

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** July 27, 2009

**FROM:** CITY MANAGER

**SUBJECT:** ZONING CODE AMENDMENT: AN AMENDMENT TO CHAPTER 17.71 (NONCONFORMING USES, STRUCTURES, AND LOTS) OF THE CITY'S ZONING CODE (TITLE 17).

## **RECOMMENDATION**

It is recommended that the Council, after a public hearing:

1. Acknowledge that the proposed Zoning Code Amendment, to clarify the definition of the termination by discontinuance, does not have the potential for causing a significant effect on the environment and thus under CEQA's General Exemption is exempt from further environment assessment;
2. Find that the adoption of these proposed Zoning Code Amendments related to Nonconforming Uses, Structures, and Lots is consistent with the goals, objectives and policies of the General Plan and the purposes of the Pasadena Municipal Code Title 17 (Zoning), as outlined in the body of the report;
3. Approve an amendment to the Zoning Code removing any references to "intent" as it relates to termination by discontinuance;
4. Approve the first reading of the ordinance that implements these recommendations as described in the agenda report.

## **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission at the July 8, 2009 Public Hearing recommended approval of these amendments with one modification that is to require that the property owner have the burden of proof to show that the use has not been discontinued for more than 12-months. This change is incorporated in the proposed Ordinance.

## **BACKGROUND**

Section 17.71.060.B of the Zoning Code, Abatement and Termination – Termination by discontinuance states that a nonconforming use that is discontinued or changed to a conforming use for a continuous period of at least 12 months shall not be reestablished,

and the use of the structure or site thereafter shall conform to the current provisions of the Zoning Code for the subject zoning district.

Section 17.71.060.B.3.a.(2) of the City's Zoning Code further states:

(2) If the [nonconforming] use is discontinued for a continuous period of 12-months or more, the land or structure shall lose its nonconforming status. The use shall be considered discontinued when any of the following apply:

(a) The intent of the owner to discontinue use of the nonconformity is apparent; or

(b) Where characteristic furnishings and equipment of the use have been removed and not replaced with equivalent furnishings and equipment during this time.

At the May 20, 2009 Board of Zoning Appeals meeting, the BZA overturned a Zoning Administrator's decision in which the Zoning Administrator determined that a property containing a nonconforming market lost its nonconforming use to sell alcohol since the sale of alcohol use ceased for a period of more than 12-months. Instead, the Board of Zoning Appeals found that the alcohol sales land use could not have been reestablished prior to the reopening of the market use, and therefore the 12-month discontinuance should start on the date the market reopened (May 2008).

The City Council at its June 8, 2009 meeting discussed the Board of Zoning Appeals decision and the implications this could have on other existing nonconforming uses throughout the City and initiated a Zoning Code Amendment by asking staff to amend the Zoning Code in order to remove the provisions related to intent and to clarify that the termination of a nonconforming use starts when the use has been discontinued.

## **ANALYSIS**

Staff is proposing to remove those portions of the text that discuss "intent." Additionally, this section of the Zoning Code will be simplified and clarified to reduce ambiguity.

The recommendation calls for the following provisions to be repealed.

"The (nonconforming) use shall be considered discontinued when any of the following apply: (a) The intent of the owner to discontinue use of the nonconformity is apparent; or (b) Where characteristic furnishings and equipment of the use have been removed and not replaced with equivalent furnishings and equipment during this time."

The Zoning Administrator would administer the provisions of the nonconforming uses Zoning Code as follows. With the removal of the intent provisions, the determination of discontinuance would be based on evidence rather than intent.

The determination of discontinuance (aka abandonment) shall be supported by evidence, satisfactory to the Zoning Administrator (e.g., the actual removal of equipment, furniture, machinery, structures, or other components of the nonconforming use and not replaced, the turning off of the previously connected utilities, or where there are no business receipts/records or any necessary licenses available to provide evidence that the use is in continual operation).

The proposed Ordinance that implements these recommendations will also include the Planning Commission's recommendation that requires the property owner to have the burden of proof to show that the use has not been discontinued for more than 12-months.

The current language in Chapter 17.71 – Nonconforming Uses, Structures, and Lots allows for discretion to determine the expiration of a nonconforming use. The proposed code amendment to clarify the definition of discontinuance will ensure that nonconforming uses that have been discontinued for the prescribed 12 month period after they first became vacant are not reestablished. This is consistent with the specific purposes for the Chapter.

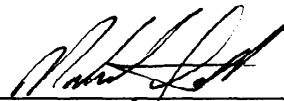
### **ENVIRONMENTAL REVIEW**

The proposed clarification of Chapter 17.71 has been determined not to have the potential for an impact on the environment and thus under CEQA's Section 15061(b)(3) - General Exemption is exempt because there is no potential for causing a significant effect on the environment.

### **FISCAL IMPACT**

The proposed amendment will clarify the nonconforming chapter of the Zoning Code and ensure that nonconforming uses are eliminated when they are discontinued for more than 12 months. This will result in fewer nonconforming uses within the City. As a result there will be no fiscal impact by the proposed change.

Respectfully submitted,



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Approved by:



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