



Legislation Text

File #: 19-647, **Version:** 1

Staff Report to amend and re-chapter the San Leandro Zoning Code, to accommodate recent changes in State law, to correct errors and inconsistencies, and to discontinue the pilot program limitation on cannabis product manufacturing.

SUMMARY AND RECOMMENDATION

Staff proposes to re-chapter and amend the Zoning Code to: 1) establish a three-tier numbering methodology consistent with the Municipal Code and Administrative Code, 2) to correct errors and inconsistencies, 3) discontinue the pilot program limitations placed on cannabis product manufacturing, and 4) to modify certain provisions consistent with recent changes in State law. The proposed amendments do not modify existing development standards and are intended to facilitate future Zoning Code updates, including a forthcoming Zoning Code implementation of the Bay Fair TOD Specific Plan.

BACKGROUND

The Zoning Code is a living document that requires regular maintenance in order to remain an effective instrument that reflects the goals and policies of the City. Routine Zoning Code updates are necessary to address changing conditions, community needs and interests, judicial determinations, and state mandates. The Planning Commission previously considered and recommended Zoning Code updates in conjunction with the 2035 General Plan in July 2016 and to streamline the Commercial and Professional Office (“P” zoning) development standards in November 2018. Staff intends to bring forward Development Code updates on an annual basis as a part of the Planning Division’s ongoing work program.

PROPOSAL

The proposed update effectively renumbers and reformats the Zoning Code to be consistent with the three-tier numbering system currently used in the City’s Municipal Code and Administrative Code. The Zoning Code’s current format uses a two-tier numbering system that limits flexibility when inserting amendments, is complicated for the public to navigate, and prevents the use of hyperlinking and certain indexing features unique to online code publishing. The proposed re-chaptering does not alter existing development standards or implementation, but instead reorganizes the Zoning Code in a logical and coherent manner with an expandable numbering system. The new numbering also designates reserved chapters to add new subject matter as future needs arise. The online version of the re-chaptered three-tier Zoning Code will allow the use of hyperlinks for cross-referencing State laws and other related code sections. This re-chaptering effort is necessary in advance of the Bay Fair TOD Specific Plan Zoning Code updates, to be considered by the Planning Commission and City Council in summer, 2020.

In addition to the proposed re-chaptering, staff has used this opportunity to conduct a comprehensive

review and editing of the Zoning Code to incorporate recent State legislation involving home child care and Accessory Dwelling Units, to remove the cannabis product manufacturing pilot program limitation, and to correct known errors and inconsistencies. The proposed changes and corrections are non-substantive and do not modify the established underlying development standards of the current Code. Most of the changes primarily relate to cross-referencing errors, grammatical errors, and inconsistencies inadvertently created when prior code updates modified one section exclusive of another.

Large Family Child Care Homes

Senate Bill 234 (Skinner), signed by Governor Newsom on September 5, 2019, makes every licensed large family child care home a permitted use by right. A large family child care home is defined as “a day care facility in a single residence where an occupant of the residence provides family day care for seven (7) to fourteen (14) clients.” This State law, effective January 1, 2020, requires the City to discontinue any permit requirements for large family child care homes in the Zoning Code. Under the new legislation, the California Department of Social Services Community Care Licensing Division and local fire departments will be responsible for reviewing and approving family child care homes. A similar bill from 2004 previously made small family child care homes a permitted use (those with fewer than seven children). In order to comply with State law, staff has prepared amendments to Section 2-516, now 2.04.224.

Accessory Dwelling Units

Six different bills signed by Governor Newsom that further regulate the development of Accessory Dwelling Units (ADU) took effect on January 1, 2020. The bills include a prohibition on imposing development impact fees on new ADUs less than 750 square feet in size (SB 13), specific development standards including a height limit of 16 feet, minimum setbacks of 4 feet and the elimination of minimum lot size requirements (AB 68), a mandatory 60-day review and approval period (AB 68), and a prohibition on requiring property owner occupancy of either the primary or accessory dwelling (AB 881). The legislation effectively enables anyone to construct an ADU on any residential parcel.

In order to comply with these new statutory requirements, staff has prepared amendments to Section 2-576 (now 2.04.388) that reflect the new development standards and streamline the current ADU review and approval process to conform to the mandatory 60-day review period. Rather than being reviewed and approved through separate planning and building permits, the changes will enable ADUs to be reviewed and approved through a single building permit application. As required by State legislation, the proposed changes include updated land use definitions for Accessory Dwelling Units and Junior Accessory Dwelling Units (effectively enabling bedrooms to have a kitchen permitted).

Cannabis Product Manufacturing Pilot Program

When the City Council first established a permit process for cannabis product manufacturing in June of 2017, less was known about the land use or its market demand. At the time, a few cities and counties in California were fielding a substantial number of applications for cannabis businesses and, because so few cities allowed cannabis product manufacturing, there was a concern that San Leandro could face a similar situation. In an abundance of caution, a pilot program was established

to initially limit the total number of allowable cannabis manufacturing conditional use permits in the City to five in total. These provisions were supported by robust application requirements in Section 5.6.140 of the San Leandro Administrative Code.

Since that time, the City has entitled and permitted one cannabis manufacturer and currently has three conditional use permit applications in progress. The market demand for cannabis product manufacturing is now better understood and is substantially less than initially assumed. The City's industrial vacancy rate remains very low (near 1%) and few property owners are willing to lease to cannabis businesses.

Given these factors, Staff recommends discontinuing the pilot program at this time and eliminating the limit on applications. Cannabis product manufacturing projects will continue to be evaluated on a case by case basis and require approval of a conditional use permit by the Board of Zoning Adjustments at a noticed public hearing. The proposed code update will delete Section 4-1640 (D) "Total Number of Valid Permits Allowed." All other Code provisions related to cannabis product manufacturing in the Zoning Code will remain unchanged.

Cross-Referencing and Organizational Inconsistencies

Staff proposes to correct several minor cross-referencing and organizational errors that do not affect code implementation. These are primarily overlooked errors and omissions left over from prior updates when new sections were created or deleted. For example, a 2016 code update eliminated two zoning districts, PHP (Professional High Density) and DA-5 (Downtown Area 5), and created one new district, IT (Industrial Transition). Some sections of the Zoning Code continue to identify the eliminated zoning districts. Another example is omitted references to Title 6, Affordable Housing, a chapter added to the end of the Zoning Code a number of years ago but never identified in the organizational and introductory tables and sections of Title 1. Other changes include deleting obsolete references to the discontinued Redevelopment Agency (RDA) and superseded or discontinued redevelopment plans, and reorganizing subsections or merged sections of code with their topic or purpose clearly identified in the heading.

Land Use Definitions

Over the years, various prior code updates have neglected to insert, add or modify land use definitions in the specified chapter of the Zoning Code, Section 1-304 (now 1.12.108). Some land use definitions are currently referenced in unexpected or unsuited locations, making searching and indexing more difficult. One of the tasks undertaken in this Zoning Code update was to consolidate all general land use definitions into the designated chapter, Section 1.12.108.

STAFF ANALYSIS

The proposed re-chaptering of the Zoning Code is intended to improve its organization and accessibility without affecting development standards or implementation. Renumbering the code into three levels with numerical spacing gaps allows greater flexibility for future code updates and makes the code easier to use and index online. The City no longer publishes printed copies of the Zoning Code, as it is over 450 pages in length and used almost exclusively online. No development standards have been modified through this code update with the exception of those mandated under State law, particularly Accessory Dwelling Units and Large Family Child Care Homes.

The proposed large family child care home and ADU ordinance amendments are intended to bring the Zoning Code into compliance with new State laws that became effective on January 1, 2020. The City's ability to regulate these is expressly limited and the Planning Commission has no discretion to impose development standards greater than State law (such as a larger setback or a reduced height limit). ADUs are required to be processed and permitted in accord with California Government Code Section 65852.2 regardless of local ordinance. Similarly, the City may no longer regulate or require a special permit to operate residential large family home child care facilities under Section 1597.40 through 1597.46 of the California Health and Safety Code.

The proposed ADU ordinance has been reviewed for conformance with State law by both the City Attorney and staff from the California Department of Housing and Community Development (HCD).

ENVIRONMENTAL REVIEW

The proposed Zoning Code Amendments have been determined to not be subject to the California Environmental Quality Act (CEQA) because 1) the proposed Amendments constitute non-substantive corrections and adjustments that will not result in a direct or reasonably foreseeable indirect physical change in the environment; 2) the proposed Amendments are covered by the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and 3) any project that has the potential to cause a significant effect on the environment will be evaluated through a separate environmental review process in accordance with CEQA. The proposed amendments to the Zoning Code are necessary for compliance with existing State mandates and are therefore exempt from CEQA under the general rule.

PUBLIC OUTREACH

In accord with the statutory requirements for an amendment to the Zoning Code, a legal advertisement for the Planning Commission public hearing was placed in the East Bay Times' Daily Review newspaper on January 3, 2020 and the agenda item was posted in advance of the meeting. No comments were received from the public regarding the proposed Zoning Code amendments at the time of the filing of this report. This item is anticipated to be scheduled for consideration by the City Council on March 2, 2020.

RECOMMENDATION

Staff recommends the Planning Commission adopt Resolution 2020-001 with attached Exhibit A, recommending approval of the proposed Zoning Code amendments to the City Council.

ATTACHMENTS

1. Prior Code Reference Table
2. Exhibit A (edited copy), proposed Zoning Code amendments, with strikeout deletions and underlined additions
3. Planning Commission Resolution Exhibit A (clean copy attached to Planning Commission

Resolution 2020-001)

PREPARED BY:
Andrew J. Mogensen, AICP
Planning Manger

Grace Wu, AICP
Senior Planner