



City of Palo Alto

City Council Staff Report

(ID # 9860)

Report Type: Action Items

Meeting Date: 12/3/2018

Summary Title: Change of Land Use in Non-Complying Facilities (Downtown)

Title: PUBLIC HEARING: Adoption of an Ordinance 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. California Environmental Equality 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; Alternatively, the Ordinance is Exempt From Environmental Review Under CEQA Guidelines Section 15061(b)(3)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council:

1. Find the attached ordinance within the scope of the Comprehensive Plan Environmental Impact Report (EIR) certified and adopted on November 13, 2017 by Council Resolution No. 9720; and,
2. Adopt the attached ordinance; and,
3. Direct staff to initiate a text amendment to amend Palo Alto Municipal Code (PAMC) Section 18.18.120 in accordance with the procedures set forth in PAMC Chapter 18.80 with review and recommendation by the Planning and Transportation Commission and in accordance with the Council's action on the attached ordinance.

Executive Summary

The recommendation in this report temporarily restores Municipal Code regulations that were changed during a 2016 zoning code update. The 2016 amendment restricts property owners who wish to remodel, improve, or replace buildings that exceed today's development standards

from changing one land use to another. For instance, a building that exceeds allowed floor area cannot remodel to convert a restaurant space into a retail use. To preserve the public health, safety, and welfare, while a permanent change is considered by the Planning and Transportation Commission (PTC), staff recommends adoption of the proposed ordinance.

Background

Palo Alto Municipal Code Chapter 18.18 regulates what a Downtown property owner can do with a building that no longer complies with today's zoning rules; it also regulates land uses that are no longer permitted.

Last summer, staff learned of a change to the subject zoning code chapter. The change may have been unintentional and occurred in January 2016 when the Council adopted a wide ranging set of minor or clarifying zoning amendments. Among those amendments, staff highlighted a change to PAMC Section 18.18.120 (Grandfathered Uses and Facilities) that clarifies when minor modifications to the building envelope of a non-complying building are permitted for the purpose of improving the structure's pedestrian-oriented features.

The 2016 amendments also included a change requiring non-complying buildings to retain the same use of the property when remodeling, improving, or replacing the building. Before the amendment, land uses in non-complying buildings, or facilities, could be replaced with other land uses provided they were permitted or conditionally permitted in the zone and met other applicable requirements.

This latter amendment was included in the 2016 ordinance as presented to both the PTC and the City Council, and it was duly enacted pursuant to the Palo Alto Municipal Code. The change was not, however, highlighted in the ordinance, and the accompanying staff reports included no reference or policy analysis related to the change. Based on the foregoing, it is possible the regulation prohibiting a change of use in non-complying buildings was an administrative error made when drafting the ordinance.

Discussion

Palo Alto's zoning code, like most in California and elsewhere, have regulations that control what an owner can do when they have either a land use or building that does not conform to current standards. Typically, non-complying uses are permitted to continue in a building but may not be altered, changed or expanded in a manner that increases the degree of non-compliance. Similarly, non-complying buildings can be altered or remodeled, and in some instances in Palo Alto, rebuilt, provided, again, there is no increase to the degree of non-compliance with any development standard. It is unusual, however, for local zoning ordinances to restrict changes to otherwise lawfully permitted land use in non-complying buildings.

Staff became aware of the code change after new owners of the President Hotel announced their interest in converting its residential units to a hotel. This property has received a considerable amount of attention, but there are lesser known examples that are impacted by this code provision. The Cheesecake Factory recently closed its doors on University Avenue and the property owner is seeking to convert this space into a retail use but is unable to renovate for a retail use under the current code. A restaurant/wine bar that is located in a building slightly over the maximum allowed floor area is seeking to occupy a former retail space but is unable to make necessary structural changes to the building for this change of use. The former North Face building on Alma, after sitting vacant for an extended period of time, proposed to remodel to change the retail space to a personal service use and has been prevented from doing so. In the case of the President Hotel, the applicant has asserted that application of the current code would run afoul of the Ellis Act, among other state laws.

The proposed ordinance seeks to revert the Downtown non-complying facilities regulations back to the pre-2016 standard. This involves a modest adjustment striking the operable clause in PAMC Section 18.18.120 (b)(2). Because there are a number of property owners that are affected by the potentially inadvertent code change, staff is pursuing a temporary resolution that is consistent with the code that allows the city to address an immediate need to preserve the public health, safety, and welfare, while a permanent change is considered by the Planning and Transportation Commission pursuant to PAMC Section 18.80.090.

Policy Implications

Although the current code may have some legitimate basis in policy (e.g. it favors replacement of non-conforming buildings with conforming development) it has had a number of negative impacts. If the Council decides not to amend the code, the City can expect additional downtown property owners objecting to the standard and frustrated by an inability to remodel to fill tenant spaces based on market demand and subject to the City's other regulatory requirements. Some property owners may be reluctant to redevelop property, including housing projects, based on this policy. There are approximately 250 Downtown properties and a number of them are non-complying with respect to maximum building height or maximum floor area. These buildings would be prevented from remodeling, improving, or replacing their facilities to change from existing land uses to other permitted or conditionally permitted land uses, including a change from non-retail to retail, which other City policies support.

Resource Impact

There are no significant resource or fiscal impacts associated with the recommendation in this report.

Timeline

As directed by the City Council, staff will present an ordinance to the PTC codifying the

proposed changes and return to Council in the first half of next year.

Environmental Review

This proposed 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. Alternatively, the Ordinance is exempt from environmental review under CEQA Guidelines Section 15061(b)(3).

Attachments:

Attachment A: Ordinance Amending PAMC Section 18.18.120 (CD-C - Grandfathered Uses and Facilities) (PDF)

**** NOT YET ADOPTED ****

DRAFT

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Temporarily 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 permitted uses in 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 for noncomplying facilities to change from eating and drinking services to retail uses.
- D. A temporary reversion of this requirement to the previously existing language is necessary to preserve the public health, safety, and welfare, while a permanent change is considered by the Planning and Transportation Commission pursuant to Palo Alto Municipal Code Section 18.80.090.

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 Grandfathered Uses and Facilities

(a) Grandfathered Uses

- (1) The following uses and facilities may remain as 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 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 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 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 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 grandfathered use to a conforming use, shall not thereafter be used except to accommodate a conforming use.

(b) Grandfathered Facilities

- (1) Any noncomplying facility existing on August 28, 1986 and which, when built, was a complying facility, may remain as a grandfathered facility and shall not be subject to the provisions of Chapter 18.70.
- (2) The 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.

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 Section 15061(b)(3) of the State CEQA Guidelines.

SECTION 5. This Ordinance shall be effective on the thirty-first date after the date of its adoption and shall expire upon adoption of replacement legislation by the City Council or on December 31, 2019, whichever occurs first. Upon expiration of this Ordinance, the City Clerk shall direct the City’s codifier to update the Palo Alto Municipal Code as appropriate.

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