



## Legislation Text

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**File #:** 20-045, **Version:** 1

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Staff Report for a City of San Leandro City Council Ordinance to Amend and Re-chapter the San Leandro Zoning Code to Accommodate Recent Changes to State law, to Make Corrections and Address Inconsistencies, and to Eliminate the Cap on Cannabis Product Manufacturing Permits That Was Associated With the Pilot Program.

### **SUMMARY AND RECOMMENDATIONS**

Staff recommends the City Council approve an ordinance that will re-chapter and amend the Zoning Code to: 1) establish a three-tier numbering methodology consistent with the Municipal Code and Administrative Code, 2) make corrections and address inconsistencies, 3) discontinue the pilot program 5-permit cap limitations placed on cannabis product manufacturing, and 4) modify certain provisions consistent with recent changes to State law. Staff also proposes to amend Title 5, Chapter 6 of the Administrative Code to remove the associated cannabis manufacturing pilot program limitations. 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 Transit Oriented Development (TOD) Specific Plan, as well as to ensure the Zoning Code remains consistent with recent changes in State law.

### **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, consistent with City Council direction. Routine Zoning Code updates are necessary to address changing conditions, community needs and interests, judicial determinations, and state mandates. The City Council previously considered and recommended Zoning Code updates in conjunction with the 2035 General Plan Update in September 2016 and in regards to streamlining the Commercial and Professional Office ("P" zoning) development standards in January, 2019. 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 rennumbers 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 more 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 later this summer.

In addition to the proposed re-chaptering, staff took 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 5-permit cap on cannabis product manufacturing associated with the 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 childcare home a permitted use by right. A large family childcare 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 childcare 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 childcare homes. A similar bill from 2004 previously made small family childcare homes a permitted use (those with fewer than seven children). In order to comply with State law, staff prepared amendments to Section 2-516, now 2.04.224.

### Accessory Dwelling Units

Six different bills signed by Governor Newsom that further regulate 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 prepared amendments to Section 2-576 (now 2.04.388) to reflect the new development standards and to streamline the current ADU review and approval process in a manner that conforms to the mandatory 60-day review period. Rather than a review and approval through separate planning and building permits, the changes will enable ADU review and approval 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 (JADUs), 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 2017, less information was known about this emerging 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 no more than five in total. These provisions were supported by robust application requirements in Title 5 Chapter 6 of the San Leandro Administrative Code (5.6.100 through 5.6.150).

Since that time, the City has entitled and permitted two cannabis manufacturers and currently has two more 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 and few property owners are willing to lease to cannabis businesses. Planning and Building staff are also now well-acquainted with these use types, and when coupled with increasingly robust regulation of these facilities by State agencies, sufficient regulations remain in place to ensure the continued protection of public health, safety, and welfare.

Given these factors, Staff recommends discontinuing the pilot program at this time by eliminating the limit of five 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. In addition to these local requirements, such projects are also required to secure a separate permit from the State of California (currently administered by the Department of Public Health - Manufactured Cannabis Safety Branch). The proposed code update will delete Zoning Code Section 4-1640 (D) "Total Number of Valid Permits Allowed" and amend the concurrent provisions within Title 5, Chapter 6 of the Administrative Code. All other Code provisions related to cannabis product manufacturing in the Zoning Code and Administrative 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. Other changes include deleting obsolete references to the discontinued Redevelopment Agency (RDA) and superseded or discontinued redevelopment plans, inserting updated graphical examples, 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 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 (now Section 1.12.108).

### **STAFF ANALYSIS**

The proposed re-chaptering of the Zoning Code is intended to improve its organization and accessibility, especially for the public, 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 were 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 childcare home and ADU ordinance amendments are intended to bring the Zoning Code into compliance with new State laws that went into effect 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 accordance 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 childcare facilities under Section 1597.40 through 1597.46 of the California Health and Safety Code.

The proposed ADU ordinance was 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. The proposed amendments to the Administrative Code affect internal procedures and are also exempt from CEQA.

## **SUMMARY OF PUBLIC OUTREACH EFFORTS**

In accord with the statutory requirements for an amendment to the Zoning Code, a legal advertisement for the City Council public hearing was placed in the East Bay Times' Daily Review newspaper on February 14, 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.

## **PLANNING COMMISSION REVIEW AND ACTION**

The Planning Commission considered the proposed Zoning Code Amendments at a special January 16, 2020 public hearing. No public comments were made during the hearing and no written comments were received. The Planning Commission asked staff several clarifying questions. Following deliberations, the Planning Commission voted to recommend the proposed Zoning Code amendments by a 5-0 decision with Commissioners Boldt and Santos absent.

## **ATTACHMENTS**

### Attachment(s) to Staff Report

- Prior Code Reference Table

### Attachment(s) to Ordinance to Amend Zoning Code

- Exhibit A (edited copy), proposed Zoning Code amendments, with strikeout deletions and underlined additions.
- Exhibit B (clean copy), proposed Zoning Code

Attachment(s) to Resolution to Amend Administrative Code

- Exhibit A (edited copy), proposed Administrative Code Amendments, with strikeout deletions
- Exhibit B (clean copy), proposed Administrative Code

**PREPARED BY:**

Andrew J. Mogensen, AICP  
Planning Manager

Grace Wu, AICP  
Senior Planner