



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

April 22, 2019

The Honorable City Council
Palo Alto, California

SECOND READING: Adoption of an Ordinance Amending Section 18.18.120 (Grandfathered Uses and Facilities) of the Palo Alto Municipal Code to Adjust Regulations Pertaining to Noncomplying Facilities. California Environmental Quality Act (CEQA): This Ordinance is Within the Scope of the Comprehensive Plan. Environmental Impact Report (EIR) certified and adopted on November 13, 2017 by Council Resolution No. 9720; the Ordinance is Also Exempt From Environmental Review Under CEQA Guidelines Sections 15061(b)(3) and 15305. (FIRST READING: April 1, 2019 PASSED: 6-1 Kou no)

This Ordinance was first heard by the Council on April 1, 2019 and approved with two amendments. The adopted motion with the amendments is below. It is now before you for the second reading.

MOTION AS AMENDED RESTATED: Vice Mayor Fine moved, seconded by Council Member Kniss to adopt on first reading an Ordinance amending Section 18.18.120 of the Palo Alto Municipal Code to allow non-complying (grandfathered) facilities in the Commercial Downtown zoning district to convert an existing use to another permitted use, except for a conversion from residential uses to non-residential uses, including the following changes:

A. Amend the Ordinance Section 18.18.120 b. 2. F. to state "...shall not be converted to a non-residential land use or reduced in gross floor area or number of units."

B. Amend the Ordinance Section 18.18.120 b. 2. F to state "...shall submit a statement of its position with all claims and all supporting documentary evidence at the time..."

MOTION AS AMENDEDE PASSED: 6-1 Kou no

ATTACHMENTS:

- Attachment A: 2019-04-01 ORD Amending PAMC Section 18.18.120 (CD-C - Grandfathered Uses and Facilities) (PDF)

Department Head: Molly Stump, City Attorney

**** NOT YET ADOPTED ****

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Section 18.18.120 (Grandfathered Uses and Facilities) of Chapter 18.18 (Downtown Commercial District) of Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to Adjust Regulations Relating to Noncomplying Facilities.

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and declarations. The City Council finds and declares as follows:

- A. Section 18.18.120 of the Palo Alto Municipal Code governs permissible noncomplying uses and facilities in the Downtown Commercial zone district.
- B. In 2016, the provisions of Section 18.18.120 governing noncomplying facilities seeking to remodel, improve, or replace site improvements were updated to: 1) allow minor modifications to building envelope through Architectural Review; and 2) require that such facilities maintain continual use and occupancy for the same use.
- C. The requirement that noncomplying facilities maintain continual use and occupancy for the same use has resulted in potentially unintended consequences, including the inability to change among similar permitted and conditionally permitted uses in noncomplying facilities, such as a change from eating and drinking services to retail uses.

SECTION 2. Section 18.18.120 (Grandfathered Uses and Facilities) of Chapter 18.18 (Downtown Commercial (CD) District) of Title 18 (Zoning) is hereby amended to read as follows:

18.18.120 Non-complying (Grandfathered) Uses and Facilities

(a) Non-complying (Grandfathered) Uses

- (1) The following uses and facilities may remain as legal noncomplying (grandfathered) uses, and shall not require a conditional use permit or be subject to the provisions of Chapter 18.70:
 - (A) Any use which was being conducted on August 28, 1986; or
 - (B) A use not being conducted on August 28, 1986, if the use was temporarily discontinued due to a vacancy of 6 months or less before August 28, 1986; or
 - (C) Any office use existing on April 16, 1990 on a property zoned CD and GF combining, which also existed as a lawful conforming use prior to August 28, 1986, notwithstanding any intervening conforming use.
- (2) The ~~legal noncomplying-grandfathered~~ uses in subsection (1) shall be permitted to remodel, improve, or replace site improvements on the same site, for continual use

and occupancy by the same use, provided such remodeling, improvement, or replacement complies with all of the following:

- (A) shall not result in increased floor area;
 - (B) shall not relocate below grade floor area to above grade portions of the building;
 - (C) shall not result in an increase of the height, length, building envelope, building footprint or any other increase in the size of the improvement. For purposes of this section, "building envelope" shall mean the three dimensional shape and size occupied by an existing building. It is not the maximum, buildable potential of the site;
 - (D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section 18.18.070; or
 - (E) in the case of medical, professional, general business or administrative office uses of a size exceeding 5,000 square feet in the CD-S or CD-N district that are deemed legal noncomplying grandfathered pursuant to subsection (1), such remodeling, improvement, or replacement shall not result in increased floor area devoted to such office uses.
 - (F) The Director may approve minor changes to the building's footprint, height, length, and the building envelope through Architectural Review of minor aesthetic architectural improvements and to improve pedestrian-orientation provided there is no increase to the degree of any non-complying feature.
- (3) If a legal noncomplying grandfathered use deemed existing pursuant to subsection (1) ceases and thereafter remains discontinued for 12 consecutive months, it shall be considered abandoned and may be replaced only by a conforming use.
- (4) A use deemed legal noncomplying grandfathered pursuant to subsection (1) which is changed to or replaced by a conforming use shall not be reestablished, and any portion of a site or any portion of a building, the use of which changes from a legal noncomplying grandfathered use to a conforming use, shall not thereafter be used except to accommodate a conforming use.

(b) Non-complying (Grandfathered) Facilities

- (1) Any noncomplying (grandfathered) facility existing on August 28, 1986 and which, when built, was a complying facility, may remain as a legal noncomplying grandfathered facility and shall not be subject to the provisions of Chapter 18.70.
- (2) The legal noncomplying grandfathered facilities in subsection (1) shall be permitted to remodel, improve, or replace site improvements on the same site ~~for continual use and occupancy, by the same use,~~ provided such remodeling, improvement, or replacement complies with all of the following:
 - (A) shall not result in increased floor area;
 - (B) shall not relocate below grade floor area to above grade portions of the building;
 - (C) shall not result in an increase of the height, length, building envelope, building footprint, or any other increase in the size of the improvement;
 - (D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section 18.18.070;

- (E) The Director may approve minor changes to the building’s footprint, height, length, and the building envelope through Architectural Review of minor aesthetic architectural improvements and to improve pedestrian-orientation provided there is no increase to the degree of any non-complying feature.
- (F) The residential portion of any legal noncomplying facility shall not be converted to a non-residential land use or reduced in gross floor area or number of units. An applicant asserting that the operation of this subsection (F) is preempted by state or federal law shall submit a statement of its position with all claims and all supporting documentary evidence at the time it applies for a change of use. The City Council shall hold at least one noticed public hearing in accordance with the procedures set forth in PAMC 18.77.080 to consider whether to waive or adjust the requirements of one or more provisions of Titles 18 or 21. The City Council may seek additional information including, without limitation, third party peer review paid for at the applicant’s expense.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Council finds that the Ordinance is within the scope of and in furtherance of the Comprehensive Plan 2030 which was evaluated in that certain Final Environmental Impact Report (“Final EIR”) certified and for which findings were adopted by Council Resolution Nos. 9720 and 9721 on November 13, 2017, all in accordance with the California Environmental Quality Act (“CEQA”). Pursuant to Section 15168 of the State CEQA Guidelines, the City has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance. The Council further and alternatively finds, that even if this Ordinance were not within the scope of the Comprehensive Plan 2030, it would be exempt from environmental review under Sections 15061(b)(3) and 15305 of the State CEQA Guidelines.

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SECTION 5. This Ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Deputy City Attorney

City Manager

Director of Planning & Community
Environment