

CHAPTER 3

SUBDIVISIONS

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CHAPTER 3

SUBDIVISIONS

PART 1 PURPOSE, INTENT AND APPLICABILITY OF SUBDIVISION CODE

9311 PURPOSE, INTENT AND APPLICABILITY OF SUBDIVISION CODE

a Title

Article 9, Chapter 3, of the Tustin City Code is and may be cited as the Subdivision Code of the City of Tustin, hereafter referred to as "the Subdivision Code."

b Purpose and Intent

The purpose of the Subdivision Code is to implement the Subdivision Map Act of the State of California related to the division of land within or partially within the City of Tustin by establishing regulations concerning the design, improvement, and survey data of subdivisions, the form and content of all required maps provided under the Subdivision Map Act, and the procedure to be followed in securing the official approval of the City regarding the maps. To fulfill these purposes, the intent of the Subdivision Code is to:

1. Promote orderly growth and development to preserve the public health, safety and general welfare;
2. Promote open space, conservation, protection, and proper use of land; and,
3. Provide for adequate traffic circulation, utilities, and other services in the City.

c Authority and Relationship to General Plan

The Subdivision Code is enacted based upon authority vested in the City of Tustin by the State of California, including but not limited to: the State Constitution and the Subdivision Map Act (Government Code Sections 66410 et seq.)

The Subdivision Code is a tool used by the City of Tustin to implement the goals, objectives and policies established in the Tustin General Plan.

d Applicability of Subdivision Code

The Subdivision Code shall apply to all divisions of land within or partially within the City of Tustin, except as provided in 9313 (Exemptions from Subdivision Requirements).

Every division of land proposed within or partially within the City of Tustin shall be consistent with the Tustin General Plan, any applicable Specific Plan, Article 9, Chapter 2 (Zoning Code) and other applicable provisions of the Tustin City Code.

The type and intensity of land use as shown on the General Plan, any applicable Specific Plan, Article 9, Chapter 2, (Zoning Code), or other applicable provisions of the Tustin City Code

shall determine, together with the requirements of the Subdivision Map Act and the Subdivision Code, the type of streets, roads, highways, utilities, and other public services that shall be provided by the subdivider.

e Responsibility and Delegation of Authority

The Subdivision Code shall be administered by the Tustin City Attorney, City Council, City Engineer, Community Development Director, Community Services Director and Planning Commission as follows:

1. City Attorney. The City Attorney shall be responsible for approving as to form all subdivision improvement agreements and security, all governing documents for a common interest development, covenants, conditions and restrictions. The City Attorney shall also have the authority to make legal interpretations of the Subdivision Code.
2. City Council. The City Council shall be the Legislative Body as identified in the Subdivision Map Act and shall have the responsibility and authority to conduct public hearings, and approve, impose conditions or disapprove subdivisions in compliance with 9321.b (Authority for Subdivision Decisions).
3. City Engineer. The City Engineer shall be responsible for:
 - (a) Determining if proposed subdivision improvements comply with the Subdivision Code;
 - (b) Examining and certifying that final maps are in substantial compliance with the approved tentative maps;
 - (c) Processing and approving subdivision public improvement plans;
 - (d) Establishing design and construction standards for public improvements;
 - (e) Preparing subdivision improvement agreements;
 - (f) Inspecting, approving and accepting subdivision public improvements; and,
 - (g) Processing of lot line adjustments.
4. Community Development Director. The Community Development Director shall be responsible for:
 - (a) Processing of tentative tract and tentative parcel maps, final maps, reversion to acreage maps, certificates of compliance, mergers, and amended maps;
 - (b) Establishing design and construction standards for private improvements;
 - (c) Processing and approving subdivision private improvement plans;
 - (d) Processing and approving proposed street names; and,
 - (e) Inspecting, approving and accepting subdivision private improvements.
5. Community Services Director. The Community Services Director shall be responsible for determining if the proposed park land dedications and/or recreation improvements related to a subdivision comply with the Subdivision Code.

6. Planning Commission. The Planning Commission shall be the Advisory Agency as identified in the Subdivision Map Act and shall have the responsibility to review and recommend to the City Council actions, findings and conditions pertinent to the application for a division of land in compliance with 9321.b (Authority for Subdivision Decisions).

f Modification of Local Requirements

Whenever the land involved in any subdivision is of a size or shape, subject to title limitations of record, affected by topographical location or conditions, or to be devoted to a use that is impossible or impracticable in the particular case for the subdivider to conform fully to the local regulations contained in the Subdivision Code, the Community Development Director may approve modifications to the local provisions of the Subdivision Code as are reasonably necessary or expedient to ensure conformity with the Subdivision Map Act. Except that the Director has no authority to waive provisions of the Subdivision Map Act. To the extent that provisions of the Subdivision Code conform to the Subdivision Map Act, they may not be waived.

g Effective Date of Subdivision Code

The provisions of the Subdivision Code area applicable as of the adoption of the Code by Ordinance of the City Council.

h Partial Invalidation of Subdivision Code

If any part, section, subsection, paragraph, subparagraph, sentence, clause, phrase or portion of the Subdivision Code is held to be invalid, unconstitutional or unenforceable by a court of competent jurisdiction, these decisions shall not affect the validity of the remaining portions of the Subdivision Code. The Tustin City Council hereby declares that the Subdivision Code, and each part, section, subsection, paragraph, subparagraph, sentence, clause, phrase and portion thereof would have been adopted irrespective of the fact that one (1) or more portions of the Subdivision Code may be declared invalid, unconstitutional or unenforceable. (Ord. No. 1177, Sec. 2, 2-18-97)

9312 MAPS REQUIRED

a Division of Land; Five or More Parcels

A tentative and final tract map shall be required for all division of land when determined by the Community Development Department that such land may be divided into five (5) or more parcels, five (5) or more condominiums, a community apartment project containing five (5) or more parcels, or for the conversion of a dwelling to a stock cooperative containing five (5) or more dwelling units, unless the subdivision activity is listed in 9313 (Exemptions from Tentative Tract Map Requirements).

b Divisions of Land; Four or Less Parcels

A tentative and final parcel map shall be required for all divisions of land when determined by the Community Development Department that such land may be divided into four (4) or less parcels, unless the subdivision activity is listed in 9313.c (Exemptions from Tentative Parcel Map Requirements). In the interest of ensuring compliance with the Tustin General Plan, Zoning Code, and any applicable specific plan, the Director may require, at the Director's discretion, a tentative tract map where a tentative parcel map is required. (Ord. No. 1177, Sec. 2, 2-18-97)

9313 EXEMPTIONS FROM SUBDIVISION REQUIREMENTS**a Exemptions from the Subdivision Code**

The following activities shall be exempt from the requirements of the Subdivision Code:

1. Those activities identified in Sections 66412 (except subsection (d) related to Lot Line Adjustments), 66412.1, 66412.2 or 66426.5 of the Subdivision Map Act; and,
2. The subdivision of four (4) parcels or less for construction of removable commercial buildings having a floor area of less than one hundred (100) square feet.

b Exemptions from Tentative Tract Map Requirements

A tentative tract map and final tract map shall not be required under any of the following circumstances:

1. The land before division contains less than five (5) acres, each parcel created by the division abuts upon a maintained public street or highway and no dedications or improvements are required by the City;
2. Each parcel created by the division has a gross area of twenty (20) acres or more and has an approved access to a maintained public street or highway;
3. The land consists of a parcel or parcels of land having approved access to a public street or highway which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the City as to street alignments and widths;
4. Each parcel created by the division has a gross area of not less than forty (40) acres or is not less than a quarter ($\frac{1}{4}$) of a quarter ($\frac{1}{4}$) section; or
5. The land is subdivided, prior to January 1, 2003, solely for the creation of any environmental subdivision pursuant to Section 66418.2 of the Subdivision Map Act.

A tentative parcel map and final parcel map shall be required unless waived by the Director in compliance with 9314 (Waiver of Subdivision Requirements).

c Exemption from Tentative Parcel Map Requirements

The following activities shall be exempt from the requirements of a tentative parcel and final parcel map:

1. Subdivisions of a portion of the operating right-of-way of a railroad corporation, defined by Section 230 of the State Public Utilities Code, which are created by short-term leases (terminable by either party on not more than thirty (30) days, notice in writing).
2. Land conveyed to or from a governmental agency, public entity or public utility, or for land conveyed to a subsidiary of a public utility for conveyance to such public utility for rights-of-way, unless a finding is made by the Director in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subsection, land conveyed to or from a governmental agency shall include a fee interest, an easement or a license.

(Ord. No. 1177, Sec. 2, 2-18-97)

9314 WAIVER OF SUBDIVISION REQUIREMENTS

a Waiver of Tentative Tract, Tentative Parcel Map and Final Map Requirements

The requirements for a tentative tract map, tentative parcel map or final map may be waived, in whole or part, at the discretion of the Director and after consultation with the City Engineer, for the following activities:

1. Division of real property or interests therein created by probate, eminent domain procedures, partition, or other civil judgments or decrees.
2. Divisions of real property resulting from the conveyance of land or any interest therein to or from the City, public entity or public utility for a public purpose, such as school sites, public building sites, or rights-of-way or easements for streets, sewers, utilities, drainage, etc.
3. The unmerger, in accordance with the Subdivision Map Act and the Subdivision Code, of real property with has been merged pursuant to the Subdivision Code, the Subdivision Map Act or any prior ordinance of the City.

b Waiver Findings

The requirements for a tentative tract map, tentative parcel map or final map shall not be waived, in whole or in part, unless the Director makes a finding that the proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act, the Subdivision Code and the Tustin General Plan, any applicable Specific Plan, Article 9, Chapter 2 (Zoning Code) and other applicable provisions of the Tustin City Code.

c Certificate of Compliance Required

The Director shall file with the County Recorder a Certificate of Compliance for the land to be divided, in compliance with 9333.c, (Certificate of Compliance), and a plat map showing the division. The certificate of compliance shall include a documentation by the County Tax Collector in compliance with 9325.b.4 (Tax Certificate).

Conditions may be imposed to provide for, among other things, payment by the subdivider of parkland dedication, drainage, and other fees that are permitted under the Subdivision Code, the Subdivision Map Act, or other relevant law.

The decision of the Director shall be considered final unless an appeal is filed in compliance with 9321.g (Appeals). The decision of the Director, or any condition of approval, is appealable to the Commission. The decision of the Commission, or any condition of approval, is appealable to the Council.

(Ord. No. 1177, Sec. 2, 2-18-97)

PART 2 SUBDIVISION PROCESSING

9321 SUBDIVISION AUTHORITY AND INITIAL APPLICATION FILING

a Introduction

This part provides procedures and requirements for the preparation, filing and processing of applications for divisions of land required by the Subdivision Code.

b Authority for Subdivision Decisions

Table 2-1 (Review Authority) identifies the City official or body responsible for reviewing and making decisions on each type of application for divisions of land required by the Subdivision Code.

Table 2-1
Review Authority

<i>Type of division</i>	<i>Decision Body</i>	<i>Appeal Body</i>
Certificate of Compliance	Director	Commission ¹
Final Maps	Council	—
Lot Line Adjustments	Council	—
Parcel Mergers	Commission	Council
Reversion to Acreage	Council	—
Tentative Maps, including Vesting	Council ²	—

¹ The Commission's decision may be appealed to the Council.

² The Planning Commission shall make recommendations to the City Council.

In the case of concurrent review of other Land Use Approvals required by Article 9, Chapter 2 (Zoning), final determination shall be made at the highest level of review authority.

c Application Filing and Fees

1. Application Contents. Applications for divisions of land shall be filed with the Department. The Department will consider an application complete when:

- (a) All necessary forms, materials and exhibits as identified in the City's Subdivision Manual have been provided and accepted as adequate; and,
- (b) All necessary application fees and/or deposits have been accepted.

The tentative tract map, tentative parcel map, final map and other drawings which are to be ultimately recorded shall be prepared by a registered civil engineer or licensed land surveyor. The maps and exhibits shall be clearly drawn and contain the necessary information as determined by the Department. The Department may also require additional materials, exhibits, data or information determined necessary to accomplish the purposes of the Subdivision Map Act and/or the Subdivision Code.

2. Eligibility for Filing. Applications may be made by the owner of the subject property or by any other person, with the written consent of the property owner.

d Initial Application Review/Environmental Assessment

All applications filed with the Department in compliance with the Subdivision Code shall be initially processed as follows:

1. Review for Completeness. The Department shall review all applications for accuracy before they are accepted as being complete.

(a) Notification of Applicant. The applicant shall be informed, as required by the Government Code, either that the application is complete and has been accepted for processing, or that the application is incomplete and that additional information, specified in the letter, must be provided.

(b) Environmental Information. The Department may require the applicant to submit such additional information as may be deemed reasonably necessary for environmental review of the project in compliance with 9321.d.3 (Environmental Assessment).

(c) Expiration of Application. If a pending application is not capable of being deemed complete within six (6) months after the first filing with the Department, the application shall be deemed withdrawn unless an extension is granted by the Director. A new application, including fees, plans, exhibits and other materials, will be required to commence processing of any subdivision on the same property.

2. Referral of Application. At the discretion of the Director, or where otherwise required by the Subdivision Map Act, any application filed may be referred to any public agency that may be affected or have an interest in the proposed subdivision.

3. **Environmental Assessment.** All subdivision applications shall be reviewed as required by the California Environmental Quality Act (CEQA) to determine whether the proposed subdivision is exempt from the requirements or is not a project as defined by CEQA, whether a Negative Declaration may be issued, or whether an Environmental Impact Report shall be required. These determinations and, where required, the preparation of environmental documents shall be in compliance with CEQA and other guidelines established by the Department.

e **Notice to Affected Agencies and Utilities**

With five (5) days of determining a tentative parcel or tentative tract map application complete, the Department shall:

1. Send notice and a copy of the tentative parcel or tentative tract map to the affected public agencies and utilities which may, in turn, forward to the Department their findings and recommendations. The agency or utility may send a written report to the Planning Commission. The report shall indicate the impact of the proposed subdivision on the agency or utility and shall make recommendations as deemed appropriate. If a written report is made by an agency or utility, such report may be returned to the City within fifteen (15) days of receipt of the proposed tentative map. In the event that an agency or utility fails to respond within the fifteen (15) day period, such failure to respond shall be deemed approval of the proposed subdivision by the agency or utility; and
2. Send a notice and a copy of the tentative parcel or tentative tract map application by certified mail to the governing board of the affected public School Districts. The notice shall contain information about the location of the proposed subdivision, the number of units, density, and any other information which would be relevant to the affected School District(s). The governing board(s) of the affected School District(s) may review the notice and may send a written report to the Planning Commission. The report shall indicate the impact of the proposed subdivision on the affected public School District(s) and may make such recommendations as the governing board of the affected School District(s) deems appropriate. If a written report is made by the governing board, such report shall be returned to the City within fifteen (15) days of receipt of the proposed tentative map. In the event that the District fails to respond within the fifteen (15) day period, such failure to respond shall be deemed approval of the proposed subdivision by the affected public School Districts.

The Planning Commission shall consider any reports from affected agencies, utilities or School Districts in approving, conditionally approving, or denying the tentative map application.

f **Public Hearings**

When a subdivision application requires a public hearing, the public shall be provided with notice of hearing(s) in compliance with State law (Government Code Sections 65090 and

65091). Additional noticing time as specified may be required to comply with noticing requirements of the California Environmental Quality Act. In the event of a conflict between required noticing times, the longer time shall be given.

A proposed conversion of residential real property to a condominium, community apartment, or stock cooperative project shall be noticed in accordance with Sections 66452.8 through 66452.10 of the Subdivision Map Act.

Notice shall also be given by mail or personal delivery to any person who has filed a written request with the City. A request may be submitted at any time during the calendar year and shall apply for the balance of the calendar year.

The Department may give such other notice that it deems necessary or advisable. Substantial compliance with these provisions for notice shall be sufficient, and a technical failure to comply shall not affect the validity of any action taken according to the procedures in the Subdivision Code.

g Appeals

The subdivider, or any other interested party, may appeal any action of the decision body to the appeal body as identified in 9321.b (Authority for Subdivision Decisions). Appeals shall be submitted in writing and filed with the Department. The appeal shall specifically state the pertinent facts of the case and the basis for the appeal. Appeals shall be filed with the Department within ten (10) calendar days of the decision body's action. Appeals shall be accompanied by the filing fee set by resolution of the Council.

The appeal shall be scheduled for consideration by the appropriate appeal body identified in 9321.b (Authority for Subdivision Decisions) within thirty (30) days of receipt of an appeal, with the same noticing as required by Section 9321.f (Public Hearings).

At the hearing, the appeal body shall conduct a de novo review, may consider any issue involving the matter that is the subject of the appeal, and shall not be limited to a consideration of the specific grounds listed in the appeal.

1. The appeal body may affirm, affirm in part, or reverse the action or determination of the decision-making body that is the subject of appeal.
2. When reviewing an appeal, the appeal body may adopt additional conditions of approval that may address other issues or concerns that the subject of the appeal.
3. If new or different evidence is presented on appeal, the appeal body may, but shall not be required to, refer the matter to the decision-making body for further consideration.

Any action taken by the Appeal Body shall be supported by appropriate findings.

h Expirations/Time Extensions

1. Expirations. The approval of a tentative parcel or tentative tract map shall expire twenty-four (24) months from the date of its approval. However, where the subdivider is required to expend an amount as prescribed in Section 66452.6 of the Subdivision

Map Act to construct, improve or finance the construction or improvement of public improvements outside the boundaries of the tentative map, excluding improvements of public rights-of-way which abut the property being subdivided, or if the tentative map is on property subject to a development agreement authorized by Section 65864 et seq. of the Government Code, then the expiration of the tentative tract or parcel map shall be governed by Section 66452.6 of the Subdivision Map Act.

2. Time Extensions

- (a) **Request by Subdivider.** The subdivider may request an extension of the expiration date of the approved tentative parcel or tentative tract map by filing a written request with the Department and paying applicable fees as established by Council resolution. The application shall be filed not less than thirty (30) days before the map is scheduled to expire and shall state the reason(s) for request. The filing of such application automatically extends the map for sixty (60) days or until the extension is acted on, whichever occurs first. The decision-making body shall determine whether the subdivider has made a good faith effort to establish the subdivision. The burden of proof is on the subdivider to establish, with substantial evidence, why the tentative tract or tentative parcel map should be extended. If the decision-making body determines that the permittee has proceeded in good faith and has exercised due diligence in seeking to establish the subdivision, the time extension shall be granted. The decision-making body may, if appropriate findings are made, impose new conditions and may require that the applicant pay any new or increased development fees which have been imposed since the date of original approval of the tentative parcel or tentative tract map.
- (b) **Hearing on Time Extension.** If the matter originally required a noticed public hearing, the decision-making body shall hold a public hearing on the proposed time extension and given notice in compliance with 9321.f (Public Hearings).
- (c) **Time Limit of Extensions.** The time for which a tentative parcel or tentative tract map may be extended by discretionary approval of the decision-making body shall not exceed a total of five (5) years beyond the original expiration date.
- (d) **Appeals.** The subdivider, or any other interested party, may appeal any action of the decision-making body with respect to the time extension, or any new condition or development fee imposed, to the appeal body in compliance with 9321.g (Appeals). (Ord. No. 1177, Sec. 2, 2-18-97)

9322 LOT LINE ADJUSTMENTS

a Purpose

The purpose of this section is to provide for the submittal and processing of lot line adjustments in compliance with the Subdivision Code. (Ord. No. 1314, Sec. II, 9-5-06)

b Applicability

An application for a lot line adjustment shall be filed with the Department in compliance with subsection 9321.c (application filing and fees). The lot line adjustment shall be prepared in a manner acceptable to the City Engineer and shall be prepared by a registered civil engineer or licensed land surveyor. The lot line adjustment shall be clearly and legibly drawn and shall contain the information identified in the City's Subdivision Manual, unless waived by the City Engineer. The City Engineer may also require additional materials, exhibits, data, or information as deemed necessary to accomplish the purposes of the Subdivision Map Act and the Subdivision Code. Lot line adjustment applications shall be determined to be complete by the Engineering Division only when:

1. All necessary application forms, materials, and exhibits as established by the Public Works Department/Engineering Division are accepted as adequate;
2. A legal description of the parcels with proposed adjustments, signed by a California Registered Civil Engineer or Licensed Land Surveyor is accepted as adequate;
3. Traverse with closures for proposed adjustments are accepted as adequate;
4. A preliminary title report showing the legal owners and any encumbrances and easements is accepted as adequate. Said title report shall be updated every six (6) months from the date of the original submittal until final action is taken on the application;
5. A site plan of the parcels showing all existing and proposed structures and site improvements with the adjustments to ensure compliance with applicable zoning and building codes is accepted as adequate; and,
6. All fees and/or deposits have been submitted and accepted.

Lot line adjustments may be considered by the Council in compliance with subsection 9321.b (authority for subdivision decisions) without a public hearing.

An application for approval of a lot line adjustment in compliance with this part shall be submitted prior to or concurrently with all applications for other necessary discretionary approvals for the development.

Any request which would create a greater number of properties shall require the filing of a tentative parcel or tentative tract map in compliance with Section 9323 (Tentative Parcel and Tentative Tract Maps), or as may otherwise be provided by the Subdivision Code. (Ord. No. 1314, Sec. III, 9-5-06)

c Application Processing and Review

Each application shall be analyzed by the Department to ensure that the application is consistent with the purpose and intent of this section.

Upon determination of a complete lot line adjustment application, the Public Works Department/Engineering Division shall forward the matter to the Council. The Council shall

take action to approve, approve with conditions, or deny the lot line adjustment. Any action taken by the Council, and any conditions imposed, shall ensure compliance with applicable zoning and building codes.

d Findings and Decision

The Council shall record its decision in writing with the findings upon which the decision is based. The Council may approve an application for a lot line adjustment, with or without conditions, if the following findings are made:

1. A greater number of parcels would not be created with the approval of the lot line adjustment;
2. The proposed adjustments involve four (4) or fewer existing adjoining parcels;
3. The proposed adjustments to the existing parcels result in compliance with applicable general plan, zoning and building codes; and
4. The proposed adjustments are in compliance with the City's Subdivision Code and the Subdivision Map Act. (Ord. No. 1314, Sec. IV, 9-5-06)

e Post Approval Procedures

1. Appeals. The decision of the Council is final.
2. Expiration/Extensions. Upon approval, and satisfaction of any conditions imposed, the Public Works/Engineering Division shall transmit the approved lot line adjustment to the County Recorder's Office. A lot line adjustment shall be recorded within two (2) years from the date of approval or other time frame that may be established with the lot line adjustment approval. Time extensions may be granted in compliance with subsection 9321.h (expirations/time extensions). If a lot line adjustment is not exercised within the established time frame and a time extension is not granted, the lot line adjustment shall be deemed to have expired. (Ord. No. 1177, Sec. 2, 2-18-97; Ord. No. 1314, Sec. V, 9-5-06)

9323 TENTATIVE PARCEL AND TENTATIVE TRACT MAPS

a Purpose

The purpose of this section is to provide for the submittal and processing of tentative parcel and tentative tract maps for the subdivision of land in compliance with the Subdivision Code.

b Applicability

An application for a tentative parcel or tentative tract map shall be filed with the Department in compliance with 9321.c (Application Filing and Fees). In addition, the tentative parcel or tentative tract map shall be prepared in a manner acceptable to the Community Development Department and shall be prepared by a registered civil engineer or licensed land surveyor. The tentative parcel map or tentative tract map shall be clearly and legibly drawn

and shall contain the information identified in the City's Subdivision Manual, unless waived by the Director or the City Engineer. The Department may also require additional materials, exhibits, data, or information as deemed necessary to accomplish the purposes of the Subdivision Map Act and the Subdivision Code. Tentative parcel and tentative tract map applications shall be determined to be complete by the Department only when:

1. All necessary application forms, materials and exhibits as established by the Department are accepted as adequate;
2. A preliminary soils, geology and seismicity report prepared in accordance with the Uniform Building Code and City's Grading Manual is accepted as adequate;
3. A preliminary title report showing the legal owners and any encumbrances and easements is accepted as adequate by the City Engineer. Said title report shall be updated every six (6) months from the date of original submittal until final action is taken on the application;
4. All necessary determinations and documents to comply with the California Environmental Quality Act have been certified or adopted; and,
5. All fees and/or deposits have been submitted and accepted.

Tentative parcel and tentative tract shall be considered by the Commission and Council in compliance with 9321.b (Authority for Subdivision Decisions), with a noticed public hearing.

An application for approval of a tentative parcel or tentative tract map in compliance with the Subdivision Code shall be submitted prior to or concurrently with all applications for other necessary discretionary City approvals for the development.

c Application Processing

Each application shall be analyzed by the Department to ensure that the proposed subdivision is consistent with the requirements of the Subdivision Map Act, Subdivision Code, Tustin General Plan, any applicable Specific Plan, Article 9, Chapter 2, (Zoning Code) and other applicable provisions of the Tustin City Code and state law.

An application for a tentative parcel or tentative tract map will be scheduled for a public hearing before the Commission when the Department has determined the application complete. Noticing of the public hearing will be given in compliance with 9321.f (Public Hearings).

The Commission shall recommend to the Council, after a public hearing, actions, findings, and conditions related to the tentative parcel or tentative tract map within the time frames established by the Subdivision Map Act or other relevant law. All applicable time frames for the Commission to recommend on the tentative parcel or tentative tract map application specified by the Subdivision Map Act, or other relevant law, may be extended by mutual consent of the subdivider and the Commission.

After a recommendation has been made by the Commission, the tentative parcel or tentative tract map application will be scheduled for a public hearing before the City Council. Noticing of the public hearing will be given in compliance with 9321.f (Public Hearings).

The Council shall take action, after a public hearing, to approve, approve with conditions or deny the tentative parcel or tentative tract map within the time frames established by the Subdivision Map Act or other relevant law. All applicable time frames for the Council to act on the tentative parcel or tentative tract map application specified by the Subdivision Map Act, or other relevant law, may be extended by mutual consent of the subdivider and the Council.

d Findings and Decision

The Council shall record its decision in writing with the findings upon which the decision is based. The Council may approve an application for a tentative parcel or tentative tract map, with or without conditions, supported by the findings required by the Subdivision Map Act and by the findings required by the California Environmental Quality Act.

e Conditions of Approval

In approving a tentative parcel or tentative tract map, the decision-making body may impose conditions deemed necessary to ensure that the approval will be in compliance with the findings required by 9323.d (Findings and Decision).

The decision-making body may require, as a condition of its approval, that the payment by the subdivider of all development fees required to be paid be made at the rate for such fees in effect at the time of permit issuance.

f Post Approval Procedures

1. Appeals. The decision of the Council is final.
2. Time Extensions. Time extensions may be granted in compliance with 9321.h (Time Extensions). If a tentative parcel or tentative tract map is not recorded within the established time frame, and a time extension is not granted, the tentative parcel or tentative tract map shall be deemed to have expired.

(Ord. No. 1177, Sec. 2, 2-18-97)

9324 VESTING TENTATIVE PARCEL AND VESTING TENTATIVE TRACT MAPS

a Purpose

The purpose of this section is to provide for the submittal and processing of vesting tentative parcel and vesting tentative tract maps for the subdivision of land in compliance with the Subdivision Code.

b Applicability

Whenever a provision of the Subdivision Map Act or the Subdivision Code requires or authorizes the filing of a tentative parcel or tentative tract map, a vesting tentative parcel or vesting tentative tract map may be filed instead. The filing of a vesting tentative parcel or vesting tentative tract map, as opposed to a tentative tract map or parcel map, shall not be a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

An application for a vesting tentative parcel or vesting tentative tract map shall be filed with the Department in compliance with 9321.c (Application Filing and Fees). The vesting tentative parcel or vesting tentative tract map shall be prepared in a manner acceptable to the Department and shall be prepared by a registered civil engineer or licensed land surveyor. The vesting tentative parcel map or vesting tentative tract map shall be clearly and legibly drawn and shall contain the information identified in the City's Subdivision Manual, unless waived by the Director. The Department may also require additional materials, exhibits, data or information as deemed necessary to accomplish the purposes of the Subdivision Map Act and the Subdivision Code. Vesting tentative parcel and vesting tentative tract map applications shall be determined to be complete by the Department only when:

1. All necessary application forms, materials and exhibits as established by the Department are accepted as adequate;
2. A preliminary soils, geology, seismicity report prepared in accordance with the Uniform Building Code and City's Grading Manual is accepted as adequate;
3. A preliminary title report showing the legal owners and any encumbrances and easements is accepted as adequate by the City Engineer. Said title report shall be updated every six (6) months from the date of the original submittal until final action on the application is taken;
4. All necessary determinations and documents to comply with the California Environmental Quality Act have been certified or adopted; and,
5. All fees and/or deposits have been submitted and accepted.

Vesting tentative parcel and vesting tentative tract maps shall be considered by the Commission and Council in compliance with 9321.b (Authority for Subdivision Decisions), with a noticed public hearing.

An application for approval of a vesting tentative parcel or vesting tentative tract map in compliance with the Subdivision Code shall be submitted concurrently with all applications for other necessary discretionary City approvals for the development.

c Application Processing

Each application shall be analyzed by the Department to ensure that the proposed subdivision is consistent with the requirements of the Subdivision Map Act, Subdivision Code, Tustin General Plan, any applicable Specific Plan, Article 9, Chapter 2 (Zoning Code) and other applicable provisions of the Tustin City Code and state law.

An application for a vesting tentative parcel or vesting tentative tract map will be processed in compliance with 9323 (Tentative Parcel and Tentative Tract Maps).

d Findings and Decision

The decision-making body shall record its decision in writing with the findings upon which the decision is based. The Council may approve an application for a vesting tentative parcel or vesting tentative tract map, with or without conditions, supported by the findings required by the Subdivision Map Act and by the findings required by the California Environmental Quality Act.

e Conditions of Approval

In approving a vesting tentative parcel or vesting tentative tract map, the Council may impose conditions deemed necessary to ensure that the approval will be in compliance with the findings required by 9324.d (Findings and Decision).

The Council may require, as a condition of its approval, that the payment by the subdivider of all development fees required to be paid be made at the rate for such fees in effect at the time of permit issuance.

f Post Approval Procedures

1. Appeals. The decision of the Council is final.
2. Time Extensions. Time extensions may be granted in compliance with 9321.h (Time Extensions). If a vesting tentative parcel or vesting tentative tract map is not recorded within the established time frame, and a time extension is not granted, the vesting tentative parcel or vesting tentative tract map shall be deemed to have expired.

g Rights of a Vesting Tentative Map

1. The approval of a vesting parcel map or vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards as described in Section 66474.2 of the Subdivision Map Act. However, if Section 66474.2 is repealed, the approval of a vesting tentative parcel or vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative parcel or vesting tentative tract map is approved or conditionally approved.
2. A permit, approval, extension, or entitlement sought after approval of a vesting tentative tract map or vesting tentative parcel map may be conditioned or denied if any of the following are determined:
 - (a) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or

- (b) The condition or denial is required to comply with state or federal law.
3. The rights referred to herein shall expire if a final map is not approved prior to the expiration of the vesting tentative parcel or tentative tract map. If the final map is approved, these rights shall last for the following periods of time:
- (a) An initial time period of one (1) year beyond the recording of the final parcel map or final tract map. When several final maps are recorded on various phases of a project covered by a single vesting tentative parcel or vesting tentative tract map, this one (1) year initial time period shall begin for each phase when the final map for that phase is recorded. All of the said final parcel maps or final tract maps must be recorded within the time period set forth in Section 9321.h (Time Extensions) or the vesting tentative parcel or vesting tentative tract map approval shall expire for those parcels for which final parcel maps or final tract maps are not timely recorded.
 - (b) The one (1) year initial time period shall be automatically extended by any time used for processing a complete application for a grading permit, if the time used by the City to process the application exceeds thirty (30) days from the date that a complete application is filed.
 - (c) If the subdivider submits a complete application for a building permit prior to the expiration of the vesting tentative tract map or vesting tentative parcel map, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.
4. An approved vesting tentative parcel or vesting tentative map shall not limit the City from imposing reasonable conditions on subsequent required approvals or permits necessary for the development in accordance with subdivision (g) (2) of this section.

(Ord. No. 1177, Sec. 2, 2-18-97)

9325 FINAL MAPS

a Purpose

The purpose of this section is to provide for the submittal and processing of final parcel and final tract maps in compliance with Subdivision Map Act and the Subdivision Code.

b Applicability and Exceptions

An application for a final parcel or final tract map may be filed with the Department in compliance with 9321.c (Application Filing and Fees). The final parcel or final tract map shall be prepared in a manner acceptable to the City Engineer and shall be prepared by a registered civil engineer or licensed surveyor. The final map shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on polyester base film and shall contain the information identified in the City's Subdivision Manual, unless waived by the City Engineer. In addition to the normal full size plan submittal, the approved version of all final maps shall be submitted to the Public Works Department/Engineering Division in

computer aided design and drafting (CADD) format consistent with CADD conventions and guidelines established by the Engineering Division. The City Engineer may also require additional materials, exhibits, data or information as deemed necessary to accomplish the purpose of the Subdivision Map Act and the Subdivision Code.

In addition, final parcel or final tract maps shall be accompanied by the following data and reports. The City Engineer or City Attorney may also require additional materials, exhibits, data or information as deemed necessary to accomplish the purposes of the Subdivision Map Act and the Subdivision Code. Final map applications shall be determined to be complete by the Public Works Department only when the following actions have been completed:

1. **Applications Forms.** All necessary application forms, materials and exhibits identified in the City's Subdivision Manual as established by the Public Works Department/Engineering Division are accepted as adequate;
2. **Improvement Plans.** Improvement plans as required by 9332 (Improvements) and by conditions of the tentative parcel or tentative tract map are accepted as adequate;
3. **Title Report.** A title report showing the legal owners and any encumbrances and easements accepted as adequate by the City Engineer. Said title report shall be updated every six (6) months from the date of the original submittal until final action on the application is taken;
4. **Tax Certificate.** A certificate from the County Tax Collector stating that all taxes due have been paid or that a tax bond or other adequate form of security assuring payment of all taxes which are a lien but not yet payable has been filed with the County;
5. **Deeds for Easements or Rights-of-way.** Deeds for off-site easements or rights-of-way required for road or drainage purposes which have not been dedicated on the final rights of entry or permanent easements across private property outside of the subdivision permitting or granting access to perform necessary construction work and permitting the maintenance of the facility have been accepted as adequate;
6. **Traverse Closures.** Traverse closures for the boundary blocks, lots, easements, street centerlines and monument lines have been accepted as adequate;
7. **Governing Documents.** For a common interest development within the meaning of Sections 1350 et seq. of the State Civil Code, conditions and restrictions containing the provisions described in Section 1353 of the Civil Code, and all other governing documents for the subdivision as are appropriate pursuant to Section 1363 of the Civil Code have been provided. All subdivisions other than a common interest development shall include any Declaration of Covenants, Conditions and Restrictions proposed in connection therewith. All documents shall be subject to review and approval by the Director of Community Development and City Attorney;
8. **Guarantee of Title.** A guarantee of title, in a form acceptable to the City Attorney, has been issued by a competent title company to and for the benefit and protection of the

City, which shall be maintained complete up to the instant of recording of the final map, guaranteeing that the names of all persons who consent is necessary to pass a clear title to the land being subdivided, and all public easements being offered for dedications, and all acknowledgements thereto, appear on the proper certificates and are correctly shown on the map, both as to consents as to the making thereof and affidavits of dedication where necessary;

9. Improvement Agreement. In the event sewer, water, drainage, grading, paving, or other required improvements have not been completed prior to the presentation of the final map, an agreement has been filed for the improvement thereof and accepted as adequate;
10. Liability Agreement and Insurance. A hold-harmless agreement obligating the subdivider to hold the City and its officers, agents and employees harmless from any liability for damages or claims for damages for personal injury or death to any person, and for injury to property which arise from the operations of the subdivider and/or the subdivider's subcontractors in connection with the subdivision has been filed and accepted by the City. A certificate of insurance reporting to the City the amount of insurance the subdivider carries for the subdividers's own liability for damages or claims for damages for personal injury or death to any person, and for injury to property which arise from the operations of the subdivider or subcontractors in connection with the subdivision naming the City as an additional insured has been filed and accepted by the City. The agreement and certificate required by this subsection shall be subject to prior review and approval by the City Engineer and City Attorney;
11. Fees and Deposits. All fees and/or deposits have been submitted and accepted; and
12. Corrections. Any and all corrections and/or additions to the final map have been made and are acceptable to the City Engineer.

c Multiple Final Maps

Multiple final maps relating to an approved or conditionally approved tentative parcel or tentative tract map may be filed prior to the expiration of the tentative map if the subdivider, at the time the tentative map application is filed, notifies the Director of Community Development in writing of the subdivider's intention to file multiple final maps on the tentative map. In providing the notice, the subdivider shall not be required to define the number or configuration of the proposed multiple maps. If the subdivider did not provide written notice of its intent to file multiple final maps at the time of the tentative map application was filed, multiple final maps may only be filed with the concurrence of the Director. The right of the subdivider to file multiple final maps shall not limit the City's authority to impose reasonable conditions relating to the filing of multiple maps.

Each final map which constitutes a part, or unit, of the approved or conditionally approved tentative map shall have a separate subdivision number. The subdivision improvement agreement executed by the subdivider shall provide for the construction of improvements as required to constitute a logical and orderly development of the whole subdivision.

d Application Processing and Review

Each application shall be analyzed by the Department to ensure that the application is consistent with the purpose and intent of the Subdivision Map Act and the Subdivision Code.

Upon determination of a complete final parcel or tract map, the Community Development Department shall forward the matter to the Council. The Council shall take action to approve, approve with conditions or deny the final parcel or tract map within the time frames established by the Subdivision Map Act.

e Findings and Decision

The Council shall record its decision in writing with the findings upon which the decision is based. The Council shall approve the final map if the City has previously approved a tentative parcel or tentative tract map for the proposed subdivision and if the Council finds that the final map is in substantial compliance with the requirements of the Subdivision Map Act, the Subdivision Code, the tentative parcel or tentative tract map and all conditions thereof.

f Conditions of Approval

If the Council approves the final map, it shall also accept, accept subject to improvement, or reject any offer of dedication. The City Clerk shall certify on the final map the action by the Council. If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities, or storm drainage easements are not accepted by the Council, the offer of dedication shall remain open and the Council may, by resolution adopted at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities, or storm drainage easements, which acceptance shall be recorded in the office of the County Recorder.

The City may accept any dedications lying outside the subdivision boundary which requires a separate grant deed. The acceptance shall be recorded in the office of the County Recorder.

g Post Approval Procedures

1. **City Engineer Signature.** The subdivider shall submit to the City Engineer the original tracing of the map and any duplicates per County requirements, corrected to its final form and signed by all parties required to execute the certificates on the map. Original signatures shall appear on the original drawing and on the blue-line duplicate. Upon receipt of all required certificates and submittals, the City Engineer shall sign the appropriate certificates and transmit the original map to the City Clerk.
2. **Filing with the County Recorder.** Upon approval of the final map by the Council, and signature by the City Engineer, the City Clerk shall execute the appropriate

certificate on the certificate sheet and shall, subject to the provisions of Section 66464 of the Subdivision Map Act, transmit the map, or have an authorized agent forward the map, to the County Recorder.

3. Survey Required. An accurate and complete survey of the land to be subdivided shall be made by a registered civil engineer authorized to practice land surveying or licensed land surveyor. All monuments, property lines, centerlines of streets, alleys and easements adjoining or within the subdivision shall be tied into the survey. The allowable error of closure on any portion of the final map shall not exceed $\frac{1}{10,000}$ for field closures and $\frac{1}{20,000}$ for calculated closures.

At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Professions Code so that another engineer or surveyor may readily retrace the survey. At least one (1) exterior boundary line shall be monumented prior to recording the final map. Other monuments shall be set prior to recording as required by the Director of Public Works.

(Ord. No. 1177, Sec. 2, 2-18-97)

9326 REVERSION TO ACREAGE

a Purpose

The purpose of this section is to provide for the submittal and processing of subdivided property reverted to acreage pursuant to the provisions of Section 66499.11 et seq. of the Subdivision Map Act and the Subdivision Code. This section shall apply to final parcel and final tract maps.

Subdivisions may also be merged and resubdivided without reverting to acreage pursuant to Section 66499.20-1/2 of the Subdivision Map Act and the Subdivision Code.

b Initiation of Proceedings

1. Proceedings to revert subdivided property to acreage may be initiated by petition of all of the owners of record of the property. The petition shall be in a form prescribed by the City Engineer. The petition shall contain the information required by the City's Subdivision Manual and any other information deemed necessary by the City Engineer to initiate and conduct the proceedings.
2. The City Council, at the request of any person or on its own motion may, by resolution, initiate proceedings to revert property to acreage. The City Council may direct the City Engineer to obtain the necessary information to initiate and conduct the proceedings. Reversions to acreage may be considered by the Council in compliance with 9321.b (Authority for Subdivision Decisions) with a noticed public hearing.

c Contents of Petition

In addition to other information required by the City, a petition shall contain, or be accompanied by, but not be limited to, the following:

1. Evidence of title to the real property;
2. At least one (1) of the following:
 - (a) Evidence of the consent of all of the owners of an interest in the property;
 - (b) Evidence that none of the improvements required to be made have been made within two (2) years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is later; or
 - (c) Evidence that no lots shown on the final or parcel map have been sold within five (5) years from the date such final or parcel map was filed for record;
3. A final parcel or final tract map in the form, and with the contents, in compliance with 9325 (Final Maps) and which delineates dedications which will not be vacated and dedications required as a condition to reversion. Final parcels or final tract maps shall be conspicuously designated with the title, "The Purpose of this Map is a Reversion to Acreage"; and,
4. Fees and/or deposits in accordance with adopted fee schedules.

d Submittal of Petition to the City Engineer

An application for a reversion to acreage shall be scheduled for a public hearing before the Council after the City Engineer has determined the application complete. Noticing of the public hearing will be given in compliance with 9321.f (Public Hearings).

e Findings and Decision

The Council shall record its decision in writing with the findings upon which the decision is based. The Council may approve the reversion to acreage, with or without conditions, supported by the findings required by Section 66499.16 of the Subdivision Map Act. The Council shall require as conditions of the reversion:

1. Dedication or offers of dedication for streets, public rights-of-way or easements necessary to accomplish the purposes of the Subdivision Code;
2. The retention of all or a portion of previously paid subdivision fees, deposits or improvement securities if the same are necessary to accomplish any of the purposes or provisions of the Subdivision Map Act or the Subdivision Code; and,
3. Such other conditions as are necessary to accomplish the purposes or provisions of the Subdivision Map Act or the Subdivision Code or necessary to protect the public health, safety or welfare.

f Post Approval Procedures

1. City Engineer Signature. The subdivider shall submit to the City Engineer the original tracing of the map and any duplicates per County requirements, corrected to its final form and signed by all parties required to execute the certificates on the map. Original signatures shall appear on the original drawing and on the blue-line duplicate. Upon receipt of all required certificates and submittals, the City Engineer shall sign the appropriate certificates and transmit the original map to the City Clerk.

When reversion becomes effective, all fees and deposits not retained per Section 9326.e (Findings and Decision) must be returned.

2. Filing with the County Recorder. Upon approval of the final map by the Council, and signature by the City Engineer, the City Clerk shall execute the appropriate certificate on the certificate sheet and shall, subject to the provisions of Section 66464 of the Subdivision Map Act, transmit the map, or have an authorized agent forward the map, to the County Recorder.

(Ord. No. 1177, Sec. 2, 2-18-97)

9327 PARCEL MERGERS

a Purpose

The purpose of this section is to provide for the submittal and processing of parcels to be merged in accordance with the Subdivision Map Act and the Subdivision Code.

b Applicability

Except as provided in Section 66451.11 (A) through (E) of the Subdivision Map Act, two (2) or more contiguous parcels or units of land held by the same owner may be merged, if any one of the parcels or units of land does not conform to the minimum parcel or lot size required by the City's Zoning Code, and if all of the following requirements are satisfied:

1. At least one (1) of the affected parcels or units of land is undeveloped with any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure other than an accessory structure which is also partially sited on a contiguous parcel or unit of land.
2. With respect to any affected parcel or unit of land, one (1) or more of the following conditions exist:
 - (a) The parcel comprises less than five thousand (5,000) square feet in area at the time of the determination of merger;
 - (b) The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

- (c) The parcel does not meet current standards for sewage disposal and domestic water supply;
 - (d) The parcel does not meet slope stability standards;
 - (e) The parcel has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
 - (f) The parcel's development would create health or safety hazards; or,
 - (g) The parcel is inconsistent with the General Plan and any applicable specific plan, other than minimum lot size or density standards.
3. The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13 of the Subdivision Map Act, and is afforded the opportunity for a hearing pursuant to Section 66451.14 of the Subdivision Map Act. For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that the notice of intention to determine status is recorded in compliance with 9327.b (Notice of Intention to Determine Status).

Subsection 2 shall not apply if any of the conditions stated in Section 66451.11(b)(A), (B), (C), or (D) of the Subdivision Map Act exist.

c Notice of Intention to Determine Status

Prior to recording a notice of merger, a notice of intention to determine status shall be prepared by the Director and delivered to the current owner of record by certified mail. The notice shall state that the affected parcels or units of land may be merged pursuant to the Subdivision Code and that, within thirty (30) days from the date the notice of intention was recorded, the owner may request a hearing before the Planning Commission to present evidence that the property does not meet the criteria for merger. The Notice of Intention to Determine Status shall be filed with the County Recorder by the Director on the same day that the notice is mailed to the property owner.

d Hearing on Determination of Status

The owner of the affected property may file a written request for consideration by the Planning Commission within thirty (30) days after recording of the notice of intention to determine status. Upon receipt of the request, the Department shall set a time, date and place for consideration by the Planning Commission and notify the owner of such hearing by certified mail. The Planning Commission shall consider the matter within sixty (60) days following the receipt of the owner's request, or may be postponed or continued by mutual consent of the Director and the property owner.

The Planning Commission shall provide the property owner with an opportunity to present any evidence that the affected property does not meet the requirements for merger specified in the Subdivision Code.

After consideration of the evidence presented, the Planning Commission shall determine whether the affected parcels are to be merged or are not to be merged and shall notify the owner of the determination. The determination of the Planning Commission shall be mailed to the property owner within five (5) days of the date of the Commission's action.

e Determination of Merger

If the Planning Commission makes a determination that the parcels are to be merged, a notice of merger shall be filed with the County Recorder by the Director within thirty (30) days of the conclusion of the Commission's action, unless the decision has been appealed in compliance with 9327.f (Appeal). The notice of merger shall specify the name of the record owner and a description of the property. The notice of merger under the Subdivision Code shall be in a form approved by the Director prior to being filed for record with the County Recorder.

If the Planning Commission makes a determination that the parcels shall not be merged, a release of the notice of intention to determine status shall be filed with the County Recorder by the Director within thirty (30) days after the Commission's determination, and a clearance letter shall be delivered to the owner by certified mail.

f Appeal

The decision of the Commission shall be considered final unless an appeal is filed in compliance with 9321.g (Appeals). The decision of the Commission, or any condition of approval, is appealable to the Council.

g Determination When No Hearing is Requested

If the owner does not file a request for a hearing within thirty (30) days after the recording of the notice of intention to determine status, the Director may, at any time thereafter, make a determination that the parcels are or are not to be merged. If they are to be merged, a notice of merger shall be filed with the County Recorder by the Director within ninety (90) days after the mailing of the notice of intention to determine status in compliance with 9327 (Notice of Intention to Determine Status).

h Request to Merge by Property Owner

If the merger of contiguous parcels or units of land is initiated by the record owner, the owner may waive in writing the right for consideration by the Planning Commission and to all notices required by the Subdivision Code. Upon receipt of such waiver, the Director shall simultaneously file with the County Recorder a notice of intention to determine status, the waiver of right of hearing and notice, and a notice of merger.

(Ord. No. 1177, Sec. 2, 2-18-97)

9328 CORRECTION AND AMENDMENT OF MAPS

a A Tentative Parcel or Tentative Tract Maps

Prior to final tract or final parcel map approval, minor amendments to the approved tentative parcel or tentative tract map, including vesting tentative maps, or conditions of

approval may be approved by the Director upon filing of an application and paying applicable fees, as established by Council resolution, by the subdivider or on the Department's own initiative, provided that:

1. No lots, units, or building sites or structures are added;
2. The changes are consistent with the intent and spirit of the original tentative map approval; and
3. There are no resulting violations of the Tustin General Plan, Zoning Code, and applicable Specific Plan, the Subdivision Code, or the Subdivision Map Act.

The amendment shall be indicated on the approved tentative parcel or tentative tract map and certified by the Director. Amendments to the tentative parcel or tentative tract map, or conditions of approval which, in the opinion of the Director, are not minor, shall be presented to the original decision[making] body for consideration. Processing of amendments shall be same as originally processed for the applicable subdivision type. Any approved amendment shall not alter the expiration date of the tentative parcel or tract map.

b Final maps

1. After a final tract or parcel map is filed in the office of the County Recorder, it may be amended by a certificate of correction or an amending map for the purposes specified in Section 66469 of the Subdivision Map Act.
2. In addition to the provisions of subsection 1 above, a final tract or parcel map may be amended by a certificate of correction if there are changes which make any of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the present fee owner of the property, and if the modifications do not alter any right, title or interest in the real property reflected on the recorded map, and that the map as modified conforms to the provisions of Section 66474 of the Subdivision Map Act.

The amending map or certificate of correction shall be prepared by a registered civil engineer or licensed land surveyor. The form and contents of the amending map shall conform to the requirements of City's Subdivision Manual. The certificate of correction shall set forth in detail the corrections made and show the names of the present fee owners of the property affected by the correction.

3. Modifications made pursuant to this subsection shall be set for public hearing before the Council consistent with the noticing provisions of 9321.f (Public Hearings). The hearing by the Council shall be confined to consideration of, and action on, the proposed modification.
4. The amending map or certificate of correction certified by the City Engineer shall be filed in the office of the County Recorder. Upon such filing, the County Recorder shall index the names of the fee owners and the appropriate subdivision designation shown on the amending map or certificate of correction in the general index and map index,

respectively. Thereafter, the original map shall be deemed to have been conclusively so corrected, and thereafter shall impart constructive notice of all such corrections in the same manner as though set forth upon the original map.

(Ord. No. 1177, Sec. 2, 2-18-97)

PART 3 DEDICATIONS, IMPROVEMENTS AND ENFORCEMENT

9331 DEDICATIONS, RESERVATIONS AND DEVELOPMENT FEES

a Dedication of Streets, Alleys, Bicycle Paths and Other Public Rights-of-way or Easements

To be consistent with the Circulation Element of the General Plan and to the extent permitted by Law, the subdivider may be required, as a condition of approval of a tentative map, to dedicate or make an irrevocable offer of dedication of land within the subdivision needed for streets and alleys (including access rights), drainage, public greenways, parks, bicycle paths, trails, scenic easements, public utility easements, local transit facilities as provided in Section 66475.2 of the Subdivision Map Act, and other public easements. In addition, the subdivider may also be required to improve or agree to improve all streets and alleys, including access rights, drainage, public greenways, bicycle paths, trails, public utility easements, and other public easements.

Improvements shall be made in accordance with 9332 (Improvements).

b Waiver of Direct Access Rights

The City may require as a condition of approval of a tentative map that dedications or offers of dedication of streets include a waiver of direct access rights to any such street from any property within or abutting the subdivision.

Upon acceptance of the dedication, such waiver shall become effective in accordance with its provisions.

c Dedications/Fee Title

All dedications of property to the City for public purposes shall be made in fee title, except that, in the City's discretion, a grant of an easement may be accepted for the following purposes: Open space easements, scenic easements or public utility easements. All dedications in fee and grants of easements shall be free of liens and encumbrances except for those which the City, in its discretion, determines would not conflict with the intended ownership and use. The City may elect to accept an irrevocable offer of dedication in lieu of dedication of fee title.

d Parkland Dedication

To implement the Conservation/Open Space/Recreation Element of the General Plan which contains policies and standards for parks and recreational facilities, the subdivider shall dedicate land or pay a fee in lieu thereof, or a combination of both, at the option of the City

(except as otherwise provided in Government Code Section 66477(g), for the purpose of developing new or rehabilitating existing neighborhood or community parks and recreational facilities to serve the subdivision, and in accordance with the standards and formula contained in this section.

1. General Provisions

- (a) Applicability. The provisions of this section shall be applicable to the division of real property defined as a "subdivision" by Section 66424 of the Subdivision Map Act.
- (b) Exceptions. Park land dedications or fees in lieu thereof shall not be required for the following:
 - (1) Industrial subdivisions.
 - (2) Commercial subdivisions.
 - (3) Condominium projects or stock cooperatives in an existing apartment building which is more than five (5) years old and no new dwelling units are added.
 - (4) Subdivisions containing less than five (5) parcels and not used for residential purposes.
- (c) Waiver. Parkland dedication fees may be waived by the City Council in its discretion upon the submission and approval of agreements for specific projects designed and guaranteed for low income, senior and handicapped citizen occupants.

2. Standards and formula for land dedication:

- (a) The public interest, convenience, health, welfare, and safety require that three (3) acres of usable park land per one thousand (1,000) potential population be devoted to local park and recreational purposes.
- (b) When the requirements of this section are complied with solely on the basis of the dedication of parkland, the minimum amount of land to be provided shall be computed by multiplying the number of proposed dwelling units by the parkland acres per dwelling unit in accordance with the appropriate density classification in the following table:

<i>Dwelling Units Per Gross Acre</i>	<i>Average Persons Per Dwelling Unit</i>	<i>Parkland Acres Per Dwelling Unit</i>
0 — 7	3.25	.0098
7.1 — 15	2.73	.0082
15.1 — 25	2.15	.0065
Mobilehome Parks	2.15	.0065

Source: Tustin General Plan Land Use Element

These density ranges, average person per dwelling unit and/or parkland acreage per dwelling unit shall be used to achieve a parkland dedication rate of three (3)

acres of parkland per one thousand (1,000) persons unless alternate density ranges, average persons per dwelling unit and/or parkland acreage per dwelling unit are established in an adopted Specific Plan adopted in compliance with Government Code Section 65450 et seq., Disposition and Development Agreement in compliance with California Community Redevelopment Law, or other agreement.

3. Fees in lieu of dedication

When there is no public park or recreational facility required within the proposed subdivision, the subdivision is less than fifty (50) parcels, or the project is a conversion of an existing apartment complex to multiple-owner occupancy not exempted herein, the subdivider shall pay a park fee, on a per unit basis, reflecting the value of land required for park purposes. The value of the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required for dedication. The fair market value shall be determined by a Master Appraisal Institute (MAI) appraiser acceptable to the City and at the expense of the developer; and the determination shall consider the value of a buildable acre of land at the time the final map is to be recorded, as if otherwise the land would be fully developed to the residential density shown on the tentative tract map for which the fees are required. If more than one (1) year elapses between the appraisal and recording of the final map, the City will require that a new appraisal be prepared at the expense of the developer. For purposes of this section, the determination of fair market value of a buildable acre shall consider, but not necessarily be limited to, the approval of and conditions of the tentative subdivision map, the General Plan, zoning, property location, off-street improvements facilitating use of the property, and site characteristics of the property.

If a subdivider objects to the fair market value as determined by the MAI appraiser, an appeal may be made to the Planning Commission. The subdivider shall have the burden of proof in contesting the appraised value.

Nothing in this section shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of fifty (50) parcels or less, where the subdivider proposes such dedication voluntarily and the dedication and land is acceptable to the Planning Commission.

For subdivisions in excess of fifty (50) parcels, the Planning Commission may elect to receive a fee in lieu of land dedication. The value of the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required for dedication as determined above.

Notwithstanding the foregoing, dedication of land may be required by the City for a condominium, stock cooperative, or community apartment project which exceeds fifty (50) dwelling units, regardless of the number of parcels.

4. Combination of dedication and fees

Whenever the requirements of this section are complied with by both the provision of parkland and the payment of a park fee, the amount of the park fee shall be computed by determining the required amount of parkland in accordance with the provision of subsection b and subtracting the amount of parkland actually provided. The remainder shall be converted to "fee" on a per unit basis in accordance with the provisions of subsection c.

5. Credit for private open space

Where private open spaces for park and recreational purposes is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, such areas may be credited against the requirement for dedication of parkland, as provided for in subsection d.2, provided the Planning Commission finds it is in the public interest to do so, and that all of the following standards are met:

- (a) That yards, court areas, setbacks and other open areas required to be maintained by the zoning and building regulations shall not be included in the computation of such private open space;
- (b) That the private ownership and maintenance of the open space is adequately provided for by written agreement;
- (c) That the use of the private open space is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be defeated or eliminated without the consent of the Planning Commission or City Council;
- (d) That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, including provisions for bicyclists, and location of the private open space land;
- (e) The facilities proposed for the open space are in substantial accordance with the provision of the Recreational Element of the General Plan, and are approved by the Planning Commission or City Council;
- (f) That the open space for which one hundred (100) percent credit is given is a minimum of one (1) acre and provides at least one (1) of the park basic elements listed below, or a combination of such and other recreation improvements that will meet the specific recreation needs of future residents of the area:
 - (1) "Recreational open spaces" which are generally defined as park areas for active recreation pursuits such as soccer, baseball, softball, and football, and have at least one (1) acre of maintained turf with less than five (5) percent slope.
 - (2) "Court areas" which are generally defined as tennis courts, badminton courts, shuffleboard courts, or similar hard-surfaced areas especially designed and exclusively used for court games.

- (3) "Recreational swimming areas" which are defined generally as fenced areas devoted primarily to swimming, diving, or both. They must also include decks, lawned area, bathhouses, or other facilities developed and used exclusively for swimming and diving and consisting of no less than fifteen (15) square feet of water surface area for each three (3) percent of the population of the subdivision with a minimum of eight hundred (800) square feet of water surface area per pool, together with an adjacent deck and/or lawn area twice that of the pool.
- (4) "Recreation buildings and facilities" which means facilities designed and primarily used for the recreational needs of residents of the development. Partial credit may be awarded for sites which do not incorporate the required basic elements or are less than one (1) acre when deemed beneficial to the community by the Planning Commission.

Because private common areas meet only a portion of resident needs, the computed credit value shall not exceed twenty-five (25) percent of the otherwise required public land dedication or in lieu fees.

The determination of the Planning Commission as to whether credit shall be given and the amount of credit shall be final and conclusive, unless appealed to the City Council as provided in Section 9321.g (Appeals).

6. Credit for public park and recreational facility improvements.
 - (a) A subdivider may elect to provide improvements to land dedicated for public park or recreational use when a combination of fees and dedications are required. The Planning Commission may credit the value of the improvements together with any equipment located thereon against the payment of fees or dedication of land required herein.
 - (b) Credit shall not be allowed for single-purpose commercial recreation facilities whether dedicated to the public or in private ownership.
7. Choice of land dedication, improvement, fees, or combination.
 - (a) Procedure. The procedure for determining whether the subdivider is to dedicate, improve, pay a fee, or combination of methods shall be as follows:
 - (1) At the time of filing a tentative tract map for approval, the subdivider of the property shall, as a part of such filing, indicate whether the subdivider desires to dedicate property for park and recreational purposes, improve the parkland, pay a fee in lieu thereof, or a combination of the foregoing. If the subdivider desires to dedicate land for this purpose, the subdivider shall designate the area thereof in the tentative tract map as submitted.
 - (2) At the time of the tentative tract map approval, the Planning Commission shall determine as a part of such approval, whether to require a dedication of land within the subdivision, payment of a fee in lieu thereof, accept improvement, or a combination of such methods.

- (3) Where dedication is required, it shall be accomplished in accordance with the provision of the Subdivision Map Act. Where fees are required the same shall be deposited with the City prior to the approval of the final tract or parcel map. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the final tract map and shall be recorded contemporaneously with the final tract map.
- (b) Determination. When land is proposed to be dedicated, the Planning Commission shall determine the appropriateness of the land to be dedicated based upon the following:
 - (1) The conservation/Open Space/Recreation Element of the City's General Plan; and
 - (2) The topography, geology, access and location of land in the subdivision available for dedication; and
 - (3) Size and shape of the subdivision and land available for dedication. The determination of the Planning Commission as to whether land shall be dedicated, fees charged, dedicated land improved, or any combination thereof, shall be final and conclusive, unless appealed to the City Council as provided in Section 9321.g (Appeals), provided that in no event, may the dedications, amount of fees or value of improvements exceed the subdivider's dedication requirements as set forth in Section 9331.d.2 (Standards and Formula for Land Dedication) unless the subdivider voluntarily agrees. On subdivisions involving fifty (50) lots or less, only the payments of fees shall be required.

8. Responsibilities and Enforcement

- (a) It is the responsibility of each property owner who proposes to create residential building sites to provide an equitable portion of parklands as required by this Code. Dedications for the provision of parklands and/or the payment of fees shall commence at the earliest possible instance of land development planning. Where parkland is to be provided, such provisions shall be included, where applicable, in zone changes, planned community texts and development plans, tentative and final tract maps, division of land and parcel maps and conditional use permits.
- (b) It is the duty of the Director of Community Services to verify that the requirements of this part are complied with, and to notify all interested parties and agencies of such compliance.
- (c) It is the duty of the Director of Community Development to enforce the provisions of this part that are applicable to the issuance of a building permit.
- (d) The Director of Community Services shall prepare a schedule for approval by the Planning Commission, specifying how and when it will use the land or fees, or both, to develop park and recreation facilities. Fees shall be committed with five (5) years of collection.
- (e) Any required in-lieu fees shall be paid prior to recording the final tract map. When improved sites are accepted, an improvement agreement shall be approved by the City prior to recording the final map.

9. Limitation of use of land and fees.

The land and fees received under this section shall be used only for the purpose of providing park and recreational facilities to serve the area from which received, and the location of the land and amount of fees shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision, the community, and the general area from which it is received.

e Reservations

1. General

Based on the General Plan, or applicable specific plan, as a condition of approval of a tentative map, the subdivider may be required to reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards and formula contained in this section.

2. Standards for Reservation of Land

Where a park, recreational facility, fire station, library, or other public use is shown on the General Plan or an adopted specific plan, the subdivider may be required by the City to reserve sites as so determined by the City in accordance with the policies and standards contained in the General Plan or the adopted specific plan. The reserved area must be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner.

The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically infeasible. The reserved area shall be consistent with the General Plan or the adopted specific plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

3. Procedure

The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map or parcel map, enter into a binding agreement to acquire such reserved area within two (2) years after the completion and acceptance of all improvements, unless the period of time is extended by mutual agreement.

4. Payment to Subdivider

The purchase price for the reserved area shall be the market value thereof at the time of the filing of the tentative map plus the taxes against the reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of the reserved area, including interest costs incurred on any loan covering the reserved area.

5. Termination

If the public agency for whose benefit an area has been reserved does not enter into a binding agreement in accordance with this section, the reservation of the area shall automatically terminate.

f Local Transit Facilities

As a condition of approval of a tentative map, the subdivider may be required to dedicate, or make an irrevocable offer of dedication, of land within the subdivision for local transit facilities such as shelters, benches, bus turnouts, landing pads, park-and-ride facilities, and similar items which directly benefit the residents of the subdivision, if (a) the subdivision as shown on the tentative map has the potential for two hundred (200) dwelling units or more if developed to the maximum density shown on the general plan or contains one hundred (100) acres or more, and (b) if the City finds that transit services are or will, within a reasonable time period, be made available to the subdivision.

The provisions of this section do not apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five (5) years old when no new dwelling units are added.

g Bridges and Major Thoroughfares

1. Purpose. The purpose of this section is to establish provisions for assessing and collecting fees as a condition of approval of a final map or prior to issuing a building permit for the purpose of defraying the actual or estimated cost of constructing bridges or major thoroughfares pursuant to Section 66484 of the Subdivision Map Act, and in order to implement the Circulation Element of the General Plan and, in the case of bridges, the transportation provisions thereof.
2. Definitions. For the purpose of this section, the following words and phrases shall have the following meanings:
 - (a) "Construction" shall mean design, acquisition of right-of-way, administration of construction contracts, actual construction and inspections.
 - (b) "Major thoroughfare" shall mean a roadway as shown on the Circulation Element of the General Plan whose primary purpose is to carry through traffic and provide a network connecting to the state highway system.
3. Payment of Fees Generally
 - (a) Prior to filing a final map which includes land within an area of benefit established pursuant to this division, the subdivider shall pay or cause to be paid any fees established and apportioned to such property pursuant to this section for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways or canyons or constructing major thoroughfares.
 - (b) At the time a building permit is issued for construction on any property within an area of benefit established pursuant to this section, the applicant for such permit

shall pay or cause to be paid any fees established and apportioned pursuant to this section for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways or canyons or constructing major thoroughfares, unless such fees have been paid pursuant to subsection (c)(1) of this section.

(c) Notwithstanding the provisions of subsections 3(a) and 3(b) of this section:

- (1) Payment of bridge fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of adoption of the boundaries of the area of benefit.
 - (2) Payment of major thoroughfare fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the area of benefit.
4. **Consideration in Lieu of Fees.** Upon application by the subdivider or applicant for a building permit, the City Council may accept consideration in lieu of the payment of fees required pursuant to this section; provided that the City Council first finds, upon recommendation of the City Engineer, that the substitute consideration has a value equal to or greater than the fee; and provided further that the substitute consideration is in a form acceptable to the City Council.
 5. **Public Hearing.** Prior to establishing an area of benefit, a public hearing shall be held by the City Council at which time the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment, and the fee to be collected, shall be established. Notice of the public hearing shall be given consistent with the provisions of Section 9304.06 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost and the method of fee apportionment.
 6. **Amount.** The amount of fees and the areas of benefit established pursuant to this section may be established by resolution.
 7. **Exemptions.** Notwithstanding the provisions of subsection 6, payment of such fees shall not be required for:
 - (a) The use, alteration or enlargement of an existing building or structure or the erection of one (1) or more buildings or structures accessory thereto, or both, on the same lot or parcel of land; provided that the total value, as determined by the Building Official, of all such alteration, enlargement or construction completed within any one (1) year period does not exceed one-half ($\frac{1}{2}$) of the current market value, as determined by the Building Official, of all existing buildings on such lot or parcel of land, and the alteration or enlargement of the building is not such as to change its classification of occupancy as defined by applicable sections of the Uniform Building Code.

- (b) The following accessory buildings and structures: private garages, children's playhouses, radio and television receiving antennas, windmills, silos, tank houses, shops, barns, coops and other buildings which are accessory to one (1) family or two (2) family dwellings.

8. Protest

- (a) At any time not later than the hour set for hearing objections to the proposed bridge facility or major improvement, any person may file a protest against the proposed bridge facility or major thoroughfare or against the extent of the area to be benefitted by the improvements or against both of them. Such protests must be in writing and must contain a description of the property in which each signer thereof is interested, sufficient to identify such property, and, if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. All such protests shall be delivered to the City Clerk and no other such protests shall be considered. Any protest may be withdrawn, in writing, by the owners making such protests, at any time prior to the conclusion of the public hearing.
- (b) If there is a written protest filed with the City Clerk by the owners of more than one-half ($\frac{1}{2}$) of the area of the property to be benefitted by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half ($\frac{1}{2}$) of that to be benefitted, then the proposed proceedings shall be abandoned and the City Council shall not, for one (1) year from the filing of that written protest, commence or carry on any proceedings for the same improvement, or that portion thereof so protested against, under the provisions of this section.

h Supplemental Improvement Capacity

- 1. As a condition of approval of a tentative map, there may be imposed a requirement that improvements installed by the subdivider for the benefit of the subdivision contain supplemental size, capacity, number or length for the benefit of property not within the subdivision and that those improvements be dedicated to the public. However, when such supplemental size, capacity, number or length is solely for the benefit of property not within the subdivision, the City shall, subject to the provisions of Sections 66486 and 66487 of the Subdivision Map Act, enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of such improvements equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements.

2. The City Council shall determine the method for payment of the costs required by a reimbursement agreement, which method may include, but shall not be limited to, the following:
 - (a) The collection from other persons, including public agencies, using such improvements for the benefit of real property not within the subdivision, of a reasonable charge for such use.
 - (b) The contribution to the subdivider of that part of that cost of the improvement(s) that is attributable to the benefit of real property outside the subdivision and the levy of a charge upon the real property benefitted to reimburse the City for such costs, together with interest thereon, if any, paid to the subdivider.
 - (c) The establishment and maintenance of local benefit districts for the levy and collection of such charge or costs from the property benefitted.
3. No charge, area of benefit or local benefit district shall be established unless and until a public hearing is noticed and held thereon by the City Council in accordance with the provisions of Government Code Section 65091 and the City Council finds that the charge, area of benefit or local benefit district is reasonably related to the cost of such supplemental improvements and the actual ultimate beneficiaries thereof.
4. In addition to the notice required by Government Code Section 65091, written notice of the hearing shall be given to those who own property within the proposed area of benefit as shown on the last equalized assessment roll, and the potential users of the supplemental improvements insofar as they can be ascertained at the time.

i Drainage Fees [Reserved]

j Solar Access Easements [Reserved]

k Interim Classroom Facilities

1. Authority, Purpose and Intent

- (a) This section is enacted pursuant to the authority of Section 65970 et seq. of the Government Code for the purpose of providing interim school facilities to alleviate conditions of overcrowding caused by new residential development.
- (b) The City Council finds:
 - (1) Public education in the primary and secondary grades is provided in the City by Irvine, Santa Ana, and Tustin Unified School Districts.
 - (2) From time to time, new residential development may cause overcrowding in one (1) or more schools in the school district.
 - (3) It is necessary that a method be available to provide the school districts with interim classroom facilities when conditions of overcrowding exist, in order that education not be adversely affected.

2. [Reserved]

3. Action by School Districts. An affected School District(s) may, from time to time, adopt a declaration of impact and file the same with the City Clerk for consideration by the City Council.
4. Action by City Council. Upon receipt of a declaration of impact from one (1) or more school districts and the schedule required by Section 65976 of the Government Code, the City Council shall, if it concurs in the findings set forth in the declaration of impact, withhold approval of, or order the appropriate officer, employee or commission within the City to withhold approval of, new residential development within the attendance area of the impacted school or schools pending compliance with subsection 5 below.
5. Mitigation Measures
 - (a) The City Council may require, as a condition of approval of new development within the attendance area of an impacted school, either the dedication of land, the payment of fees in lieu thereof, or a combination of both, in accordance with the provisions of Section 65974 of the Government Code.
 - (b) The decision concerning whether to require the dedication of land, payment of fees of an appropriate combination shall be determined after consultation with the affected school district(s) concerning the needs of the school district(s) as they relate to the impacted school or schools.
 - (c) The amount of any fee shall be in accordance with the provisions of Chapter 4.9 (commencing with Section 65995) of the Government Code, shall be prescribed by resolution of the City Council, and shall be collected at the time of issuance of a building permit.
6. Use of Fees and Land-Accounting
 - (a) The school districts shall use the land and/or fees solely to alleviate the conditions of overcrowding within the affected attendance area.
 - (b) The school districts shall annually provide to the City Council the report required by Section 65978 of the Government Code.
7. City's Right to Disapprove Development or Require Other Fees. Nothing in this section shall be construed to limit the right of the City to disapprove new residential development for any lawful reason, including, but not limited to, the impact that such development may have on a school or schools within the school districts which cannot be alleviated by the provisions of this section.

1 Permanent Classroom Facilities

The City may not require, as a condition of approval of a tentative map for a residential subdivision, dedication of land or payment of in-lieu fees or a combination of both in order to provide permanent facilities for school purposes. Nothing in this chapter is intended as a limitation on the school districts' authority to directly levy a fee, charge, dedication or other

form of requirement against any development project, pursuant to Section 53080 of the Government Code, in order to provide temporary and permanent facilities for school purposes.

- m Reimbursement to a Telephone Corporation or Cable Television System for Undergrounding or Relocation.

Whenever the City imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding, or permanently or temporarily relocating existing facilities of a telephone corporation or cable television system, the subdivider shall reimburse the telephone corporation or cable television system for all costs for the replacement, undergrounding, or relocation. All of these costs shall be billed to the subdivider directly by the telephone corporation or cable television system after they are incurred, and shall include a credit for any required advance payments and for the salvage value of any facilities replaced. In no event shall the telephone corporation or cable television system be reimbursed for costs incurred in excess of the cost to replace the facilities with substantially similar facilities. In no event shall the City be obligated to pay such reimbursement.

(Ord. No. 1177, Sec. 2, 2-18-97)

9332 IMPROVEMENTS

a General

The subdivider shall construct all required improvements, both on and off-site, in accordance with the standard engineering specifications and other approved standards as provided by this chapter and by the City Council's resolution or resolutions establishing such standards.

No final map shall be presented to the Council for approval until the subdivider either completes the required improvements, or enters into an agreement with the City agreeing to do the work.

b Required Improvements

1. General. All improvements as may be required as conditions of approval of the tentative map or by City ordinance or resolution, together with, but not limited to, the required improvements set forth below shall be required of all subdivisions.

Requirements for construction of on-site and off-site improvements for subdivisions of four (4) or less parcels shall be noted in the parcel map, or waiver of parcel map or the subdivision improvement agreement recorded prior to or concurrent with the parcel map.

Completion of improvements shall be in accordance with 9332.k (Completion of Improvements).

2. **Frontage Improvements.** The frontage of each lot shall be improved to its ultimate adopted geometric section, including street structural section, curbs, sidewalks, driveway approaches and transitions.
3. **Storm Drainage.** Storm water runoff from the subdivision shall be collected and conveyed by an approved storm drain system. The storm drain system shall be designed for ultimate development of the watershed and shall be capable of collecting and conveying runoff generated by a 100 year flood. The storm drain system shall provide for the protection of abutting and off-site properties that would be adversely affected by any increase in runoff attributed to the development. Off-site storm drain improvements may be required to satisfy this requirement.
4. **Sanitary Sewers.** Each unit or lot within the subdivision shall be served by an approved sanitary sewer system in accordance with the applicable provisions of this Code.
5. **Utilities.** Each unit or lot within the subdivision shall be served by gas, electric, telephone and cablevision facilities.
6. **Underground Utilities.** The provisions of this Subsection are in addition to, and not a substitute for other underground provisions of this Code.
 - (a) All existing and proposed utilities within the subdivision and along peripheral streets shall be placed underground except those facilities exempted by Public Utilities Commission regulations. Undergrounding shall be required for overhead lines on either side of peripheral streets.
 - (b) The developer may request that the undergrounding requirement along peripheral streets be waived. The City may, at its discretion, accept a fee in lieu of the undergrounding. The amount of the fee shall be determined by the City Engineer and shall be based upon the reasonable estimated cost of that portion of a future undergrounding project attributable to the subdivision. The requirement for undergrounding or payment of an in-lieu fee shall be a condition of approval of the tentative map.
 - (c) Undergrounding requirements may be waived or modified by the City Council only upon finding:
 - (1) The subdivision is within an area where existing utilities have not been undergrounded and that deferral will be allowed since undergrounding is impractical due to physical constraints, or the surrounding neighborhood is absent of similar improvements; and
 - (2) Overhead utilities will have no significant visual impact.
 - (d) If the undergrounding requirements are waived as allowed by findings (c)(1) and (2) above, the in-lieu fee as established by the City Engineer shall be made a condition of approval of the tentative map.
 - (e) In-lieu fees shall be deposited in a special undergrounding account to be used as approved by the City Council for future undergrounding of utilities throughout the City.

7. Fencing. Each parcel or lot within the subdivision that is adjacent to property containing a public facility shall have an approved fence or wall adequate to prevent unauthorized access between properties.
8. Other Improvements. Other improvements including, but not limited to, grading, street lights, traffic signals, fire hydrants, signs, street lines and markings, street trees and shrubs, landscaping, monuments, bicycle facilities and fences, or fees in lieu of any of the foregoing, shall also be required as determined by the City Engineer in accordance with this Code, the General Plan and the City standards and specifications.
9. Off-Site Improvements. If the subdivider is required to construct off-site improvements on land in which neither the subdivider nor the City has sufficient title or interest to allow construction, the City shall, within one hundred twenty (120) days of recording the final map, acquire by negotiation or commence condemnation of the land. If the City fails to meet the one hundred twenty (120) day time limit, the condition for the construction shall be waived. Prior to approval of the final map, the City may require the subdivider to enter into an agreement to complete the off-site improvements at the time the City acquires title or an interest in the land.

The subdivider shall pay the cost of acquiring off-site land or an interest in the land required to construct the off-site improvements.

c Deferred Improvement Agreements

1. Subdivisions of Four (4) or Less Parcels. The frontage improvements along peripheral streets may be deferred when deemed necessary by the City Engineer. When improvements are deferred, the subdivider and/or the owner of the real property shall enter into an agreement with the City, in form acceptable to the City Engineer and City Attorney, for the installation of all frontage improvements at a time in the future specified by the City. The agreement shall provide for the following:
 - (a) Construction of improvements shall commence within ninety (90) days of the receipt of the notice to proceed from the City and shall be completed within the time specified by Section 9310.10.
 - (b) That in the event of a default by the subdivider and/or owner, the City is authorized to cause construction to be done and charge the entire cost and expense to the subdivider and/or owner, including interest from the date of notice of said cost and expense until paid.
 - (c) That the agreement shall be recorded with the County Recorder at the expense of the subdivider and/or owner and shall constitute notice to all successors and assigns of title to the real property of the obligations set forth therein, and shall also constitute a lien in such amount necessary to fully reimburse the City, including interest as provided above, subject to foreclosure in the event of a default in payment.

- (d) That in event of litigation occasioned by any default of the subdivider and/or owner, the subdivider and/or owner agree to pay all costs incurred by the City, including reasonable attorney's fees, and that the same shall become a part of the lien against the real property.
- (e) The terms "subdivider" and "owner" shall include, respectively, not only the subdivider and the present owner of the real property but also heirs, successors, executors, administrators and assigns thereof, it being the intent of the parties that the obligations undertaken shall run with the real property and constitute a lien against it.
- (f) Any other improvement security as required by Section 9310.08.
- (g) Any other provisions required by the City as reasonably necessary to effectuate the purposes and provisions of the Subdivision Map Act and this Code.

The agreement shall not relieve the subdivider or owner from any other specific requirements of the Subdivision Map Act, this Code or law. The construction of deferred improvements shall conform to the provisions of this chapter and all applicable articles of this code in effect at the time of construction.

- 2. Remainders. Where a remainder is made part of a final or parcel map, the subdivider may enter into an agreement with the City to construct improvements within the remainder at some future date and prior to the issuance of a permit or other grant of approval for the development of a remainder. The improvements shall be at the subdivider's expense. In the absence of such an agreement, the City may require fulfillment of the construction requirements within a reasonable time following approval of the final or parcel map and prior to the issuance of a permit or other grant of approval for the development of the remainder, upon finding that fulfillment of the construction requirements is necessary for reasons of:
 - (a) The public health and safety, or
 - (b) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

d Design

- 1. General. The design and layout of all required improvements, both on-site and off-site, private and public, shall conform to generally accepted engineering standards, standard engineering specifications, and Subdivision Map Act and applicable provisions of this code.
- 2. Energy Conservation. The design of a subdivision for which a tentative map is required shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

Examples of passive or natural heating opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure and to permit orientation of a structure to take advantage of shade or prevailing breezes.

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, contour, configuration of the parcel to be divided, and other design improvement requirements. The provision shall not result in reducing allowable densities, or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in force at the time the tentative map is filed.

The requirements of this subsection do not apply to condominium projects which consist of the subdivision of airspace in an existing building and no new structures are added.

For the purpose of this subsection, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

3. Cable Television Service. The design of a subdivision for which a tentative map or parcel map is required shall provide one (1) or more City franchised cable television systems an opportunity to construct, install and maintain, on land identified on the map as dedicated or to be dedicated to public utility use, any equipment necessary to extend cable television services to each residential parcel in the subdivision.

This subsection shall not apply to the conversion of existing dwelling units to condominiums, community apartments, or stock cooperatives.

e Access

All lots or parcels created shall have direct access to a public street improved to the standards set forth in this article. Private streets shall not normally be permitted. However, if the City Council determines that the most logical development of the land requires that lots be created with access to private streets, such a development may be approved. The subdivider shall submit a development plan showing the alignment, width, grade, and material specifications of any proposed public or private street, the topography and means of access to each lot, and the drainage, sewer and water service and fire protection for the lots served by such private street(s). Private street(s) shall be constructed in accordance with standard engineering specifications and any other applicable plans and specifications of the City as approved by the Director of Community Development. Construction of private street(s) shall be completed prior to the completion of the construction and/or occupancy of the lots. The subdivider shall be required to provide a feasible method for the maintenance of such private streets, which method shall be subject to the prior approval of the Director of Community Development.

Reserved strips, or non-access at the end of streets or at the boundaries of subdivisions, shall be dedicated unconditionally to the City when required by the City.

g[f] Improvement Plans

1. General. Improvement plans shall be prepared under the direction of and must be signed and sealed by a registered civil engineer licensed by the State of California.

Improvement plans shall include, but shall not be limited to, all improvement required pursuant to Section 9310.02.

2. Form. Plans, profiles and details shall be legibly drawn, printed or reproduced on 24" x 36" reproducible 4 mil thick mylar. A border shall be made on each sheet providing 1/2" at top, bottom and right side and 1-1/2" on the left side.

A City of Tustin Public Works Department Engineering Division Title Block shall be placed in the lower right corner of each sheet.

Plans and profiles shall be drawn to the scale of 1"=20' unless approved otherwise by the City Engineer. Details shall be drawn to such scale that clearly shows the facility being constructed. The scales for various portions of the plans shall be shown on each sheet.

A vicinity map shall be shown on the first sheet of all sets of plans.

A north arrow shall be shown on each sheet when applicable.

Plans shall be laid out to orient north to the top or right edge of the sheet unless approved otherwise by the Public Works Director.

All lettering shall be 1/8" minimum.

If the plans include two (2) or more sheets, a cover sheet showing the streets, lots, easements, storm drains, index and vicinity map shall be included.

In addition to normal full size plan submittals, all final development plans, including but not limited to, right-of-way maps, records of survey, public and private improvements, final grading and site plans, shall be submitted to the Public Works Department/Engineering Division in computer aided design and drafting (CADD) format consistent with the CADD conventions and guidelines established by the Engineering Division.

The form of all plans shall conform to additional requirements as may be established by the City Engineer. The final form of all plans shall be approved by the City Engineer.

3. Contents. The improvement plans shall show complete plans, profiles and details for all required improvements to be constructed, both public and private, including common areas.

Reference may be made to the City of Tustin or State Standard Plans in lieu of duplicating the drawings.

4. Supplementary Plans and Calculations. Hydrology, hydraulic plans and calculations, bond or other security estimates and any structural calculations as may be required, shall be submitted with the improvement plans to the City Engineer. All calculations shall be legible, systematic and signed, sealed and dated by a registered civil engineer licensed by the State of California and in a form approved by the City Engineer.

5. Review by the City Engineer. The subdivider shall submit the improvement plans and all computations to the City Engineer for review. Upon completion of the review, one (1) set of preliminary plans, with any required revisions indicated, will be returned to the subdivider.
6. Approval by the City Engineer. After completing any required revisions, the subdivider shall transmit the originals of the improvement plans to the City Engineer for signature.

Upon finding that any required revisions have been made and that the plans conform to all applicable City ordinances and plans, design requirements and conditions of approval of the tentative map, the City Engineer shall sign and date the plans. The subdivider or engineering representative may request duplicate mylars of signed originals for subdivider use.

Approval of the improvement plans shall not be construed as approval of the gas, electric, telephone and cable television service construction plans.

Approval by the City Engineer shall in no way relieve the subdivider or the subdivider's engineer from responsibility for the design of the improvements and for any deficiencies resulting from the design or from any required conditions of approval of the tentative map.

7. Revision to Approved Plans
 - (a) Requests by the subdivider for revisions to the approved plans appearing necessary or desirable during construction shall be submitted in writing to the City Engineer or the City Engineer's authorized representative and shall be accompanied by revised drawings showing the proposed revision. If the revision is acceptable to the City Engineer and consistent with the tentative map, the subdivider shall revise the plans in the Engineering Division office. Construction of any proposed revision will not be permitted to commence until revised plans have been received and approved by the City Engineer.
 - (b) When revisions are deemed necessary by the City Engineer to protect the public health and safety, or as field conditions may require, a request in writing shall be made to the subdivider. The subdivider shall revise the plans in the Engineering Division office within the time specified by the City Engineer.

The subdivider may appeal revisions required by the City Engineer to the City Council by filing an appeal in writing with the City Engineer within fifteen (15) days following receipt of the request to revise the plans.

- (c) Costs incurred by the City for checking of plans or calculations or inspection as a result of revisions to the approved plans shall be borne by the subdivider at actual cost. A deposit, when required, shall be submitted with the revised plans and applied toward the actual costs.

g Improvement and Subdivision Monumentation Agreement

The improvement and subdivision monumentation agreements shall be prepared by the City Engineer and approved as to form by the City Attorney. The agreements shall provide for:

1. Construction of all improvements required pursuant to Section 9310.02, including any required off-site improvements, according to the approved plans and specifications on file with the City Engineer.
2. Completion of improvements within the time specified by Section 9310.10.
3. Right of the City to modify plans and specifications and to require the subdivider to pay for modifications.
4. Warranty by the subdivider that construction will not adversely affect any portion of adjacent properties.
5. Payment of inspection fees in accordance with the City's resolution.
6. Payment of in-lieu fees for undergrounding of utilities of peripheral streets.
7. Payment of planned drainage facility fees.
8. Improvement security as required by Section 9310.08.
9. Maintenance and repair of any defects or failures and their causes.
10. Release and indemnification of the City from all liability incurred in connection with the development and payment of all reasonable attorneys' fees that the City may incur because of any legal action or other proceeding arising from the development.
11. Any other deposits, reimbursements, fees or conditions as required by City ordinance or resolution and as may be required by the City Engineer.
12. Any other provisions required by the City as reasonably necessary to effectuate the purposes and provisions of the Subdivision Map Act and this Code.
13. Monumentation of the subdivision.

j[h] Improvement Security

1. Any improvement agreement, contract or act required or authorized by the Subdivision Map Act or this chapter, for which security is required, shall be secured in accordance with Section 66499 et seq. of the Subdivision Map Act and as provided below.

No final map or parcel map shall be signed by the City Engineer or recorded until all improvement securities required by this section have been received and approved.

2. The form of security shall be one (1) or the combination of the following at the option and subject to the approval of the City:
 - (a) Bond or bonds by one (1) or more duly authorized corporate sureties. Duly authorized corporate sureties must be admitted sureties. The form of the bond or bonds shall be in accordance with Sections 66499.1, 66499.2, 66499.3 and 66499.4 of the Subdivision Map Act.
 - (b) A deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public monies.
 - (c) Any other form of security as provided in Section 66499 of the Subdivision Map Act.
3. **Amount of Security.** A performance bond or other security in the amount of one hundred percent (100%) of the total estimated construction cost to guarantee the construction or installation of all improvements shall be required of all subdivisions. An additional amount of fifty percent (50%) of the estimated construction cost shall be required to guarantee payment to subdivider's contractor, subcontractors, and to persons furnishing labor, materials or equipment for the construction or installation of improvements. As a part of the obligation guaranteed by the security and in addition to the full amount of the security, there shall be included costs and reasonable expenses and fees, including attorneys' fees, incurred by the City in enforcing the obligations secured.

The estimate of improvements costs shall be as approved by the City Engineer and shall provide for:

 - (a) Not less than five percent (5%) nor more than ten percent (10%) of the total construction cost for contingencies.
 - (b) Increase for projected inflation computed to the estimated midpoint of construction.
 - (c) All utility installation costs or a certification acceptable to the City Engineer from the utility company that adequate security has been deposited to ensure installation.
4. **Monumentation Bond.** A performance bond or other security in the amount of one hundred percent (100%) of the total estimated cost to guarantee the installation of the subdivision monumentation as determined by the registered civil engineer or surveyor responsible for setting the monuments.
5. **Warranty Security.** Upon acceptance of the subdivision improvements by the City, the subdivider shall provide security in the amount as required by the City Engineer to guarantee the improvements against any defective work or labor done or defective materials used in the performance of the improvements throughout the warranty period which shall be the period of one (1) year following acceptance of the

improvements. The amount of the warranty security shall not be less than ten percent (10%) of the cost of the construction of the improvements, including the cash bond which shall be retained for the one (1) year warranty period.

6. **Reduction in Performance Security.** The City Engineer may authorize in writing the release of a portion of the security in conjunction with the acceptance of the satisfactory completion of a part of the improvements as the work progresses upon application by the subdivider, but in no case shall the security be reduced to less than ten percent (10%) of the total improvement security given for faithful performance. The amount of reduction of the security shall be determined by the City Engineer; however, in no event shall the City Engineer authorize a release of the improvement security which would reduce security to an amount below that required to guarantee the completion of the improvements and any other obligation imposed by the Subdivision Map Act, this code or the improvement agreement.

7. **Release of Improvement Security**

(a) The performance security shall be released only upon acceptance of the improvements by the City and when an approved warranty security has been filed with the City Engineer. If a warranty security is not submitted, performance security shall be released twelve (12) months after acceptance of improvements and correction of all warranty deficiencies.

(b) Security given to secure payment to the contractor, subcontractors and to persons furnishing labor, materials or equipment may, six (6) months after the completion and acceptance of the improvements by the City, be reduced to an amount equal to one hundred twenty-five percent (125%) of the amount of all claims therefor filed with the City. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

(c) The warranty security shall be released upon satisfactory completion of the warranty period, provided:

(1) All deficiencies appearing on the warranty deficiency list for the subdivision have been corrected.

(2) Not less than twelve (12) months have elapsed since the acceptance of the improvements by the City.

[i Reserved]

j **Construction and Inspection**

The construction methods and materials for all improvements shall conform to the standard engineering specifications and all other standard plans and specifications of the City.

Construction shall not commence until all required improvement plans have been approved. All improvements are subject to inspection in accordance with the City's approved specifications.

k Completion of Improvements

1. Subdivisions of Five or More Parcels. The improvements for subdivisions of five (5) or more parcels shall be completed by the subdivider within twelve (12) months, or such later time as approved by the City Engineer, not to exceed thirty-six (36) months, from the recording of the final map, unless an extension is granted by the City Council.

Should the subdivider fail to complete the improvements within the specified time, the City may, by resolution of the City Council and at its option, cause any or all uncompleted improvements to be completed and the parties executing the security or securities shall be firmly bound for the payment of all necessary costs.

2. Subdivision of Four or Less Parcels. The completion of improvements for subdivisions of four (4) or less parcels shall not be required until a permit or other grant of approval for the development of any parcel within the subdivision is applied for. The completion of the improvements may be required by a specified date by the City when the completion of the improvements are found to be necessary for the public health or safety or for the orderly development of the surrounding area. This finding shall be made by the City Engineer or authorized representative. The specified date, when required, shall be stated in the subdivision improvement agreement. Improvements shall be completed prior to final building inspection or occupancy of any unit within the subdivision.
3. Extensions. The completion date may be extended by the City Council upon written request by the subdivider and the submittal of adequate evidence to justify the extension. The request shall be made not less than thirty (30) days prior to expiration of the subdivision improvement agreement.

The subdivider shall enter into a subdivision improvement agreement extension with the City.

In consideration of a subdivision improvement agreement extension, the following may be required:

- (a) Revision of improvement plans to provide for current design and construction standards when required by the City Engineer;
- (b) Revised improvement construction estimates to reflect current improvement costs as approved by the City Engineer;
- (c) Increase of improvement securities in accordance with revised construction estimates;
- (d) Inspection fees may be increased to reflect current construction costs but shall not be subject to any decrease or refund.

The City Council may impose additional requirements as recommended by the City Engineer or as it may deem necessary as a condition to approving any time extension for the completion of improvements.

The costs incurred by the City in processing the agreement shall be paid by the subdivider at actual cost plus twenty-five percent (25%) of such cost for overhead expenses.

4. As-Built Plans. Revisions for as-built drawings are to be made in the Engineering Division offices. The subdivider or engineering representative may request duplicate mylars for the subdividers use.

1 Acceptance of Improvements

1. With respect to all subdivisions, when all improvement deficiencies have been corrected and as-built improvement plans submitted, the completed subdivision improvements shall be considered by the City Engineer for acceptance. Acceptance of the improvements shall imply only that the improvements have been completed satisfactorily and that public improvements have been accepted for public use.
2. Acceptance. If the subdivision improvements have been accepted by the City Engineer and public improvements have been dedicated on the final map or parcel map, the City Clerk shall file an acceptance of public improvements with the County Recorder.
3. Acceptance of a Portion of the Improvements. When requested by the subdivider in writing, the City Engineer may consider acceptance of a portion of the improvements. Such improvements will be accepted by the City Engineer only if the City Engineer finds that it is in the public interest to do so and such improvements are for the use of the general public.

Acceptance of a portion of the improvements shall not relieve the subdivider from any other requirements imposed by this article.

(Ord. No. 1177, Sec. 2, 2-18-97)

9333 ENFORCEMENT

a Prohibition

1. No person shall sell, lease, or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final or parcel map is required by the Subdivision Map Act or the Subdivision Code, until such a map, in full compliance with the provisions of the Subdivision Map Act and the Subdivision Code, has been filed with the County Recorder.
2. Conveyances of any part of a division of real property for which a final or parcel map is required by the Subdivision Map Act or the Subdivision Code shall not be made by parcel or block number, letter or other designation, unless and until such map has been filed with the County Recorder.

3. This section does not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law, including the Subdivision Code, regulating the design and improvement of subdivisions in effect at the time the subdivision was established.
4. Nothing contained in subsection a shall be deemed to prohibit an offer or contract to sell, lease or finance real property or to construct improvements thereon where such sale, lease or financing, or the commencement of such construction, is expressly conditioned upon the approval and filing of a final map or parcel map, as required under the Subdivision Map Act or the Subdivision Code.

b Remedies

1. Any deed of conveyance, sale or contract to sell real property which has been divided, or which has resulted from a division, in violation of the provisions of the Subdivision Map Act or the Subdivision Code is voidable at the sole option of the grantee, buyer or person contracting to purchase, any heirs, personal representative, or trustee in insolvency or bankruptcy thereof for a period of one (1) year after the date of discovery of such violation. The deed of conveyance, sale or contract to sell is binding upon any successor in interest of the grantee, buyer or person contracting to purchase, other than those above enumerated, and upon the grantor, vendor or person contracting to sell, or his or her assignee, heir or devisee.
2. Any grantee, or successor in interest thereof, of real property which has been divided, or which has resulted from a division, in violation of the provisions of the Subdivision Code or the Subdivision Map Act may, within one (1) year of the date of discovery of such violation, bring an action in the superior court to recover any damages suffered by reason of such division of property. The action may be brought against the person who divided the property in violation of the provisions of the Subdivision Map Act or the Subdivision Code and against any successors in interest who have actual or constructive knowledge of such division of property.
3. The provisions of this section shall not apply to the conveyance of any parcel of real property identified in a certificate of compliance filed pursuant to Section 66499.35 of the Subdivision Map Act or identified in a recorded final map or parcel map, from and after the date of recording.

The provisions of this section shall not limit or affect in any way the rights of a grantee or successor in interest under any other provision of law.

4. This section does not bar any legal, equitable or summary remedy to which the City or other public agency, or any person, firm or corporation may otherwise be entitled, and the City or other public agency, or such person, firm or corporation may file a suit in the superior court to restrain or enjoin any attempted or proposed subdivision or sale, lease, or financing in violation of the Subdivision Map Act or the Subdivision Code.

5. The City shall not issue a permit or grant any approval necessary to develop any real property which has been divided, or which has resulted from a division, in violation of the provisions of the Subdivision Map Act or the Subdivision Code if it finds that development of such real property is contrary to the public health or the public safety. The authority to deny such a permit or approval shall apply whether the applicant therefor was the owner of record at the time of such violation or whether the applicant therefor is either the current owner of record or a vendee thereof with, or without, actual or constructive knowledge of the violation at the time of the acquisition of an interest in such real property.

If the City issues a permit or grants approval for the development of any real property and subsequently determines that the real property was not legally subdivided, the City may reconsider the permit or approval for the development and may impose those additional conditions which would have been applicable to the division of the property at the time the current owner of record acquired the property. If the property has the same owner of record as at the time of the initial violation, the City may impose conditions applicable to a current division of the property. If a conditional certificate of compliance has been filed for record, only those conditions stipulated in that certificate shall be applicable.

c Certificate of Compliance

1. Any person owning real property or a vendee of such person pursuant to a contract of sale of such real property may request the Director to determine whether the real property complies with the provisions of the Subdivision Map Act and the Subdivision Code.
2. If it is determined that the real property complies with the provisions of the Subdivision Map Act and the Subdivision Code, the Director shall file a Certificate of Compliance with the County Recorder. The Certificate of Compliance shall identify the real property and shall state that the division thereof complies with the provisions of the Subdivision Map Act and the Subdivision Code.
3. If it is determined that the real property does not comply with the provisions of the Subdivision Map Act or the Subdivision Code, the Director may, as a condition to granting a Certificate of Compliance, impose conditions in accordance with Section 9323.e (Conditions of Approval). Upon the director making such determination and establishing such conditions, the Director shall file a Conditional Certificate of Compliance with the County Recorder. Such certificate shall serve as notice to the property owner or vendee who has applied for the certificate, a grantee of the property owner, or any subsequent transferee or assignee of the property, that fulfillment and implementation of such conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.
4. A recorded final map or parcel map shall constitute a certificate of compliance with respect to the parcels of real property described therein.

5. Subject to the provisions of Section 66499.35 (e) of the Subdivision Map Act, an official map prepared pursuant to Section 66499.52(b) of the Subdivision Map Act shall constitute a certificate of compliance with respect to the parcels of real property described therein.

d Notice of Violation.

If the City of Tustin has knowledge that real property has been divided in violation of the provisions of the Subdivision Map Act or the Subdivision Code, a notice of intention to record a notice of violation shall be prepared by the Director and delivered to the current owner of record by certified mail. The notice shall describe the property in detail, name the owners, describe the violation and state that the owner will be given the opportunity to present evidence. The notice shall also contain an explanation as to why the subject parcel is not lawful under Section 66412.6 (a) or (b) of the Subdivision Map Act. The notice shall specify the date, time and place for a meeting at which the owner may present evidence to the Commission why a notice of violation should not be recorded.

The meeting shall be held no sooner than thirty (30) days and no later than sixty (60) days from the date of mailing of the notice of intention to record a notice of violation. If, within fifteen (15) days of receipt of the notice, the owner fails to file with the Community Development Department a written objection to recording the notice of violation, a notice of violation shall be filed with the County Recorder by the Director. If after the owner has presented evidence and the Planning Commission determines that there has been no violation, after a ten (10) day appeal period has elapsed, a clearance letter shall be delivered to the then current owner of record by certified mail, unless appeal is filed in compliance with 9333.E (Appeal to Council). If after the owner has presented evidence and the Planning Commission determines that the property has in fact been illegally divided, and after a ten (10) day appeal period has elapsed, a Notice of Violation shall be filed with the County Recorder by the Director, unless an appeal is filed in compliance with 9333.E (Appeal to Council).

The notice of violation, when recorded, shall be deemed to be constructive notice of the violation to all successors in interest in such property.

e Appeal to Council

The owner, or other interested party may appeal the determination of the Commission to the Council by filing a written notice and paying applicable fees, as established by resolution, to the Community Development Department within ten (10) days of the Commission determination. The Council shall hear the appeal within sixty (60) days from the date of appeal. If the Council makes a determination that the property has in fact been illegally divided, a Notice of Violation shall be filed with the County Recorder by the Director within thirty (30) days of the conclusion of the hearing.

If the Council determines that the property has not been illegally divided, a clearance letter shall be delivered to the owner by certified mail within thirty (30) days of the conclusion of the hearing.

f Violation as a Misdemeanor

In addition to the remedies and procedures provided in the Subdivision Map Act, the Subdivision Code, or any other state or local statute or regulation, any person violating any of the provisions or failing to comply with any of the regulatory requirements of Subdivision Map Act and the Subdivision Code shall be guilty of a misdemeanor.

g Indemnification/Action Against Map Approvals

In accordance with the provisions of Government Code Section 66474.9(b), the subdivider shall defend, indemnify and hold harmless the City, its officers, employees and agents from any claim, action, or proceeding to attack or set aside the map approval.
(Ord. No. 1177, § 2, 2-18-97)

PART 4 DEFINITIONS

9341 DEFINITIONS.

Words and phrases used in this Chapter are as defined in the Subdivision Map Act and Chapter 2 (Zoning) of Article 9 of this Code unless set forth below. If any word or phrase is not defined, the dictionary definition shall prevail.

"Acreage" shall mean any parcel of land which is not a lot, as defined in this chapter, and those areas where a legal subdivision has not been made previously, or where a legal subdivision has declared such parcel as acreage.

"Advisory agency" shall mean and refer to the Planning Commission of the City of Tustin.

"Appeal board" shall mean and refer to the City Council of the City of Tustin.

"Block" shall mean the area of land within a subdivision, which area is entirely bounded by streets, highways or ways, except alleys, or the exterior boundary or boundaries of the subdivision.

"Business and Professions Code" shall mean the Business and Professions Code of the State of California.

"City Clerk" shall mean and refer to the City Clerk of the City of Tustin unless otherwise specified.

"City Engineer" shall mean the City Engineer of the City of Tustin unless otherwise specified.

"Community apartment project" shall have the same meaning as provided in Section 1351 of the Civil Code.

"Condominium" shall have the same meaning as provided in Section 1350 of the Civil Code.

"Council" shall mean and refer to the City Council of the City of Tustin as established by City Ordinance.

"County" shall mean the County of Orange.

"County Recorder" shall mean the County Recorder of the County of Orange.

"County Surveyor" shall mean the County Surveyor of the County of Orange.

"Conversion" shall mean the creation of separate ownership of existing real property together with a separate interest in the space within residential, industrial or commercial buildings.

"Day" shall mean a calendar day unless otherwise specified.

"Declaration of impact" shall mean a statement adopted by a School Board, and forwarded to the Advisory Agency, declaring the existence of an impacted school or schools, in accordance with the findings and other requirements of Section 65971 of the Government Code. The declaration of impact may include the schedule required by Section 65976 of the Government Code.

"Department" shall mean the Community Development Department of the City of Tustin unless otherwise specified.

"Director" shall mean the Director of the Community Development Department unless otherwise specified.

"Easement" shall mean a nonpossessory right, interest or privilege that the City, other public entity or private party has in another's land.

"Environmental impact report (EIR)" shall mean a detailed statement prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), State Public Resources Code Sections 21000 et seq., and State and City CEQA Guidelines promulgated pursuant thereto, describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects.

"Fair market value" shall mean the value of property as determined by the Advisory Agency based upon appraisal by an MAI appraiser acceptable to the City and at the expense of the developer. The determination of "Fair Market Value" shall consider the value of a buildable acre of land at the time of development. All costs of appraisal shall be paid by the developer prior to the recordation of any final map or the issuance of any building permit.

"Final map" shall mean a map showing a subdivision of five (5) or more parcels for which a tentative and final map are required by the Subdivision Map Act and this Chapter, prepared in accordance with the provisions of the Subdivision Map Act and this Chapter and designed to be filed for recordation in the Office of the County Recorder.

"General plan" shall mean the General Plan of the City of Tustin.

"Government Code" shall mean the Government Code of the State of California.

"Improvement" shall mean streets, sidewalks, storm drainage facilities, water and sewer facilities, utilities, landscaping to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and acceptance of the final map thereof. "Improvement" shall also mean other specific improvements or types of improvements, the installation of which, either by or by a combination of, the subdivider, public agencies, private utilities, or any other entity approved by the City, is necessary to ensure consistency with, or implementation of, the General Plan, or any applicable specific plan. Improvements shall be constructed in accordance with standard engineering specifications, where applicable.

"Legislative body" shall mean and refer to the City Council of the City of Tustin.

"Lot" shall mean a unit or portion of land separate from other units or portions by description, as on a final map or parcel map, or by such other map approved by the County or by the City under the provisions of the Subdivision Map Act and the City ordinances in effect at the time of such approval, for the purposes of sale, lease, or financing.

"Lot line adjustment" shall mean a minor shift or rotation of an existing lot line or other adjustment where a greater or fewer number of parcels than originally existed is not created.

"Merger" shall mean the joining of two (2) or more contiguous parcels of land under one (1) ownership into one (1) parcel.

"Parcel" See "Lot".

"Parcel map" shall mean a map showing a subdivision of four (4) or less parcels as required by the Subdivision Map Act and this Chapter, prepared in accordance with the provisions of the Subdivision Map Act and this Chapter and designed to be filed for recordation in the Office of the County Recorder.

"Park" shall mean a parcel, or contiguous parcels of land which is owned, operated, and maintained by a public agency or private association and which provides recreational land and facilities for the benefit and enjoyment of the residents and visitors of the City. The City of Tustin designates parks in the following classifications:

"Park—Community" shall mean those parks that serve a minimum population of ten thousand (10,000) and are generally eight (8) acres in size, or more, excluding greenbelts and school grounds. Typical facilities include community centers, athletic facilities, large multi-use swimming pools, picnic areas or cultural centers. "Community parks" are owned and maintained by the City and serve residents of the entire City.

"Park—Neighborhood private" shall mean those parks that serve the immediate subdivision or development or specific neighborhood in which they are located and are a minimum of one (1) acre in size. Typical features include passive and active play areas, swimming pools, spas, tennis courts and club houses. "Private neighborhood parks" are owned and maintained by a homeowner's association.

"Park—Neighborhood public" shall mean those parks that serve a minimum population of two thousand five hundred (2,500) and are a minimum of three (3) acres in size, excluding greenbelts and school grounds. Typical facilities include active and passive open space, playground equipment, sport fields and picnic areas. "Public neighborhood parks" are owned and maintained by the City and serve residents of the entire City.

"Park improvements—Extraordinary" shall mean park and recreation improvements over and above those minimum improvements described below and may include, but not be limited to, playground equipment, picnic facilities, community centers, sports fields, swimming pools and tennis courts.

"Park improvements—Minimum" shall mean any public improvement as deemed necessary by the City to develop land for park and recreation facilities, and may include, but not be limited to, grading, automatic irrigation systems, adequate drainage, lawn shrubs, trees, concrete walkways and walkway lighting.

"Person" shall mean any individual, firm, partnership, joint venture, association, club, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, the County, this and any other city or county, municipality, district, or other political subdivision, or any other group or combination acting as a unit.

"Planning Commission" shall mean and refer to the Planning Commission of the City of Tustin as established by City Ordinance.

"Remainder" shall mean that portion of an existing parcel which is not designated on the required map as part of the subdivision. The remainder shall not be considered as part of the subdivision but shall be shown on the required map as part of the area surrounding the subdivision. A remainder of five (5) acres or more need not be shown on the map and its location need not be indicated as a matter of survey, but only by deed reference to the existing boundaries of the remainder.

"Right-of-way" shall mean a specifically defined area or strip of land, either public or private, on which an irrevocable right of passage or use has been recorded.

"Standard engineering specifications" shall mean those standard subdivision public improvement plans and specifications as prepared and/or approved by the City Engineer and those standard subdivision private improvement plans and specifications as prepared and/or approved by the Director of Community Development.

"Stock cooperative" shall be defined as provided in Section 1351 of the Civil Code.

"Street—Collector" shall mean a street, intermediate in importance between a local street and either a major or secondary thoroughfare, which has the purpose of collecting local traffic and carrying it to a thoroughfare.

"Street—Peripheral" shall mean an existing street whose right-of-way is contiguous to the exterior boundary of a subdivision.

"Street—Private" shall mean any street, access way, or the like, lying in whole or in part within a subdivision for which dedication and ownership is privately held and is utilized as access to a development. Private streets shall be constructed in accordance with standard engineering specifications.

"Street—Public" shall mean any duly dedicated street, avenue, or the like which the City has accepted and regularly maintains, or which the County duly accepted and regularly maintained prior to the incorporation of the City, or upon which public funds have been expended for improvements or rights-of-way used by the public generally.

"Subdivider" shall be as defined in the Subdivision Map Act.

"Subdivision" shall be as defined in the Subdivision Map Act.

"Subdivision Map Act" shall mean the Subdivision Map Act of the State of California as provided in Government Code Sections 66410 et seq., inclusive.
(Ord. No. 1177, Sec. 2, 2-18-97)