



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 3

Section Name: {{section.name}}

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TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: Community Development
MEETING DATE: July 15, 2019

SUBJECT:
Nonconforming Zoning Code Update

RECOMMENDATION:
Provide direction on Zoning Code amendments for legal nonconforming buildings and uses.

BACKGROUND:
The City's current General Plan includes a policy that allows for minor expansions of legal nonconforming buildings and uses. However, the Zoning Code is much more restrictive and is not entirely consistent with this General Plan policy. Staff is seeking Council direction in resolving this inconsistency.

Legal Nonconforming Explained
General plans and zoning codes commonly change over time as local conditions and needs change. These changes can render a previously legal building or land use nonconforming with respect to the new general plan or zoning code. As a result, zoning codes contain provisions to guide how these previously legal buildings and land uses are addressed once they no longer comply with amended provisions of the zoning code.

It is possible for a property to contain both a legal nonconforming building and a legal nonconforming land use. In the context of this administrative report, a building or land use must have been legally erected or operated to be considered legal nonconforming. An illegal building or land use can never be considered legal nonconforming.

General Plan Policy
General Plan Land Use Element Policy LU 1.19 provides guidance on how legal nonconforming buildings and uses should be addressed. :

"Legal Non-conforming Developments. Allow legally established nonconforming uses and buildings to be maintained and to be reconstructed if destroyed by fire or natural disaster; allow minor expansion of legal nonconforming developments. Encourage reconstruction and/or minor expansion to have a design which is visually compatible with surrounding development."

The General Plan also provide additional commentary on this policy which states "This policy continues the 1989 policy which provides that when a building or use is more than 50% destroyed by fire or natural disaster, the building may be rebuilt, or the use re-established if it is in a district which generally allows the same type of use. The policy also allows for minor expansion of legal non-conforming uses, if the design of the expanded portion is visually compatible with adjacent development, the intensity and density limits are not exceeded, and it complies with the City's development standard."

Current Zoning Code Provisions

The current Zoning Code provisions relating to legal nonconforming buildings and uses are not consistent with policy direction contained in Land Use Element Policy LU 1.19. Chapter 27.72 of the San Mateo Municipal Code contains the City's criteria and methodology for addressing legal nonconforming building and uses. Many of the current code provisions date back to the 1940's and 1950's when this chapter was first adopted. Since that time Chapter 27.72 has been amended repeatedly but never examined in a comprehensive manner.

The key issues with the current provisions of Chapter 27.72 are that the chapter is not consistent with Land Use Policy LU 1.19 and that many of the code sections do not clearly differentiate between nonconforming buildings and nonconforming uses. Legal nonconforming land uses are easier to bring into compliance than legal nonconforming buildings since it generally requires that a nonconforming building be demolished and then rebuilt legally.

Survey of Nonconforming Land Uses

Although a comprehensive citywide survey has not yet been conducted, to get a better understanding of the types of nonconforming land uses in the City, a survey of nonconforming uses in residential zoning districts (based upon a 2015 City data base search) was conducted. This list of potential properties was augmented by other locations identified by members of the Community Development Department. These additional properties had been identified through contacts with local property and business owners in recent years. The results of the survey identified 47 properties which contained legal nonconforming uses and three sites with drive-thru establishments located too close to a residential zone. The majority of these 47 properties consisted of commercial, office, and older industrial uses in residential and transit-oriented development zoning districts. The results of the survey identified the most likely types of legal nonconforming uses that a future code amendment would be dealing with. This information will assist staff in testing how the draft ordinance would work on a day-to-day basis. In addition, about half of the 47 sites may be suitable to have their land use designations re-evaluated during the current General Plan Update process.

Range of Policy Alternatives

There are a wide range of options available to the Council. The options at two ends of the spectrum include: (1) requiring nonconforming buildings and uses to comply with new code provisions after a short grace period, and (2) allow nonconforming buildings and uses to be altered and expanded without restriction and, in effect, to become permanent. These policy options are unreasonable since it puts a substantial burden on property and business owners as well as being counter-productive to local government planning since it can prevent the City from using its general plan and zoning code to guide future development. The following are some of the more reasonable options that the Council could consider.

- Allow a legal nonconforming building to be modified only if it does not increase the degree of non-conformity. The Zoning Code presently allows this.
- Allow legal nonconforming buildings to be rebuilt after it has been destroyed. The Zoning Code presently allows this in limited circumstances.
- Amend the Zoning Code to modify the zoning standards (e.g. required yards, permitted uses or maximum height) to make previously nonconforming buildings or uses to become legal and conforming. This may be appropriate for specific parcels in certain circumstances but is not recommended as an across-the-board policy solution.
- Amend the Zoning Code to allow legal nonconforming buildings to be modified or expanded in specified circumstances through some form of permit approval process. This concept is consistent with Land Use Policy LU 1.19 but not currently allowed by the Zoning Code.

Questions for the Council

The key focus of this study session is how to implement the existing General Plan policy to "allow minor expansion of legal nonconforming developments." There are a wide range of options available which would justify or allow an expansion to a nonconforming building or use. In order to facilitate the City Council's discussion, staff has identified a number of criteria that the Council may wish to consider.

1. Does the Council support the current General Plan policy to “... allow minor expansion of legal nonconforming developments”?
2. If yes, what factors/criteria should be considered in allowing an expansion?

The following are some possible criteria that could be used to define when the expansion or alteration of a legal nonconforming building or land use can be allowed.

- When the changes would bring a building “up to code” for life and seismic safety purposes.
- When the changes would not increase the overall mass (or height) beyond the existing “building envelope”.
- When the use provides goods and services to the adjacent neighborhood (i.e. is a neighborhood serving business).
- When the use that doesn’t have a pattern or history of negative impacts on the surrounding community.
- A replacement of one nonconforming use with another nonconforming use

Future Steps

Based upon Council direction, staff will draft an Ordinance and conduct additional public outreach before conducting the required environmental review prior to a draft ordinance being considered by the Planning Commission for a recommendation to the City Council.

BUDGET IMPACT:

There is no direct budget impact related to this item.

ENVIRONMENTAL DETERMINATION:

In accordance with CEQA Guidelines Section 15262, an activity involving only feasibility or planning study for possible future actions does not require the preparation of an environmental impact report or negative declaration. Any future ordinance resulting from this process will receive environmental review prior to the ordinance being considered by the Planning Commission and City Council.

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

None

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