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DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

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SACRAMENTO, CA
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PLANNING SERVICES
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December 6, 1996

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Zoning Ordinance Amendment Relating To Modification Of Conditions Of A Special Permit And Modification Or Revocation Of A Use Established Prior To Enactment of A Special Permit Requirement (M96-055)

LOCATION: Citywide

RECOMMENDATION:

Staff and the City Planning Commission recommend that the Law and Legislation Committee recommend approval of the attached Zoning Ordinance amendment and forward the ordinance to City Council.

CONTACT PERSON: Joy Patterson, Senior Planner
Planning & Development Department, 264-5607

FOR COMMITTEE MEETING OF: January 21, 1997

SUMMARY:

The proposed Zoning Ordinance amendment allows the Planning Commission to impose conditions on nuisance creating uses that presently do not have a special permit but would require a special permit under the provisions of the current Zoning Ordinance. In extreme cases, the Planning Commission would have the authority to revoke the deemed approved use.

BACKGROUND INFORMATION:

On May 25, 1993, the City Council approved Zoning Ordinance amendments that are applicable to establishments that sell alcoholic beverages for off-premise consumption and bars that were established prior to special permit requirements for alcohol sales. The amendment allows the city to treat these establishments that were in business prior to the special permit requirement as though they had a special permit, thereby permitting the modification or revocation of the right to operate if the establishment creates a public nuisance. Earlier this year the Planning Commission held a public hearing under the provisions of this ordinance and imposed additional conditions on a convenience market that was creating a public nuisance due to alcohol sales (P96-044, 5601 Wilkinson Street, June 27, 1996).

The proposed Zoning Ordinance amendment would broaden the use of this Zoning Ordinance provision to include all uses that currently do not have a special permit but would require a special permit under the provisions of the current Zoning Ordinance. If the City established that a pre-existing business or other use today requiring a special permit was creating a nuisance, the operator/owner of the use could be brought before the Planning Commission to discuss the operation of the use. The Planning Commission could choose to impose conditions on the use to alleviate the nuisance or choose to revoke the deemed approved use, requiring the operator to close the business/use down. If the Planning Commission modified or revokes the permit the commission is required to make findings that the existing use is being conducted in a manner detrimental to the public peace, health or safety or is creating a public nuisance. The decision of the Planning Commission may be appealed to the City Council.

Attachment A is the proposed Zoning Ordinance amendment. Attachment B is a copy of the proposed amendment which highlights the changes to the Zoning Ordinance.

VOTE OF THE PLANNING COMMISSION

On November 21, 1996, by a vote of seven ayes, two absent, the Planning Commission voted to recommend approval of the proposed Zoning Ordinance amendment.

FINANCIAL CONSIDERATIONS

The Planning Division recovers costs through application fees; however, in cases where this proposed ordinance would be implemented the owner/operator of the land use would generally not be filing an application with the Planning and Development Department.

ENVIRONMENTAL CONSIDERATIONS

This Zoning Ordinance Amendment is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Section 15061(b)(3).

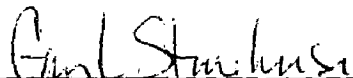
POLICY CONSIDERATIONS

Presently the City has the ability to impose additional conditions on establishments that sell alcoholic beverages that were established prior to special permit requirements for alcohol sales. The proposed ordinance would be consistent with this policy and broaden the use of this Zoning Ordinance provision to include all uses that currently do not have a special permit but would require a special permit under the provisions of the current Zoning Ordinance.


MBE/WBE:

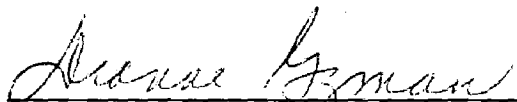
No impact. No goods or services are being purchased.

Respectfully submitted,


GARY STONEHOUSE, GENERAL MANAGER
PLANNING AND DEVELOPMENT

RECOMMENDATION APPROVED:


Betty Masuoka
Deputy City Manager


DIANNE GUZMAN, AICP, DIRECTOR
PLANNING AND DEVELOPMENT

Attachments:

- Attachment A: Zoning Ordinance Amendment pertaining to Special Permits
- Attachment B: Copy of Proposed Zoning Ordinance Amendment Highlighting Changes to the Zoning Ordinance

ATTACHMENT A

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING SECTION 15 OF THE COMPREHENSIVE ZONING ORDINANCE (FOURTH SERIES, AS AMENDED) BY AMENDING SECTION 15-F AND ADDING SECTION 15-G, RELATING TO MODIFICATION OF CONDITIONS OF A SPECIAL PERMIT AND RELATING TO MODIFICATION OR REVOCATION OF A USE ESTABLISHED PRIOR TO ENACTMENT OF A SPECIAL USE PERMIT REQUIREMENT

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 15-F of the Comprehensive Zoning Ordinance (Fourth Series, as Amended) is hereby amended to read as follows:

F. REVOCATION OR MODIFICATION IN LIEU OF REVOCATION OF A SPECIAL PERMIT: A Special Permit may be revoked or modified in lieu of revocation only under the following circumstances:

1. Planning Director May Set Hearing on Revocation or Modification in Lieu of Revocation of Special Permit: When in the discretion of the Planning Director a use permitted by a Special Permit is being conducted in a manner detrimental to the public health, safety, or general welfare or in such a manner as to constitute a public nuisance, or in violation of any condition imposed by the Planning Commission on the use or if conditions specified in the permit as limiting the duration of the permit have occurred (other than the passage of time as provided in subsection D-3), the Planning Director shall set a hearing before the Planning Commission to consider revocation or modification of the Special Permit. Notice of any hearing so set shall be given in the manner prescribed by subparagraph C-3-c of this section and

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in addition thereto notice shall be given to the owner of the property upon which the use is conducted, and to the person in possession of said property if other than the owner, which shall include a specific statement of the conditions which are deemed to constitute a detriment to the public health, safety or welfare of which constitutes a public nuisance, or which are in violation of conditions imposed by the Planning Commission on the use.

2. Planning Commission May Revoke or Modify Special Permit: Upon a determination by the Planning Commission that the use is being conducted in a manner detrimental to the public health, safety, or welfare, or in a manner so as to constitute a public nuisance, or in violation of any condition imposed by the Zoning Administrator or Planning Commission, the Planning Commission may revoke the Special Permit if the Planning Commission determines that the detrimental aspects of the use which exist may be alleviated through a modification to the Special Permit, it may make such modification in lieu of revocation, including, but not limited to, imposition of conditions which must be complied with if the use is to continue.
3. Appeal: In the case of a revocation or modification of a Special Permit, an appeal may be taken in accordance with Section 18 of this Ordinance within ten days after the decision of the Planning Commission to revoke or modify said permit.

SECTION 2.

Section 15-G is hereby added to the Comprehensive Zoning Ordinance (Fourth Series, as Amended) to read as follows:

- G. Modification or Discontinuance of a Use Established Prior to Special Use Requirements:
1. Planning Commission May Order Modification or Discontinuance of Any Use Established Prior to Special Permit Requirements: An existing use which would require a Special Permit, but for the fact that it was lawfully established without a Special Permit before the Special Permit requirement became effective, or at the time of annexation or consolidation into the city, may be ordered modified or discontinued if it is determined:
 - a. that the use is being conducted in a manner detrimental to the public peace, health or safety; or

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- b. that the use is being conducted in a manner so as to constitute a public nuisance; or
 - c. that the use as operated or maintained has resulted in repeated nuisance activities, including, but not limited to, public inebriation, drinking in public, loitering, excessive littering, public urination, disturbances of the peace, harassment of passersby, excessive noise, illegal drug activity, gambling, prostitution, sale of stolen property, theft, assaults, batteries, vandalism, or police detentions and arrests.
- 2. Applies to Any Use: This section shall apply to any use in the City of Sacramento as provided in Section 15-G-1, whether commercial or residential, and whether the use is presently conforming or non-conforming, including, but not limited to, the sale of alcoholic beverages for on-sale or off-sale premises.
 - 3. Conduct of the Proceedings: The proceeding shall be conducted in the same manner as a proceeding to revoke or modify a Special Permit, as set forth in Section 15-F.
 - 4. Planning Commission's Order: Upon a determination by the Planning Commission that the use is being conducted in a manner detrimental to the public health, safety or welfare, or in a manner so as to constitute a public nuisance, the Planning Commission may order that the use be discontinued, or if the use is to continue, that it only do so if the person or entity maintaining the use complies with conditions approved by the Planning Commission. The Planning Commission's authority for imposition of conditions shall include, but not be limited to, imposition of any reasonable condition upon the continued operation of the use, for compliance, and the period of time the conditions will remain in effect.
 - 5. Failure to Comply With Commission's Order: Where a continued use has been conditioned by the Planning Commission and the person or entity maintaining or operating the use fails to fully comply with the conditions imposed, the city may take legal or administrative action. The city's legal or administrative remedies shall include, but not be limited to, seeking a further order of the Planning Commission to order the use discontinued or further modified or conditioned, legal or equitable action, and imposition of administrative penalties in accordance with this ordinance or the City Code.

6. Appeal: An appeal of an order of the Planning Commission issued pursuant to this section may be taken in accordance with Section 18 of this ordinance. The appeal must be requested within ten (10) days of the decision of the Planning Commission or the decision of the Planning Commission is final.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

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ATTACHMENT B

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING SECTION 15 OF THE COMPREHENSIVE ZONING ORDINANCE (FOURTH SERIES, AS AMENDED) BY AMENDING SECTION 15-F AND ADDING SECTION 15-G, RELATING TO MODIFICATION OF CONDITIONS OF A SPECIAL PERMIT AND RELATING TO MODIFICATION OR REVOCATION OF A USE ESTABLISHED PRIOR TO ENACTMENT OF A SPECIAL USE PERMIT REQUIREMENT

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 15-F of the Comprehensive Zoning Ordinance (Fourth Series, as Amended) is hereby amended to read as follows:

F. REVOCATION OR MODIFICATION IN LIEU OF REVOCATION OF A SPECIAL PERMIT: A Special Permit may be revoked or modified in lieu of revocation only under the following circumstances:

1. Planning Director May Set Hearing on Revocation or Modification in Lieu of Revocation of Special Permit: When in the discretion of the Planning Director a use permitted by a Special Permit is being conducted in a manner detrimental to the public health, safety, or general welfare or in such a manner as to constitute a public nuisance, or in violation of any condition imposed by the Planning Commission on the use or if conditions specified in the permit as limiting the duration of the permit have occurred (other than the passage of time as provided in subsection D-3), the Planning Director shall set a hearing before the Planning Commission to consider revocation or modification of the Special Permit. Notice of any hearing so set shall be given in the manner prescribed by subparagraph C-3-c of this section and

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in addition thereto notice shall be given to the owner of the property upon which the use is conducted, and to the person in possession of said property if other than the owner, which shall include a specific statement of the conditions which are deemed to constitute a detriment to the public health, safety or welfare of which constitutes a public nuisance, or which are in violation of conditions imposed by the Planning Commission on the use.

2. Planning Commission May Revoke or Modify Special Permit: Upon a determination by the Planning Commission that the use is being conducted in a manner detrimental to the public health, safety, or welfare, or in a manner so as to constitute a public nuisance, or in violation of any condition imposed by the Zoning Administrator or Planning Commission, the Planning Commission may revoke the Special Permit if the Planning Commission determines that the detrimental aspects of the use which exist may be alleviated through a modification to the Special Permit, it may make such modification in lieu of revocation, including, but not limited to, imposition of conditions which must be complied with if the use is to continue.

3. Appeal: In the case of a revocation or modification of a Special Permit, an appeal may be taken in accordance with Section 18 of this Ordinance within ten days after the decision of the Planning Commission to revoke or modify said permit.

- ~~4. Planning Commission May Order Modification or Discontinuance of Use Relating to Sale of Alcoholic Beverages for Off-Premises Consumption or Bar Beverages for Off-Premises Consumption or Bar Established Prior to Special Permit Requirements. An existing use for the sale of alcoholic beverages for off-premises consumption or a bar which would require a special permit but for the fact that it was lawfully established without a special permit before the special permit requirements became effective, or at the time of annexation or consolidation into the city, may be ordered modified or discontinued if it is determined:~~

- ~~a. that the use is being conducted in a manner detrimental to the public peace, health or safety, or~~
- ~~b. that the use is being conducted in a manner so as to constitute a public nuisance, or~~

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- c. ~~that the use as operated or maintained has resulted in repeated nuisance activities including but not limited to public inebriation, drinking in public, loitering, excessive littering, public urination, disturbances of the peace, harassment of passersby, excessive noise, illegal drug activity, gambling, prostitution, sale of stolen property, theft, assaults, batteries, vandalism, or police detention and arrests.~~

~~The proceeding shall be conducted in the same manner as a proceeding to revoke or modify a special permit, as set forth in Section 15-F-2, 15-F-3, and 15-F-4.~~

SECTION 2.

Section 15-G is hereby added to the Comprehensive Zoning Ordinance (Fourth Series, as Amended) to read as follows:

G. Modification or Discontinuance of a Use Established Prior to Special Use Requirements:

1. Planning Commission May Order Modification or Discontinuance of Any Use Established Prior to Special Permit Requirements: An existing use which would require a Special Permit, but for the fact that it was lawfully established without a Special Permit before the Special Permit requirement became effective, or at the time of annexation or consolidation into the city, may be ordered modified or discontinued if it is determined:

- a. that the use is being conducted in a manner detrimental to the public peace, health or safety, or
- b. that the use is being conducted in a manner so as to constitute a public nuisance, or
- c. that the use as operated or maintained has resulted in repeated nuisance activities including, but not limited to, public inebriation, drinking in public, loitering, excessive littering, public urination, disturbances of the peace, harassment of passersby, excessive noise, illegal drug activity, gambling, prostitution, sale of stolen property, theft, assaults, batteries, vandalism, or police detentions and arrests.

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2. **Applies to Any Use:** This section shall apply to any use in the City of Sacramento, as provided in Section 15-G-1, whether commercial or residential, and whether the use is presently conforming or non-conforming, including, but not limited to, the sale of alcoholic beverages for on-sale or off-sale premises.
3. **Conduct of the Proceedings:** The proceeding shall be conducted in the same manner as a proceeding to revoke or modify a Special Permit, as set forth in Section 15-F.
4. **Planning Commission's Order:** Upon a determination by the Planning Commission that the use is being conducted in a manner detrimental to the public health, safety or welfare, or in a manner so as to constitute a public nuisance, the Planning Commission may order that the use be discontinued, or if the use is to continue, that it only do so if the person or entity maintaining the use complies with conditions approved by the Planning Commission. The Planning Commission's authority for imposition of conditions shall include, but not be limited to, imposition of any reasonable condition upon the continued operation of the use, for compliance, and the period of time the conditions will remain in effect.
5. **Failure to Comply With Commission's Order:** Where a continued use has been conditioned by the Planning Commission and the person or entity maintaining or operating the use fails to fully comply with the conditions imposed, the city may take legal or administrative action. The city's legal or administrative remedies shall include, but not be limited to, seeking a further order of the Planning Commission to order the use discontinued or further modified or conditioned, legal or equitable action, and imposition of administrative penalties in accordance with this ordinance or the City Code.
6. **Appeal:** An appeal of an order of the Planning Commission issued pursuant to this section may be taken in accordance with Section 18 of this ordinance. The appeal must be requested within ten (10) days of the decision of the Planning Commission or the decision of the Planning Commission is final.

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