

**EFFECTIVE DATE
OF ORDINANCE**

May 18, 2022

ORDINANCE NO. 2811 N.C.S.

Introduced by Dave King

Seconded by Brian Barnacle

ORDINANCE OF THE CITY OF PETALUMA CITY COUNCIL

**AMENDING THE TEXT OF THE IMPLEMENTING ZONING ORDINANCE,
ORDINANCE 2300 N.C.S., CHAPTER 24 (ADMINISTRATIVE PROCEDURES),
AMENDING CHAPTER 12 (DEVELOPMENT STARDARDS MODIFICATIONS) TO
ADD SECTION 12.060 (EXCEPTIONS TO REQUIRED SETBACKS), CORRECTING
CROSS REFERENCES TO CHAPTER 24 THROUGHTOUT THE IMPLEMENTING
ZONING ORDINANCE, AND REPEALING RESOLUTION NO. 2018-107 N.C.S.
(RESOLUTION ADOPTING A PUBLIC OUTREACH AND ON-SITE POSTING
POLICY FOR MAJOR PROJECTS)**

WHEREAS, Implementing Zoning Ordinance (IZO) Chapter 24 deals specifically with the administrative procedures associated with entitlements, including Site Plan and Architectural Review (SPAR), Conditional Use Permits (CUP), Variances, and Appeals; and

WHEREAS, the City of Petaluma initiated a Zoning Text Amendment to modify Implementing Zoning Ordinance (IZO) Chapter 24 to codify the Resolution No 2018-107 N.C.S, regarding public noticing of major projects, add sections regarding withdrawal of applications, make minor cleanups, and add a new finding necessary for SPAR applications to allow the reviewing body greater discretion to analyze the project’s environmental impacts; and

WHEREAS, Section 25.010 of the City of Petaluma Implementing Zoning Ordinance (IZO) provides in pertinent part that no amendment that regulates matters listed in Government Code Section 65850, which matters include the use and construction of buildings and structures, shall be made to the IZO unless the Planning Commission and City Council find the amendments to be in conformity with the General Plan and consistent with the public necessity, convenience, and general welfare in accordance with Section 25.050(B) of the IZO; and

WHEREAS, the text amendments contained in Exhibit 1 to this ordinance modify Chapter 24 of the City’s Implementing Zoning Ordinance; and

WHEREAS, the text amendments contained in Exhibit 1 add a new section regarding when development applications are deemed withdrawn and a new section regarding the contents of application forms; and

WHEREAS, City Council Resolution No. 2018-107 N.C.S. addresses the City’s public noticing requirements for major development application; and

WHEREAS, the text amendments contained in Exhibit 1 codify the public noticing requirements of Resolution No. 2018-107 N.C.S.; and

WHEREAS, in the published case *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80 (*McCorkle*) the Court held that the City’s design review approval of the multi-family residential land use was ministerial and therefore St. Helena’s environmental review under the California Environmental Quality Act (CEQA) was limited to the scope of St. Helena’s design review authority, and specifically, its authority under its zoning regulations to mitigate project environmental impacts; and

WHEREAS, the California Supreme Court has denied petitions to depublish or overturn the *McCorkle* ruling, which remains in effect and binding on the City and its ability to conduct environmental review regarding project that may be subject to only design review in specified zones; and

WHEREAS, prior to the *McCorkle* decision, it had been the City’s consistent practice to treat applications for Site Plan and Architectural Review (SPAR) approval, pursuant to Chapter 24 of the Implementing Zoning Ordinance (IZO), as subject to the exercise of discretion of the approving body, up to and including the authority of the approving body to disapprove the project on SPAR grounds, and to conduct full CEQA review, up to and including the ordering of an Environmental Impact Report if warranted; and

WHEREAS, the *McCorkle* case limits environmental review of development applications to environmental impacts the approving body has authority to mitigate; and

WHEREAS, the City’s existing SPAR regulations do not address the projects impacts unrelated to aesthetics, siting, and internal circulation; and

WHEREAS, the text amendments contained in Exhibit 1 address the limitations of the *McCorkle* case and permit the Planning Commission or City Council on appeal to review a project for its full environmental impacts; and

WHEREAS, staff sought the Planning Commission’s feedback on amendments to Chapter 24 of the IZO during the June 22, 2021, Planning Commission meeting; and

WHEREAS, on March 22, 2022, the Planning Commission held a duly noticed public hearing in accordance with Chapter 25 of the Implementing Zoning Ordinance to consider the amendments; and

WHEREAS, the City has complied with the noticing and procedures for zoning text amendments governed by Chapter 25 of the Implementing Zoning Ordinance and by California Government Code Section 65853; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

- 1) This ordinance is not a “project” within the meaning of Section 15378 of the CEQA Guidelines, because it is an administrative activity has no potential for resulting in physical change in the environment as the amendments address the process by how development applications are processed and reviewed and does not itself encourage physical development;
- 2) If this ordinance was a “project” under CEQA, this ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its policy power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and possible adoption of contemplated local legislation, regulation and policies, which local legislation, if adopted, will be subject to CEQA requirements;

3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and for the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

WHEREAS, after the conclusion of said public hearing, the Planning Commission adopted Resolution No. 2022-04, recommending the City Council adopt the amendments; and

WHEREAS, on April 7, 2022, the public notice of the April 18, 2022 public hearing before the City Council to consider the amendments was published in the Argus Courier as an eight-page ad; and

WHEREAS, on April 18, 2022, the City Council of the City of Petaluma held a duly noticed public hearing to consider the amendments; and

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

Section 1: Findings. The City Council of the City of Petaluma hereby finds:

1. The above recitals are hereby declared to be true and correct and are incorporated into the resolution as findings of the City Council.
2. The text amendments contained in Exhibit 1 to this resolution, which exhibit is hereby made a part of this resolution, are exempt from the California Environmental Quality Act (CEQA) for the following reasons:
 - a. This ordinance is not a “project” within the meaning of Section 15378 of the CEQA Guidelines, because it is an administrative activity has no potential for resulting in physical change in the environment as the amendments address the process by how development applications are processed and reviewed and does not itself encourage physical development; and
 - b. If this ordinance was a “project” under CEQA, this ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its policy power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and possible adoption of contemplated local legislation, regulation and policies, which local legislation, if adopted, will be subject to CEQA requirements; and
 - c. This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and for the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.
3. In accordance with Sections 25.010 and 25.050(B) of the City’s Implementing Zoning Ordinance, Ordinance No. 2300 N.C.S., (“IZO”), the proposed amendments to the IZO as contained in Exhibit 1 are in general conformity with the Petaluma General Plan 2025 in that these amendments do not change the general character or impacts of current zoning

regulations and implement the General Plan as outlined in the March 22, 2022 Planning Commission staff report.

4. In accordance with Section 25.050(B) of the IZO, the proposed amendments are consistent with the public necessity, convenience, and welfare in that they update and clarify existing regulations, provide greater flexibility for approving extended expiration for housing projects, and remove identified obstacles to the implementation of the zoning code, which implements the policies of the General Plan.
5. The proposed modifications include non-substantive corrections to other chapters in the IZO to accurately reference changed sections in Chapter 24 as a result of these amendments and as recommended by the Planning Commission.
6. The proposed text amendment also includes modification to Chapter 12 (Development Standards Modifications) of the IZO to relocate existing Section 24.040 (Exceptions to Required Setbacks).
7. The proposed text amendment also includes correction to all cross references to Chapter 24 throughout the Implementing Zoning Ordinance.

Section 2. Chapter 24 entitled “Administrative Procedures” of the Petaluma Implementing Zoning Ordinance, is repealed and replaced in its entirety to read as provided in Exhibit 1 which is attached to and made a part of this ordinance.

Section 3. Section 12.060 entitled “Exceptions to Required Setbacks” is hereby added to Chapter 12 entitled “Development Standards Modifications” of the Implementing Zoning Ordinance to read as follows:

12.060 Exceptions to Required Setbacks.

A. **Exception – Principal Dwelling/Building.** The Director may grant an exception for the principal dwelling/building, in the same manner as provided in Section 24.060 (Conditional Use Permit), from the development standards regulating building encroachment into required setbacks in residential districts when all of the following findings can be made based on substantial evidence in the record:

1. The encroachment is consistent with the prevalent development pattern in the immediate area;
2. The encroachment will not adversely affect the privacy of adjacent properties;
3. The encroachment will not significantly increase shading of adjacent properties; and
4. Conditions will be imposed to accommodate maintenance and drainage requirements.

B. **Exception – Accessory Building.** The Director may grant an exception for the reconstruction, renovation or expansion of existing accessory buildings and structures, in the same manner as provided in Section 24.060 (Conditional Use Permit), from the required setbacks for accessory buildings and structures contained in Tables 4.6 through 4.13 when all of the following findings can be made based on substantial evidence in the record:

1. The setback will be consistent with the prevalent development pattern for similar building uses in the immediate area;
2. The location of the accessory building or structure will not adversely affect the privacy of adjacent properties;
3. The location of the accessory building or structure will not significantly increase shading of adjacent properties;
4. Conditions will be imposed to accommodate required maintenance and drainage; and
5. The design of the accessory building or structure is compatible with that of the principal dwelling and will not detract from appearance of the immediate area.

Section 4. All cross references to Chapter 24 throughout the Implementing Zoning Ordinance are hereby corrected to reflect accurate reference in keeping with modifications made to Chapter 24.

Section 5. Except as amended herein, the City of Petaluma Implementing Zoning Ordinance, Ordinance No. 2300 N.C.S. remains unchanged and in full force and effect.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful, or otherwise invalid.

Section 7. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

Section 8. Posting/Publishing of Notice. The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in a manner provided by the City Charter and other applicable law.

INTRODUCED, and ordered posted/published, this 18th day of April 2022 by the following vote:

Ayes: Barrett, Barnacle, Fischer, Healy, King, McDonnell, Pocekay
 Noes: None
 Abstain: None
 Absent: None

ADOPTED this 2nd day of May, 2022, by the following vote:

Ayes:
 Noes:
 Abstain:
 Absent:

DocuSigned by:

Teresa Barrett

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Teresa Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Kendall Rose

184689A429E4492...

Kendall Rose, City Clerk

DocuSigned by:

Eric Danly

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Eric Danly, City Attorney