completion of a public hearing, the Commission shall, not later than forty (40) days thereafter, render its decision on the matter so heard. Failure to so act within said forty (40) days shall serve to automatically and immediately refer the whole matter to the Board of Supervisors for such action as it deems warranted under the circumstances. In the event of such failure on the part of the Commission to act, the Director shall immediately deliver to the Board of Supervisors all of the records of the matter involved.
4. The recommendation for approval of any amendment shall be by resolution of the Commission carried by the affirmative votes of not less than a majority of its total membership. A resolution for recommendation which receives a majority vote of the members present and voting but not a majority vote of the total voting members of the Commission may, with the consent of the applicant, if any, and by majority vote of the members present be continued until the next regular or special meeting of the Commission; however, if the majority of the members present do not vote to continue the matter or the applicant does not consent thereto, then the action shall constitute disapproval. A resolution for approval of any amendment which fails to carry by reason of no votes of a majority of the members present shall be deemed a disapproval.
5. The Commission shall announce and record its action by formal resolution. Said resolution shall be filed with the Board and a copy thereof shall be mailed to the applicant at the address shown on the application.
6. Not later than ten (10) days after final action by the Commission on an application, notice of the decision shall be mailed to the applicant at the address shown on the application.
7. A decision of the Commission recommending approval is advisory and a hearing shall automatically be scheduled before the Board for final action. Exception: Where a majority vote of the Commissioners voting is for denial, the Commission's decision shall be final unless appealed to the Board within fifteen (15) days after its decision. The appeal shall be made by filing with the Clerk of the Board a written notice of appeal which shall state the reasons therefor.

(Amended by Ord. 490.84 adopted 4-10-73)

8. An appeal may be initiated by the applicant, an interested party, the Director of Planning, the Director of Resources and Development, or by any member of the Board.

(Amended by T-252 adopted 12-9-80)

G. NOTICE OF BOARD PUBLIC HEARING

The hearing date of the Board public hearing should be set by the Clerk of the Board of Supervisors for not less than fifteen (15) or more than forty (40) days after the filing of the Commission's resolution by the Board.

Notice shall be given as provided in Section 878-E.2, above.

(Amended by Ord. 490.181 adopted 8-7-79)

H. BOARD PUBLIC HEARING, DECISION AND NOTICE THEREOF

The Board shall, not less than ten (10) days after legal notice of a public hearing on a proposed amendment, hold said public hearing.

The Board may approve the proposed amendment and enact it into Ordinance, or disapprove it. The Board shall not substantively alter the proposed amendment without referral back to the Commission unless said alteration was previously considered by the Planning Commission during its hearing. An additional hearing is unnecessary and shall be optional. A copy of the decision shall be mailed to the applicant at the address on the application. The decision shall be made within fifteen (15) days of the hearing. When the proposed amendment is referred back to the Commission, the Commission shall render a report to the Board within forty (40) days of such referral and the Board shall render its decision within forty (40) days of the receipt of the report of the Commission. Failure of the Commission to report within forty (40) days after the referral shall be deemed to be approval of the proposed alteration.

(Amended by Ord. 490.181 adopted 8-7-79)

I. APPEAL OF DENIAL

1. The Board, not more than forty (40) days after the denial by the Commission, shall hear such appeal after giving notice pursuant to Section 878-E.2.

(Amended by Ord. 490.181 adopted 8-7-79)

2. The Board shall refer any proposed reversal of such denial back to the Commission for a report.
3. The Commission shall render such report to the Board within forty (40) days of such referral.
4. The Board shall render its decision within forty (40) days of the receipt of the report from the Commission.

J. REAPPLICATION FOR ZONING DIVISION AMENDMENT

No person, including the original applicant, shall reapply for the same change of zone on the same lot or lots within a period of one (1) year from the date of the final decision on such previous application unless such decision is a denial without prejudice.

- K. Appeals, if any, to a court of competent jurisdiction shall be made within thirty (30) days after the final decision by the Board.

L. CONDITIONAL ZONING

(Added by Ord. 490.61 adopted 5-12-70)

1. The Board may impose conditions to the zoning reclassification of property, to be given an appropriate designation on the zone map, where said conditions are essential to: 1) protect the community from potentially deleterious effects of certain uses permitted in the proposed district, or 2) where said conditions are required to adjust the proposed use to the community's need for facilities to meet the public service demands created by the proposed development. If conditions to zoning are imposed, a Site Plan Review shall be required prior to development, as provided in Section 874 of this Division.

(Amended by Ord. 490.192 adopted 12-3-79)

2. Conditions considered within the scope of this Section are those related to:
 - a. Access, circulation and parking.
 - b. Street dedication where uses of proposed zone substantially contribute to such requirement.
 - c. Street improvement where uses of proposed zone substantially contribute to such requirement.
 - d. Lot coverage, building height and bulk, and population density.
 - e. Special yards, spaces, and buffers including fences and walls.
 - f. Landscaping.
 - g. Noise, lighting, odors, and vibration.
 - h. Outdoor advertising.
 - i. Limitations and prohibitions on the number and type of uses permitted subject to the provisions of Section 878-L.4 below.

(Added by Ord. 490.192 adopted 12-3-79)

- j. Such elements as may require regulation in order to conform with the intent and purpose of this Division.
3. Conditions outside the scope of this Section are those related to:
 - a. Time limits within which uses must be developed or reversion to original zoning.
 - b. Any provision for automatic reversion to a preceding zone classification.
 - c. Termination of nonconforming uses.
4. Conditions to prohibit uses or to limit the number and type of uses pursuant to Section 878-L.2i above shall be subject to the following provisions.

- a. Such conditions shall not be imposed without the consent of the property owner(s) or the authorized representative of the property owner(s) unless such conditions are necessary to achieve zoning consistency upon General Plan adoption.

(Amended by Ord. T-011-265 adopted 11-16-82)

- b. The Board, when imposing such conditions, shall specifically identify the uses to be prohibited or limited. The Board shall also make a finding that said conditions are essential to protect the community and nearby properties from adverse impacts which could result from the development of such uses.

(Added by Ord. 490.192 adopted 12-3-79)

M. OVERLAY ZONE DISTRICTS

(Added by Ord. 490.190 adopted 11-5-79)

1. An overlying zoning designation may be adopted concurrently or subsequent to adoption of the underlying district.
2. When coupled with the underlying zones, overlying districts actually create an additional series of zoning districts. They do not constitute conditional zoning; however, conditions of zoning may be applied as with any other zoning district.

SECTION 879

FILING FEES

A fee shall be paid by the applicant to the County of Fresno upon the filing of an application incidental to the several procedures provided in this Division in an amount determined by resolution of the Board of Supervisors. Said amount shall not exceed the cost estimated by the County Auditor-Controller to defray the expense in administering such application including the cost of administrative personnel, postage, posting, advertising and such other costs incidental thereto.

(Amended by Ord. 490.112 adopted 4-20-76)

SECTION 880

FORM OF APPLICATIONS

The Commission shall prescribe the form of all applications provided for in this Division, which forms shall, among other things, indicate the accompanying data to be furnished by the applicant, so as to assure the fullest practicable presentation of facts for proper consideration of the matter involved in each case and for a permanent record thereof. Each application provided for in this Division shall be signed by one (1) or more owners or lessees of the property in respect to which the application is filed.

In all cases, such applications shall be provided in the Resources and Development Department.

(Amended by Ord. T-252 adopted 12-9-80)

SECTION 881

PUBLIC HEARINGS

The Board or the Commission may establish its own rules for the conduct of public hearings and the presiding member thereof shall have the power to administer oaths to any person testifying.

The Board or Commission may for any reason, when it deems such action necessary or desirable, continue any hearing to a certain date, time, and place, and public announcement of such date, time, and place of hearing to be continued, shall for all purposes be sufficient notice thereof to all persons.

The Board or Commission may order a hearing continued when requested by an owner-applicant upon a showing of good cause therefor, in writing, except in unusual circumstances, that as a condition precedent to such continuance where the Board or Commission elects to renotice such hearing, said applicant shall pay a continuance fee in an amount prescribed by Ordinance.

The Secretary to the Commission may continue or reschedule a noticed public hearing before the Planning Commission when requested by the applicant-owner after the notices have been given or after the notices have been prepared but not formally mailed or published, upon a showing of good cause therefore. Such request for continuance must be submitted not less than five (5) working days before the scheduled hearing. The applicant, as a condition to such continuance, shall pay a continuance fee in an amount prescribed by Ordinance.

(Amended by Ord. 490.97 adopted 4-22-74)

SECTION 882

LEGAL PROCEDURE

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Division and any use of land, building, or premises established, conducted, or operated or maintained contrary to the provisions of this Division shall be and the same is hereby declared to be unlawful. The provisions of this Division may be enforced by a criminal proceeding or by a civil action or proceedings for the abatement and removal and the enjoining thereof in the manner prescribed by law. The remedies provided herein shall be cumulative. The provisions of this Division shall be enforced by the Director.

(Amended by Ord. 490.100 adopted 7-16-74; amended by Ord. T-252 adopted 12-9-80)

SECTION 882.1 - SUMMARY ABATEMENT OF ZONING VIOLATIONS

Upon making a finding that an immediate threat or danger exists to the public health, safety or welfare of the occupants or the public, the Director, in consultation with other appropriate governmental officials or agencies, may order a summary abatement of zoning violations. Upon such finding, the Director may require immediate action on the part of the property owner to abate zoning violations of this Division.

- A. NOTICE The Director shall make a reasonable attempt to notify the occupants and property owner(s), either by telephone or by personally visiting the property, of the zoning violation(s) that require immediate abatement.
- B. ABATEMENT BY THE COUNTY If the Director finds that an immediate threat to public health, safety or welfare exists, and that it is unhealthy or hazardous to delay abatement action, he or she may order county staff, contractors, or designated agents to abate the condition. Abatement may include, but is not limited to, the cleanup and disposal of rubbish or other materials which threaten public health or the maintenance standards of section 850.B.6.
- C. ABATEMENT COSTS The property owner or occupant shall be liable for all costs associated with this abatement, including but not limited to administrative, labor, material and other costs incurred in the physical abatement, in addition to the costs recoverable under Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law. All costs incurred as described in this section 882.1 shall be recovered from the property owner or occupant according to the procedure beginning with section 882.2-E.

(Added by Ord. T-062-333 adopted 5-2-00)

SECTION 882.2 - ADMINISTRATIVE ABATEMENT PROCEDURE

Violation of any provision of this Division may be abated according to the following procedure, which is in addition to, or in lieu of, the other enforcement procedures within this Division.

- A. NOTICE OF ABATEMENT Upon making a reasonable determination that violations of this Division exists, the Director shall notify the occupant(s), the property owner(s), any mortgagees of record and beneficiaries under any deed of trust relating to such property of record, and any lessees and other estate holders of record, that zoning

violation(s) exists upon such persons' property. This Notice of Abatement and Order shall be by means of certified or registered mail return receipt requested. The Notice of Abatement and Order shall be sent to the property owner(s) as the owner(s)' name(s) appear on the last equalized assessment roll. If the address of any person is unknown to the Director, then a copy shall be posted on the property and published in a newspaper of general circulation at least once in accordance with Government Code section 6061.

1. Contents of Notice of Abatement and Order

- a. The Notice of Abatement and Order shall describe the condition which constitutes the violation of this zoning ordinance; and
- b. The Notice of Abatement and Order shall order that the conditions constituting the zoning violation(s) be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time as determined by the Director, however not to exceed thirty (30) days from the date such notice is mailed; and
- c. The Notice of Abatement and Order shall contain instructions to the property owner, tenant, lessee and occupant describing procedures for scheduling a hearing for the purpose of presenting information as to why the Property should not be considered a violation of this Division, or why the noticed person believes he or she is not responsible therefor; and
- d. The Notice of Abatement and Order shall state that if the abatement efforts described therein are not completed within the number of days specified, or a hearing has not been requested in accordance with section 882.2.B, or a time extension has not been granted to complete the abatement, the County may abate the nuisance without further notification and the owner may be responsible for all costs associated with the investigation and abatement of the violations of this zoning ordinance as set forth above in section 882.1.C.
- e. The Notice of Abatement and Order shall state that if the owner fails to request a hearing, all rights to appeal any action by the County to abate the violation(s) of this zoning ordinance are waived.

B. HEARING AND DETERMINATION; EXTENSIONS

At the time fixed in the Notice of Hearing on Abatement, the Board of Supervisors or the person(s) designated Hearing Officer(s) shall proceed to hear testimony from any interested person regarding the specified condition deemed by the Director to be a violation of this Division, the estimated cost of its removal or other remedial work, and any other matter which the Board of Supervisors or the Hearing Officer may deem pertinent thereto. The Board or the Hearing Officer may adjourn or continue the hearing from time to time.

1. Determination After Hearing: Upon the conclusion of the hearing, the Board of Supervisors or the Hearing Officer will make a determination based on the evidence presented at the hearing. In the event that the hearing body determines the condition is a violation of this Division, it may direct the property owners, or occupant(s) or both, to abate the same within thirty (30) days after posting and mailing a Notice of Determination and Order of Abatement.

- a. Notice by Posting: After the determination of the hearing body directing the abatement of zoning violations, the Director shall conspicuously post a copy of the Notice of Determination and Order of Abatement on the Property and shall mail a copy thereof to the occupants(s) and to the owner(s) of such Property as well as to the mortgagees of record and trust deed beneficiaries of record, and any other person, if any, determined by the Board of Supervisors to be a Responsible Party.
 - b. Notice to Property Owner(s): Notice to the property owner(s) shall be deemed complete upon mailing the Notice of Determination and Order of Abatement as the owner(s) name(s) appear on the last equalized assessment roll.
2. Continuation of the Hearing: The Board of Supervisors or the Hearing Officer may grant reasonable extensions of time to abate the zoning violation(s) upon good cause shown for such extension.

C. FAILURE OF PROPERTY OWNER OR OCCUPANT TO ABATE; AUTHORITY TO ABATE ZONING VIOLATION(S)

If the occupant or property owner fails to abate the zoning violation(s) within the time specified by the Hearing officer, Board of Supervisors, or the Director, and is not granted a time extension, the Director is authorized to abate the zoning violation(s) described in the Notice of Determination and Order of Abatement and collect abatement expenses in the manner described in section 882.2.E, et seq.

D. RIGHT TO APPEAL DECISION

1. Any interested party may appeal the decision of the Hearing Officer to the Board of Supervisors by filing a written notice stating the grounds upon which such party is appealing. Such appeal shall be filed with the Director within the thirty (30) day period of notice to abate the zoning violation(s). Requests for appeal will require the remittance of any applicable fee. The appeal shall set forth the following:
 - a. A brief statement setting forth the applicant's ownership interest in the subject property wherein the zoning violation(s) exists, including identification of the property by street address and assessor's parcel number (APN).
 - b. A brief statement of the material facts which the applicant claims support his or her contention that no zoning violation(s) exist and why abatement expenses should not be imposed as prescribed in this section; and
 - c. An address at which the applicant agrees notice of any additional proceedings or an order(s) relating to this abatement or the imposition of the abatement expense may be received by first class mail, postage prepaid.
2. The filing of appeal shall stay the effectiveness of the Order of Abatement until such time as the case has been decided by the Board of Supervisors, which decision shall be rendered in accordance with the procedure in section 882.2-B.1.
3. Any interested person being aggrieved by the determination and final actions of the Hearing Officer or Board of Supervisors zoning violation abatement proceeding may, within thirty (30) days after the date of notice to the property owner(s) of the decision, bring an action in a court of competent jurisdiction to contest the validity of the proceeding.

E. SALE OF MATERIALS OBTAINED IN ABATEMENT OF ZONING VIOLATION

Any materials obtained from the abatement violations of this zoning ordinance may be sold by the county at public sale to the highest responsible bidder after not less than ten (10) days notice of the intended sale, published at least once in a newspaper of general circulation in the county, either before or after the zoning violation is abated.

1. Abatement Expense Statement – posting: The Director shall cause to be conspicuously posted on the property from which the violation was abated a statement of abatement expenses, verified by the Director, showing the expenses of abatement, together with a notice of the time and place that the statement will be submitted to the Board of Supervisors for approval and confirmation.
2. Notice to Owners of Abatement Expense: A copy of the Abatement Statement shall be mailed to the property owner(s) in the manner prescribed in section 882.2-A. The time for submitting the Abatement Statement to the Board of Supervisors for confirmation shall not be less than ten (10) days from the posting and mailing of said Abatement Expense Statement.
 - a. The Abatement Expense Statement shall state the time and place the Board of Supervisors shall consider objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such abatement work, and any other interested person.

F. ABATEMENT EXPENSE STATEMENT – HEARING

At the time fixed for hearing objections or protests to the Abatement Expense Statement the Board of Supervisors shall consider the Statement together with any objections or protests which may be raised. The Board of Supervisors may make such revision, correction or modification in the Statement as it may deem just. The Board's decisions on the Statement, protests and objections shall be final and conclusive. The Board may adjourn or continue the hearing from time to time. Notice of the Board's decision shall be mailed to owner(s) in accordance with the provisions of 882.2-A.

G. COLLECTION OF UNRECOVERED COSTS

1. In the event that the cost of abating the zoning violation(s) exceeds the proceeds received from the sale of materials, if any, such unrecovered costs, if not paid within ten (10) days after the Board of Supervisors' decision, shall constitute a special assessment on the real property from which the zoning violation(s) was abated.
2. Immediately upon the confirmation of the assessment by the Board, the Director shall execute and file in the office of the County Recorder of Fresno County a Notice of Abatement Lien in the amount no greater than the total cost of abatement appearing in the Abatement Statement earlier approved by the Board of Supervisors. The Notice of Abatement Lien shall be in substantially the following form:

NOTICE OF ABATEMENT LIEN

Pursuant to the authority vested in the Director by the provisions of []
the ZONING Ordinance of the County of Fresno, said Director of the
Planning and Resource Management did on or about the _____

day of _____, 20 ____, cause the premises on the property hereinafter described to be abated in order to abate a zoning violation(s) on said real property, and the Board of Supervisors of the County of Fresno did on the _____ day of _____, 20 ____, assess the cost of such abatement upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said County of Fresno does hereby claim a lien on said real property for the net expense of the doing of said abatement in the amount of said assessment, to wit; the sum of \$_____, and the same shall be a lien upon said real property until the sum has been paid in full and discharged of record.

The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the County of Fresno, State of California, and particularly described as follows:

(DESCRIPTION OF PROPERTY)

Dated: This ____ day of ____, 20 ____

Director of Planning & Resource Management Department,
County of Fresno

3. Upon recordation, the Notice of Abatement Lien shall have the same effect as recordation of an abstract of money judgment. The Notice of Abatement Lien shall have the same priority as a judgment lien recorded against real property and continues in effect until released. Upon the order of the Board of Supervisors, or upon the order of the Director who is authorized to act on behalf of the Board of Supervisors in the releasing or subordination of liens under section 882.2-G.2, any Abatement Lien created under this Chapter may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.
4. The Notice of Abatement Lien after recording shall be delivered to the Auditor of Fresno County, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The Notice of Abatement Lien shall be delivered to the Auditor before the date fixed by law for the delivery of the assessment book to the County Board of Equalization.
5. Thereafter the amount set forth in the Abatement Lien shall be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and to the same procedure for sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes shall be applicable to such special assessment, except if any real property to which such cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or a lien of a bona fide encumbrancer for value has been created and attaches to the real property prior to the date upon which the first installment of county taxes would become delinquent, then such cost of abatement shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.

6. From the date of recording the Notice of Abatement Lien, all persons shall be deemed to have notice of the contents thereof.

H. REFUND OF EXCESS RECEIPTS FROM SALE OF MATERIALS

In the event that the amounts received from the sale of materials exceed the expenses of removing or otherwise abating the zoning violation(s), such excess shall be deposited with the Treasurer of the county to the credit of the owner of such Property or to such other person legally entitled thereto. Such excess shall be payable to the owner or such other person upon evidence of ownership, satisfactory to the Treasurer.

I. REFUND OF ERRONEOUS TAX LEVY

The Board may order a refund of all or part of a tax paid pursuant to this Chapter if it finds that all or part of the tax has been erroneously levied. A tax or part thereof shall not be refunded unless a claim is filed with the Clerk to the Board of Supervisors on or before November 1 after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his/her guardian, executor or administrator.

J. REMEDIES OF PRIVATE PARTIES

The provisions of this Chapter shall in no way affect the right of the owner, lessee or occupant of any such property to recover all costs and expenses required by this article from any person causing such zoning violation.

K. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Chapter 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 Board of Supervisors hereby declares that it would have adopted this ordinance and Chapter and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions be declared invalid or unconstitutional. If for any reason this or any part thereof shall be declared invalid or unconstitutional, then all other provisions thereof shall remain valid and enforceable.

(Added by Ord. T-062-333 adopted 5-2-00)

SECTION 883

PENALTIES FOR VIOLATION

Any person, firm, or corporation, whether principal, agent, employee, or otherwise, violating or causing the violation of any of the provisions of this Division shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred (500) dollars, or by imprisonment in the County Jail for a term not to exceed six (6) months, or by both such fine and imprisonment, unless otherwise provided. Such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this Division is committed or continued by such person, firm, or corporation and shall be punishable as herein provided.

SECTION 884

VALIDITY

If any section, sentence, clause, or phrase of this Division is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Division. The Board of the County of Fresno hereby declares that it would have passed and does hereby pass this Division and each section, sentence, clause, and phrase hereof, irrespective of the fact that any one (1) or more sections, sentences, clauses, or phrases be declared invalid, or unconstitutional.