



## Legislation Text

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**File #:** 12-033, **Version:** 1

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### **..Title**

Consideration of Amendments to the City's Zoning Code Related to Large Family Day Care, Accessory Structures, Paving in Residential Front Yards in Residential Districts, and Fences in the Residential Single-Family View Preservation Overlay District

### **RECOMMENDATIONS**

Staff recommends that the City Council take public testimony on the proposed amendments, consider the Planning Commission's comments and recommendations on the proposed amendments, and adopt the proposed Zoning Code Amendments.

Staff also recommends that the City Council accept the Planning Commission's recommendation to direct staff to review whether existing regulations on Large Family Day Care conform to State law.

### **BACKGROUND**

Staff is proposing amendments to the Zoning Code related to Large Family Day Care, Accessory Structures, Paving in Residential Front Yards in Residential Districts, and Fences in the Residential Single-Family View Preservation Overlay District as part of its continuing updates to the Zoning Code. The proposed amendments make the following changes:

- Require Administrative Review (instead of a Conditional Use Permit) for minor changes in the site parameters for establishing residential large family day care uses;
- Clarify existing rules for accessory structures;
- Limit impervious paving within front yards to fifty percent; and
- Add text to the fence rules that would allow the Zoning Enforcement Official to determine whether view preservation issues are germane to proposed fence projects within the Bay-O-Vista neighborhood.

At its January 19, 2012 meeting, the Planning Commission adopted Resolution-001PC, recommending that the City Council approve the proposed Zoning Code Amendments.

### **Analysis**

Over time, City staff has encountered the need for minor adjustments to the Zoning Code text to correct and/or clarify sections. In this group of proposed amendments, staff is focusing on residential regulations related to Large Family Daycare, Accessory Structures, Paving in Residential Front Yards and Fences in the View Preservation Overlay District.

### **Large Family Daycare**

Currently, the Zoning Code has a series of standards that guide the use of a detached, single-family dwelling on a lot zoned for residential day care use (Section 2-516 Large Family Day Care Homes). These are home-based day care operations for up to 14 children. Each Large Family Day Care applicant must comply with a series of parameters related to site features. These include provisions C.1 through 5, as follows:

1. Spacing: No Large Family Day Care home shall be located within three hundred (300) feet of any other Large Family Day Care Home, as measured from the exterior lot lines.
2. On-Street Parking: No Large Family Day Care home shall be located upon a lot having less than thirty-two (32) feet of legally permitted parking along the frontage of the lot.
3. Street Width: No Large Family Day Care home shall be located upon a lot fronting upon a street with a curb-to-curb width of less than thirty (30) feet.
4. High Traffic Volume Streets: No Large Family Day Care home shall be located upon a lot fronting upon a street with four or more traffic lanes or upon a street with an average daily traffic of five thousand (5,000) or more vehicles, as calculated by the City Engineer.
5. Employee Parking and Circulation Plan. The driveway of a Large Family Day Care home may be used to provide off-street parking required by Article 17 if such use will not obstruct any required drop-off and pick-up area and will not obstruct a sidewalk or other public right-of-way.

The Zoning Code specifies that a Conditional Use Permit be required if the site features do not meet any of the above five parameters. Based on comments from the permit counter, staff has observed the existence of certain properties that are appropriate for Large Family Day Care but yet do not conform to the above regulations, particularly parameter C.2, governing on-street parking. To expeditiously allow Large Family Day Care that largely conform to the goals and requirements of Section 2-516 of the Zoning Code, staff is proposing that the requirement for a Conditional Use Permit be modified to an Administrative Exception.

The Administrative Exception process involves an administrative decision by the Zoning Enforcement Official pursuant to Section 2-574, Administrative Exceptions. The Administrative Exception is currently utilized for exceptions to height, size and setback regulations for residential projects as accessory structures and extensions of non-conforming building setbacks. Unlike a Conditional Use Permit, the Administrative Exception does not involve a public hearing and can be processed in a more rapid time frame. The process would include noticing to the adjacent neighbors, rather than to those residents living in a 300-foot radius.

The findings for the Administrative Exception are similar to those findings that must be made for a Conditional Use Permit and include “a determination that such exception would not be detrimental to public health, safety or welfare and would not cause undue damage, hardship, nuisance or other detriment to persons or property in the vicinity.”

Staff believes that the Administrative Exception process is more suited to residential-based Large Family Day Care proposals while continuing to regulate the impacts that may be associated with such a use. In order to accommodate the process for an Administrative Exception, Zoning Code Sections 2-516 Large Family Day Care Homes and 2-574 Administrative Exceptions should be

modified as shown in the proposed Ordinance.

### Accessory Structures

Zoning Code Section 2-546 governs the allowable location, size and height of a residential accessory structure. Most common forms of accessory structures are detached garages, but can also include workshops, sheds and secondary dwelling units, among others. The existing language in the Code has been difficult to interpret. Existing text under Subsection D, Maximum Height and Subsection E, Minimum Setbacks and Relation to Property Lines provide contradictory guidance. For example, the Setback section provides that structures within the rear twenty- five feet of the lot may be located between zero and three feet from the property line. However, the Height section provides that structures greater than eight feet in height must be located at least five feet from the property line. This contradiction in height and location parameters has led to inconsistent interpretation of the Code and a lack of clarity for staff and homeowners on their residential accessory structure projects. Staff proposes the elimination of the inconsistent text and addition of a table that clearly sets out the allowable range of heights and corresponding setbacks.

The proposed Ordinance would delete this confusing narrative; set out the Height and Setback regulations in a table; add new formatting sections in the regulations for Lot Area and Coverage; and add further clarification that the Board of Zoning Adjustments would be the decision-making body for any Conditional Use Permits.

### Fences in the View Preservation Overlay District

In 2009, Section 4-1682 of Article 16 of the Zoning Code was amended to require that all fences in the Residential Single-Family View Preservation Overlay District RS-VP (i.e. the Bay-O-Vista neighborhood) be constructed of solid materials only up to three feet in height and of glass for the remaining allowable height of up to seven feet. If a fence could not meet this criteria, the Code requires a Fence Modification permit, which involves a public hearing before the Zoning Enforcement Official. This regulation protects existing views in the hills of the Bay-O-Vista neighborhood.

Staff observed that, in practice, many side and rear yards in the RS-VP district are not located within significant viewsheds. For example, many homes on the flat sections of Bay-O-Vista in the VP overlay, such as on Benedict Drive, are subject to this requirement when their homes are not within any viewsheds. Even homes on the hilly sections of Bay-O-Vista may be oriented so that a side or rear fence would not infringe on a significant view corridor.

As such, staff is proposing that the following text be added to Section 4-1682, Subsection A.3 RS-VP District: *“Fences proposed in side and rear yards where no views, as defined above, are significantly affected are not subject to this section, as determined by the Zoning Enforcement Official.”*

The above modified text in Section 4-1682 is included in the proposed Ordinance.

### Paving within Residential Front Yards

While the San Leandro Zoning Code currently provides that parking anywhere other than on a driveway in the front setback is prohibited, the Code also allows for additional paved areas adjacent to the driveway and states that said driveway not exceed fifty percent of the width of the subject

property. As such, there are no regulations against completely paving over a front yard. In recent years, this has resulted in cases where a homeowner has paved over the entire front yard of the home, causing adjacent neighbors and the City Council to voice concerns regarding aesthetics. State stormwater run-off permits encourage larger areas of pervious surface to allow for on-site filtration of rain water before entering into a storm drain system.

In order to ensure more attractive and environmentally sustainable front yards in the City's residential neighborhoods, staff proposes to amend the Zoning Code to limit impervious surfaces to 50% of front yards.

### **Committee Review and Actions**

City Council Business and Housing Development Committee was provided a brief update on the proposed amendments on October 13, 2011.

### **Applicable General Plan Policies**

The proposed amendments conform with the General Plan. Specifically, these Policies apply:

- **Policy 1.06 Day Care Centers in Neighborhoods** - To the extent permitted by State law, maintain regulations for large-family day care facilities (as defined by the State) and child care centers which ensure that impacts on residential neighborhoods are minimized.
- **Policy 2.05 Alterations, Additions, and Infill** - Ensure that alterations, additions and infill development are compatible with existing homes and maintain aesthetically pleasing neighborhoods.
- **Policy 1.07 Fences** - Require that any fencing in residential neighborhoods meets high aesthetic and safety standards. Residential fencing should not obstruct vehicle sight lines, should be compatible with the architectural design of nearby structures, and should make a positive contribution to the character of the neighborhood.
- **Policy 1.04 Front Yards** - Encourage the attractive treatment of front yards and other areas in residential neighborhoods that are visible from the street. Establish limits on the paving of front yard areas.

### **Environmental Review**

The proposed minor amendments to the Zoning Code are exempt from environmental review under the California Environmental Quality Act pursuant to Public Resources Code section 21065 because the associated Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines and because the amendments do not approve or allow the construction of any project and, therefore, have no potential for resulting in physical change in the environment, directly or ultimately.

### **Board/Commission Review and Actions**

On the Accessory Structure amendments, Board of Zoning Adjustments members commented that setback requirements be increased to a minimum of 18 inches, including for those structures less than eight feet in height, citing concerns related to drainage and other impacts on adjacent properties.

Staff's response was that current policy and practice allow for structures in the rear of the property to be less than five feet from the property lines, but that the size of a structure may be included in the proposed table. Staff notes that the concerns raised by the comment are also mitigated through existing code requirements for building type and State regulations that site drainage be retained on site and not directed toward adjacent properties.

In response to BZA members' comments, and in consultation with the Zoning Enforcement Official, the addition of text referencing the current definition within the San Leandro Building Code for structures less than 120 square feet in area was included in the proposed height and setback table. Additional edits were made to the Lot Coverage and Height and Setback sections for consistency in format and content. At the January 19, 2012, Planning Commission meeting, the Commissioners requested that additional language specifying the Board of Zoning Adjustments as the referral body for any Conditional Use Permits be included in the proposed text changes.

The Board of Zoning Adjustments voiced support for the amendments, with modifications. The Planning Commission supported the amendments, and recommended adoption of the proposed text changes with minor modifications as stated above.

Finally, the Planning Commission voted to recommend that the City Council direct staff to review the regulations in San Leandro Zoning Code section 2-516, Large Family Day Care Homes, including their conformance to State law.

### **Summary of Public Outreach Efforts**

- Notification of the Planning Commission January 19, 2012 and the City Council February 21, 2012 meetings included a legal ad in the Daily Review and posting of the meeting at City Hall a minimum of 72 hours in advance of the meeting dates. In addition, a courtesy notice was sent to all Neighborhood Associations listed on the City's roster.
- Staff was contacted by the Marina Gardens Homeowner Association and the Bay-O-Vista Improvement Association. Both contacts involved clarification of the issues and no comments either in support or in opposition to the changes were registered.
- At the Board of Zoning Adjustments meeting on January 5, 2012 and at the Planning Commission meeting of January 19, 2012, no public comments were received.

### **Legal Analysis**

The proposed Zoning Code amendments were analyzed by the City Attorney's office and found to be in conformance with the California Government Code as well as the local General Plan and Zoning Code.

## **ATTACHMENTS**

- Attachment A: Excerpt of the Draft Minutes of the Planning Commission meeting of January 19, 2012
- Attachment B: Excerpt of the Minutes of the Board of Zoning Adjustments meeting of January 5, 2012.
- Attachment C: Resolution No. 2012-002PC, Recommending that the City Council Direct Staff to Review the Existing Regulations on Large Family Day Care
- Attachment D: State of California Health and Safety Code H.S. 1597.46 Family Day Care

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