

Exhibit K: Proposed Amended Article 22

Note: underline and bolded text represents new text; ~~strike-through~~ text represents text to be eliminated

Article 22 Use Permits, Variances, and Parking Exceptions

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5-2200 Purposes

- A. This Article provides the flexibility in application of land-use and development regulations necessary to achieve the purposes of this Code by establishing procedures for approval, conditional approval, or disapproval of applications for use permits and variances.
- B. Use permits are required for use classifications typically ~~having~~ **resulting in** unusual site development features or operating characteristics requiring special consideration, so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area, **provided the use will not be detrimental to the public health, safety, and welfare and will not impair the integrity and character of the zoned district.**
- C. Variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site.
- D. Variances may be granted only with respect to landscaping, screening, lot area, lot dimensions, yards, height of structures, distances between structures, open space, off-street parking and off-street loading, and performance standards.

- E. Authorization to grant variances does not extend to use regulations, because sufficient flexibility is provided by the use permit process for specified uses and by the authority of the Board of Zoning Adjustments to determine whether a specific use belongs within one (1) or more of the use classifications listed in Article 3: Definitions. Further, Article 27 provides procedures for amendments to the zoning map or zoning regulations. These will ensure that any changes are consistent with the General Plan and the land use objectives of this Code.
- F. Parking exceptions are intended for the review of parking requirements in which particular difficulties or undue hardship would occur without the granting of such exception. It is the purpose of this Article to set forth findings that relate to specific parking circumstances. (Ord. 2001-015 § 1)

5-2202 Authority of Board of Zoning Adjustments

- A. The Board of Zoning Adjustments shall approve, conditionally approve, or disapprove applications for use permits, variances, or parking exceptions upon finding that the proposed use permit, variance, or parking exception is consistent with the General Plan, the general purposes of this Article, the specific purposes of the base or overlay zoning district in which a development site is located, and all applicable requirements of the Municipal Code.
- B. Projects on City-Owned Land in the CR and OS Districts. The Zoning Enforcement Official shall submit all applications for use permits, variances, or parking exceptions to the City Council for approval, and no action by the Board of Zoning Adjustments shall be required. After a duly noticed public hearing, the City Council may approve or conditionally approve such application if it meets the findings required by Section 5-2212. (Ord. 2001-015 § 1)

5-2204 Applicability to Existing and New Uses

Use permits shall be required for any new or expanded use located in a district where the land use regulations require such a permit for that use classification. In addition, preexisting uses shall be presumed to be subject to a use permit, even though a use permit was not required at the time the use was originally established, if a requirement for a use permit for the use is subsequently enacted in the Zoning Code. Therefore, any subsequent modifications or expansions to the “presumed conditional use,” shall be subject to all of the requirements of this Article. (Ord. 2001-015 § 1)

5-2206 Initiation

Applications for use permits, variances, and parking exceptions shall be initiated by submitting the following materials to the Zoning Enforcement Official:

- A. A completed application form, signed by the property owner or authorized agent, accompanied by the required fee, copies of deeds, any required powers of attorney, plans and mapping documentation, or other information required on the application or deemed necessary by the Zoning Enforcement Official to assume the completion of the application, in the form prescribed by the Zoning Enforcement Official;
- B. A vicinity map showing the location and street address of the development site. (Ord. 2001-015 § 1)

5-2208 Notice and Public Hearing

- A. Public Hearing Required. The Board of Zoning Adjustments shall hold a public hearing on an application for a use permit, variance, or parking exception.
- B. Notice. Notice of the hearing shall be given in the following manner:
 1. Mailed or Delivered Notice. At least ten (10) days prior to the hearing, notice shall be: (1) mailed to the owner of the subject real property or the owner's duly authorized agent, and the project applicant; (2) all owners of property within ~~three~~ **five** hundred (~~300~~**500**) feet of the boundaries of the site, as shown on the last equalized property tax assessment roll or the records of the County Assessor or Tax Collector; and (3) any agency as required by Government Code Section 65091.
 2. Notice to Adjacent Property Owners. Normally, notice shall be mailed to all owners of real property as shown on the latest equalized assessment roll within ~~three~~ **five** hundred (~~300~~**500**) feet of the property that is the subject of the hearing. In lieu of utilizing the assessment roll, applicants may submit and the City may use records of the County Assessor or Tax Collector, which contain more recent information than the assessment roll.
 3. Posted Notice. For hearings directly relating to an identifiable property, notice shall also be given by posting at least three (3) public notices, thereof, at least ten (10) days prior to such hearing, including at least one such notice on or within three **five** hundred (~~300~~**500**) feet of the subject property.
 4. Published Notice. Notice shall be published once in a newspaper of general circulation in San Leandro at least ten (10) days prior to the hearing.
 5. No proceeding in connection with the hearing shall be invalidated by failure to send notice where the address of the owner is not a matter of public record or to post public notices or by failure to receive any notice.
 6. Supplemental On-Site Notice. For projects that the Community Development Director determines may have a significant impact on adjacent uses or may gener-

ate significant public concerns, the Director may require that the applicant and/or property owner erect an on-site public notice sign, minimum three (3) feet by five (5) feet in size and six (6) feet in height that provides a description of the proposed project, the date, time, and place of scheduled public hearing(s), the name of the project proponent, and other information as required to clarify the project proposal.

Such sign shall be subject to review and approval of the Community Development Director and shall be installed at a prominent location on the site a minimum of ten (10) days prior to the scheduled public hearing.

C. Contents of Notice. The notice of public hearing shall contain:

1. A description of the location of the development site and the purpose of the application;
2. A statement of the time, place, and purpose of the public hearing;
3. A reference to application materials on file for detailed information; and
4. A statement that any interested person or an authorized agent may appear and be heard.

D. Multiple Applications. When applications for multiple use permits, variances, or parking exceptions on a single site are filed at the same time, the Zoning Enforcement Official may schedule a combined public hearing. (Ord. 2001-015 § 1)

5-2210 Duties of Board of Zoning Adjustments

- A. Public Hearing. The Board of Zoning Adjustments shall conduct the public hearing and hear testimony for and against the application. A public hearing may be continued to a definite date and time without additional public notice.
- B. Decision and Notice. After the close of the public hearing, the Board shall approve, conditionally approve, or deny the application. Notice of the decision shall be mailed to the applicant and any other party requesting such notice within seven (7) days of the date of the action ratifying the decision.
- C. Limits on Conditions of Approval. No conditions of approval of a use permit shall include use, height, bulk, density, open space, parking, loading, or sign requirements that are less restrictive than those prescribed by applicable district regulations. (Ord. 2001-015 § 1)

5-2212 Required Findings

An application for a use permit or variance as it was applied for or in modified form as required by the Board, shall be approved if, on the basis of the application, plans, materials, and testimony submitted, the Board finds:

A. For All Use Permits.

1. That the proposed location of the use is in accord with the objectives of this Code and the purposes of the district in which the site is located;
2. That the proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing, or working in, or adjacent to, the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity, or to the general welfare of the City;
3. That the proposed use will comply with the provisions of this Code, including any specific condition required for the proposed use in the district in which it would be located; and
4. That the proposed use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities, which cannot be mitigated.

B. For Variances.

1. That because of special circumstances or conditions applicable to the subject property, including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions, strict application of the requirements of this Article would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
2. That the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources, and without significant detriment or injury to property or improvements in the vicinity of the development site or to the public health, safety or general welfare; and
3. That granting the application is consistent with the purposes of this Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.
4. OS District Only. That granting the application is consistent with the requirements of Section 65911 of the Government Code and will not conflict with General Plan policy governing orderly growth and development and the preservation and conservation of open-space land.

C. For Parking Exceptions.

1. The strict application of the provisions of this Chapter would cause particular difficulty or undue hardship in connection with the use and enjoyment of said property; and
2. That the establishment, maintenance and/or conducting of the off-street parking facilities as proposed are as nearly in compliance with the requirements set forth in this Chapter as are reasonably possible.
3. That the provision of additional parking measures for projects shall be allowed to include car share features, transit passes for tenants in residential, commercial, or mixed-use developments, and within one-quarter mile proximity to a transit corridor or other transit facility including a bus stop or BART station.
4. Parking exceptions may be granted to affordable housing and senior housing facilities, or mixed-use developments with shared parking.

D. Mandatory Denial. Failure to make all the required findings under Subsections A, B, or C shall require denial of the application for a use permit, variance, or parking exception. (Ord. 2004-007 § 8; Ord. 2001-015 § 1)

5-2214 Conditions of Approval

In approving a use permit, variance, or parking exception, reasonable conditions may be imposed as necessary to:

- A. Achieve the general purposes of this Code or the specific purposes of the zoning district in which the site is located or to make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare;
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area; or
- D. Prevent or mitigate potential adverse effects on the environment. (Ord. 2001-015 § 1)

5-2216 Effective Date; Appeals

A use permit, variance, or parking exception shall become effective fifteen (15) days after action by the Board, unless appealed to the City Council in accord with Article 28. (Ord. 2001-015 § 1)

5-2218 Lapse of Approval; Transferability; Discontinuance; Revocation

- A. Lapse of Approval. A use permit, variance, or parking exception shall lapse **after** one year, or at an alternative time specified as a condition of approval, after its date of approval unless:
1. A building permit has been issued, coupled with diligent progress evidencing a good faith intent to commence the intended use; or
 2. A certificate of occupancy has been issued; or
 3. The use is established; or
 4. The use permit or variance is renewed.

A use permit also shall lapse upon discontinuance of work on a project or expiration of a building permit.

- B. Transferability. The validity of a use permit, variance, or a parking exception shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor applies to the City for a business license and zoning approval.
- C. Discontinuance. A use permit, variance, or parking exception shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days.
- D. Revocation. A use permit, variance, or parking exception that is exercised in violation of a condition of approval or a provision of this Code may be revoked, as provided in Section 5-2906.
- E. Renewal. Upon written request, a use permit, variance, height exception, or parking exception may be renewed by the Zoning Enforcement Official for **one year, with one additional one-year renewal allowed for a total** a period not to exceed ~~one (1) year~~ **two (2) years** without notice or public hearing if the findings required by Section 5-2212 remain valid. (Ord. 2001-015 § 1)

5-2220 Changed Plans; New Applications

- A. Changed Plans. A request for changes in conditions of approval of a use permit, variance, or parking exception, or a change to development plans that would have a substantial effect on conditions of approval shall be treated as a new application. The Zoning Enforcement Official may approve changes that are minor in nature.
- B. New Application. If an application for a use permit, variance, or parking exception is disapproved, no new application for the same or substantially the same, use permit or variance shall be filed within one (1) year of the date of denial of the initial application, unless the denial is made without prejudice. (Ord. 2001-015 § 1)

5-2222 Temporary Use Permits

A temporary use permit authorizing certain temporary use classifications as listed in various residential, commercial, and industrial districts under the heading “**Temporary Uses Subject to Administrative Review...**” shall be subject to the provisions of this Section. Temporary uses shall include: Christmas Tree and Pumpkin Sales, Limited Commercial Filming, Temporary Religious Assembly, Street and Neighborhood Fairs, Temporary Real Estate Offices, Outdoor Retail Sales, Temporary Storage Containers, Circuses and Carnivals, Trade Fairs, Non-Recurring Swap Meets, and Animal Shows. The definitions for these temporary uses are found in Article 3. In the event that a temporary use other than those listed above is proposed, the Zoning Enforcement Official shall review the proposed use and shall determine if it should be treated as a temporary use.

- A. Application and Fee. A completed application form and the required fee shall be submitted to the Zoning Enforcement Official. The Zoning Enforcement Official may request any other plans and materials necessary to assess the potential impacts of the proposed temporary use.
- B. Duties of the Zoning Enforcement Official. The Zoning Enforcement Official shall approve, approve with conditions, or deny a complete application within a reasonable time. No notice or public hearing shall be required.
- C. Required Findings. The application shall be approved as submitted, or in modified form, if the Zoning Enforcement Official finds:
 - 1. That the proposed temporary use will be located, operated, and maintained in a manner consistent with the policies of the General Plan and the provisions of this Chapter; and
 - 2. That approval of the application will not be detrimental to property or improvements in the surrounding area or to the public health, safety, or general welfare.
- D. Conditions of Approval. In approving a temporary use permit, the Zoning Enforcement Official may impose reasonable conditions necessary to:
 - 1. Achieve the general purposes of this Chapter and the specific purposes of the zoning district in which the temporary use will be located, or to be consistent with the General Plan;
 - 2. Protect the public health, safety, and general welfare; or
 - 3. Ensure operation and maintenance of the temporary use in a manner compatible with existing uses on adjoining properties and in the surrounding area.

- E. Effective Date; Duration; Appeals. An approved temporary use permit shall be effective on the date of its approval; a disapproved permit may be appealed by the applicant, as provided in Article 28. The permit shall be valid for a specified time period not to exceed ninety (90) days as specified by the Zoning Enforcement Official's approval action. The temporary use permit shall specify the time within which the temporary use shall be commenced, which shall be not more than ninety (90) days from approval by the Zoning Enforcement Official, and the use shall be continued only for the duration set forth in the zoning approval. A temporary use permit shall lapse if not used within the dates approved and may be revoked by the Zoning Enforcement Official effective immediately upon verbal or written notice for violation of the terms of the permit. Verbal notice shall be confirmed by written notice mailed to the permit holder within a reasonable time. The Zoning Enforcement Official may approve changes in a temporary use permit. (Ord. 2001-015 § 1)