

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County    City    Town    Village  
(Select one:)

of SANTA CLARA

**Local Law No. 1 of the year 2016**

A local law AMENDING PROVISION OF THE SANTA CLARA LAND USE LAW  
*(Insert Title)*  
RELATING TO THE ZONING BOARD OF APPEALS

Be it enacted by the TOWN BOARD of the  
*(Name of Legislative Body)*

County    City    Town    Village

of SANTA CLARA as follows:

[SEE ATTACHED]

[continued on page (1-A)]

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**Section 1. Authority**

The Town of Santa Clara Land Use Law does not include some requirements of current Sections of New York State Town Law relating to the Zoning Board of Appeals and is inconsistent with other such requirements. The purpose of this Local Law is to make these provisions of the Town's Land Use Law consistent with the State's Town Law and more inclusive of its procedural requirements. This Local Law is adopted pursuant to New York Municipal Home Rule Law.

**Section 2. Amendments**

The Town of Santa Clara Land Use Law is amended as follows:

**A. Subsection 1.73**, entitled "Board of Appeals" is deleted in its entirety and replaced by the following Section 1.73:

**1.73 Zoning Board of Appeals**

- A.** Pursuant to Section 267 of the Town Law, a Zoning Board of Appeals (Board of Appeals) is hereby created. Said Board shall consist of five (5) members appointed by the Town Board. The Town Board shall also designate one of the Board of Appeals members as chairman thereof.
- B.** Such Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by an administrative official charged with the enforcement of this local law, including hearing and deciding all applications for variances pursuant to Section 9.20 hereof.
- C.** Meetings of such Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. Such Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions.
- D.** Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five business days and shall be a public record.
- E.** Such Board shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.:
- F.** Unless otherwise provided by local law or ordinance, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- G.** Each order, requirement, decision, interpretation or determination of the Code Enforcement Officer shall be filed in his or her office within five (5) business days from the day it is rendered, and shall be a public record. Alternately, the Town Board may, by resolution, require that such filings instead be made in the Town Clerk's office.

- H. An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer by filing with such official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The Code Enforcement Officer from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- I. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer from whom the appeal is taken certifies to the Board of Appeals, after the notice of appeal has been filed with the Code Enforcement Officer, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Code Enforcement Officer from whom the appeal is taken and on due cause shown.
- J. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.
- K. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, if any, as required by Section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.
- L. The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
- M. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The Board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.
- N. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

- O. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
  - P. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.
  - Q. Except as otherwise provided in paragraph N above, every motion or resolution of a Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred 239-m of the General Municipal Law shall apply.
- B. Section 9.20**, entitled "VARIANCES" is deleted in its entirety and replaced by the following Section 9.20:

9.20 VARIANCES

9.21 Purpose of this Article

The purpose of this article is to provide for variances from this local law in cases where the strict application thereof would result in practical difficulties or undue hardships, while not violating the general purposes and objectives of this local law.

9.22 Authorization to Grant or Deny Variances

- A. In accordance with §267-b of the Town Law of the State of New York, the Zoning Board of Appeals shall have the power, upon appeal from a written decision, determination, order, requirement or interpretation by the Code Enforcement Officer and after public hearing, to vary or modify the application of any of the provisions of this chapter relating to the construction, alteration or use of structures or the use of land, so that the intent and terms of this chapter are observed, public safety and welfare secured, and substantial justice done.
- B. Any variance to this local law shall be granted by the Board of Appeals in accordance with the standards and procedures set forth in this article. Compliance with the applicable standards shall be stated in written findings by the Board of Appeals.
- C. In granting a variance, the Board of Appeals may impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the Town's Land Use Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community conditions to protect the best interests of the surrounding property, the neighborhood and the Town as a whole.

- D. In granting variances, the Board of Appeals shall grant the minimum variance that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- E. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations

#### 9.23 Application for a Variance

The Zoning Board of Appeals' jurisdiction shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. A property owner(s) or his/her agent(s) may initiate a request for a variance by filing an application with the Board of Appeals using forms supplied by the Board of Appeals, which shall include all information reasonably considered by the Board of Appeals as necessary to make its findings under Section 9.24 of this local law, and including a legal description of the property, a map showing the property and all properties within a radius of 750 feet of the exterior boundaries thereof, plans and elevations necessary to show the proposed variance, and other drawings or information reasonably considered necessary by the Board to an understanding of the proposed variance and its relationship to surrounding properties. Such application shall also be mailed to all adjacent property owners within 750 feet of the exterior boundaries via registered mail. Signed postal receipts of mailings shall be provided to the Board of Appeals.

#### 9.24 Requirements for Granting Variances

- A. Area Variances – The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, to grant a variance to allow land use or development or subdivision to be located on a lot or property which does not conform to the dimensional requirements for that district listed in Article V. Water and wetland setbacks are not a variance item due to the purpose of the law, which is to protect water and wetlands from infringement and environmental degradation.

In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

3. whether the requested area variance is substantial;
  4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- B. Use Variances – The Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant a variance to allow a use within a district other than a use allowable as a Primary Use or Secondary Use listed in Article IV.

No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable Zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that:

  - (1) for each and every permitted use under the Zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
  - (2) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and,
  - (3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (4) the alleged hardship has not been self-created.

#### 9.25 Referrals

The Board of Appeals shall refer all completed variance applications to the Planning Board for its report and recommendation and where required by Section 239-m of the General Municipal Law, to the county planning agency or regional planning agency, if any, having jurisdiction for its report and recommendation. In no case shall final action under Section 9.26(b) be taken until said Planning Board and county or regional planning agency (if such county or regional planning agency exists) have submitted their reports, or until 30 days have passed since the date of referral, whichever occurs first.

#### 9.26 Variance Application Hearing and Decision

- A. Within a reasonable time from the receipt of a completed application, for a variance, the land use Board of Appeals shall give notice of a public hearing to be held on the application not less than five (5) days nor more than thirty (30) days after the notice by publication in a newspaper of general circulation in the Town. At least five (5) days before such hearing, the Board of

Appeals shall mail notices thereof to the parties (including the applicant or applicants as well as all property owners to whom copies of the application must be mailed under section 9.23, above); to the Adirondack Park Agency and to the entities requiring referral under Section 9.25. The Adirondack Park Agency shall be a full party in interest, with standing to participate in any and all proceedings under this Article for which the Agency was required to be sent notice under Section 9.25 of this local law.

- B. Within sixty-two (62) days after the close of a public hearing called and held under paragraph (a) of this section, the Board of Appeals shall grant, grant with conditions, or deny the variance applied for. The decision of the Board shall be in writing and shall contain each of the findings specified in Section 9.24 of this local law, and the factual basis for each finding from the record of the hearing, which shall support the decision of the Board. The Board shall notify the Adirondack Park Agency, by certified mail, of such decision. Any variance granted or granted with conditions shall not be effective until 30 days after such notice to the Agency. If, within such 30-day period, the Agency determines that such variance involves the provisions of the Land Use and Development Plan as approved in the local land use program, including any shoreline restriction, and was not based upon the appropriate statutory basis of practical difficulties or undue hardships, the Agency shall have the right to reverse the local determination to grant a particular variance.
- C. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

**Section 3. Severability** – The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

**Section 4. Repealer; Supersedence** – Any Local Laws or Ordinances or parts of Local Laws or Ordinances in conflict with any part of this Local Law are hereby repealed. As noted in Section 2, the revised Sections of the Land Use Law are intended to replace the current provisions which are specifically deleted. This Local Law is specifically intended to supersede the provision of Town Law Section 267-a[10] which does not require mailing to adjacent property owners.

**Section 5. Effective Date** – This Local Law shall take effect upon filing by the New York State Department of State, or as otherwise provided by law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2016 of the (County)(City)(Town)(Village) of SANTA CLARA was duly passed by the TOWN BOARD on FEBRUARY 20, 2016, in accordance with the applicable provisions of law.

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. .... of 199... of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ....., 199....., and was (approved)(not approved)(repassed after disapproval) by the ..... and was deemed duly adopted on ....., 199..... in accordance with the applicable provisions of law.~~

~~**3. (Final adoption by referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. .... of 199.. of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ..... and was (approved)(not approved)(repassed after disapproval) by the ..... on ....., 199... Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on ....., 199 ....., in accordance with the applicable provisions of law.~~

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. .... of 199.... of the (County)(City)(Town)(Village) of ..... was duly passed by the ..... on ....., 199....., and was (approved)(not approved)(repassed after disapproval) by the ..... on ....., 199... Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of ....., 199....., in accordance with the applicable provisions of law.~~

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. ~~(City local law concerning Charter revision proposed by petition.)~~**

~~I hereby certify that the local law annexed hereto, designated as local law No. .... of 199.... of the City of ..... having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on ....., 199....., became operative.~~

**6. ~~(County local law concerning adoption of Charter.)~~**

~~I hereby certify that the local law annexed hereto, designated as local law No. .... of 199.... of the County of ....., State of New York, having been submitted to the electors at the General Election of November ....., 199....., pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the town of said county considered as a unit voting at said general election, became operative.~~

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ... 1 ....., above.

\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

Date: \_\_\_\_\_