

Docket Item #16
TEXT AMENDMENT #2004-0003

Planning Commission Meeting
April 6, 2004

CASE: TEXT AMENDMENT #2004-0003
SUP ENFORCEMENT

ISSUE: Consideration of amendments to Section 11-207(C)(5) and Section 11-503(F)(1) of the Zoning Ordinance to increase civil fines for repeat SUP violators and improve the administrative change of ownership process.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the following text amendment:

ARTICLE XI: DEVELOPMENT APPROVALS AND PROCEDURES

[Proposed new ordinance language for increasing fines for repeat offenders]

Sec. 11-200 ENFORCEMENT AND PENALTIES

- 11-207(C)(5) For a class five civil violation, the penalty for each individual offense shall be \$50.00 for the first violation, and \$100.00 for each subsequent violation of the same regulation or requirement arising from the same set of operative facts, **except that in the case of a third violation of a special use permit condition within any one 12 month period, the penalty shall be \$500.**

[Proposed new ordinance language for change of ownership applications, allowing administrative changes to conditions with applicant agreement and requiring a hearing only for serious violations]

Sec. 11-500 SPECIAL USE PERMITS

- 11-503(F) *Change in ownership only.* Where an application under this section 11-500 is necessitated solely by a change in ownership of the use that is subject to the special use permit, and the circumstances set forth below in paragraph (1) apply, the director may administratively approve such application and transfer the special use permit to the new applicant only.

1. The circumstances which are a condition to such administrative approval are as follows:
2.
 - (a) The applicant is not requesting a change in the conditions of the special use permit.
 - (b) There have been no substantiated violations of the special use permit **which were not corrected immediately, constitute material or repeat violations or which create a direct and immediate adverse impact on the surrounding community.**
 - (c) There are no changes proposed or anticipated in the operation of the use involved.
 - (d) The director has concluded that no new conditions, ~~other than~~

~~standard conditions promulgated by the director, approved by city council and agreed to by the applicant, and no amendments to existing conditions are necessary, other than **as may be required by the following:** to conform to such standard conditions.~~

(i) standard conditions promulgated by the director, approved by City Council and agreed to by the applicant; or

(ii) those conditions the director finds to be necessary for the public benefit, in keeping with the use and the prior Council approval, and agreed to by the applicant in writing.

- (5) Following notice of the application in a newspaper of general circulation in the city, no person has requested the director to forward the application to city council.

DISCUSSION

On January 27, 2004, City Council approved the City Manager's recommendation regarding a series of steps that should be taken to enhance the system for special use permit enforcement. Those include several general approaches, such as increasing outreach to the community on SUP enforcement, and reporting annually on enforcement efforts. They also include certain specific language changes to current conditions and zoning ordinance procedures. For example, the SUP cases being heard by the Commission and Council in April include new language in staff's recommended conditions regarding the one year review.

The text amendments proposed here implement the two Council recommendations which require changes to the zoning ordinance: increasing the civil penalty for repeat SUP violations from \$100 to \$500; and streamlining and making less restrictive the administrative procedure for changing ownership of a SUP. The text amendments were initiated by City Council on March 9, 2004.

Increased Fines for Repeat SUP Violators

Under the zoning ordinance, SUP condition violations are class 5 violations, punishable by either criminal prosecution or by civil fines. Staff typically proceeds with enforcement under its civil penalty authority, issuing warnings, and tickets with fines if the warning is not heeded. Under the zoning ordinance, staff is authorized to assess a fine of \$50 for a first violation and \$100 for a second or subsequent violation, up to a maximum of \$3,000 for any single violation. In addition, in the case of a serious violation, the Planning Director is authorized to, and has in the past, issued an order requiring that the event, activity or business cease. Violators who fail to heed the order can be arrested. The Director is also authorized to docket an SUP for revocation in an appropriate case.

Although existing fines are lower than allowed by state statute (\$100 for first violation; \$250 for each additional; and \$5,000 cap), staff believes that they are effective in most cases. In the vast majority of cases, staff is able to achieve compliance with SUP conditions and other zoning requirements without issuing fines or after issuing one or two tickets. Typically, when staff finds a violation, it issues a warning to the violator without a fine. In most cases, SUP permittees who are found to violate a condition of an SUP are either genuinely not aware they are in violation or are responsive and heed staff's warning. On the other hand, when staff finds a violation and issues a ticket for it, there is almost always compliance after one or two tickets. Where there is room for additional tools to make SUP enforcement more effective is in the case of repeat offenders, those who do not comply after warnings and initial fines.

Specifically, staff recommends that the existing fine structure be changed to add a fine of \$500 for a third violation of an SUP condition within any 12 month period. This increased fine is designed specifically to address those permittees who chose to ignore city requirements, and distinguishes itself from the penalties for less serious violations. A graduated approach to enforcement, being able

to distinguish among the type and degree of violations, especially with regard to repeat offenders, has been specifically suggested by the Federation of Civic Associations in the past.

Elimination of Hearing Requirement for Some Change of Ownership Cases. Most SUPs, and all recent ones, include a requirement that the owner/applicant of the SUP stay the same as the one before Council when it was approved. The zoning ordinance provides a procedure for changing the ownership and allows it to be done administratively in many cases. On the other hand, the change of ownership request must be docketed for public hearing in two circumstances that have proven to be unwarranted in some cases.

1. Violation of SUP conditions. The zoning ordinance requires a public hearing for change of ownership cases if there has been any violation of the SUP conditions. Under the current ordinance provisions even minor violations now lead to a requirement for hearings before the Planning Commission and City Council. The business community has complained about this hardship in the past, and staff and some community representatives agree that a hearing is more than is required if the violation is a minor one or is corrected satisfactorily and immediately.

For example, as has occurred in more than one case, if the original applicant has not provided a trash can on the right-of-way as required by the original permit and, at the point of the one year review, staff reminds the applicant of the condition and he immediately orders the trash can, staff believes that compliance has been adequately achieved and that the punishment of requiring two public hearings for the infraction does not fit the seriousness of the violation. Moreover, in change of ownership cases, it is not the violator who is punished but the prospective new owner.

Because the existing zoning ordinance language is absolute even for such cases, staff is recommending that it be changed in a fashion similar to the new one year review condition, indicating that where a violation is not material, is corrected in a timely way, and is not repeated, then a hearing for the new owner is not required. On the other hand, the new language allows staff to require a hearing where an SUP has a history of repeat violations or even only one very serious violation in terms of impact on the community.

2. Agreement to new conditions. An applicant for a change of ownership is bound by the conditions in the original permit and, under the ordinance, those conditions may not be changed without a hearing, even if staff and the applicant are in agreement regarding new or changed conditions, and even if they are not directly material to the approval. The only exception in the current law is for those Standard Conditions previously approved by City Council. See attached current Standard Conditions.

Again, the requirement of a hearing, especially given the time and expense involved, may be unwarranted in such cases and overly difficult for a new business. As a common example, where staff finds that additional landscaping or the reduction of signage is important to upgrade the appearance of a site, and the applicant is eager to open and willing to make the improvements, there is really little reason for requiring a hearing for what amount to additional conditions.

Staff is therefore recommending that language be added to the change of ownership procedures in Section 11-503(F) to allow staff to proceed administratively even if there are changes to conditions, as long as the applicant agrees to the new language, the changes do not materially change the approval, and the director finds the condition changes to be required for the benefit of the public.

Staff believes that there are sufficient protections in the ordinance for this administrative procedure for both applicants and the public. As to an applicant, his approval is required to change the conditions. Furthermore, an applicant can always request a hearing if he believes that staff's recommendations are unreasonable. As to the public, administratively approved change of ownership cases will continue to be advertised in the newspaper. That has been part of the zoning ordinance requirement since the inception of the administrative approval procedures. As in the past, if staff receives a request as a result of the ad to docket the matter for hearing, it is obligated to do so. In addition, staff will continue to notify the Planning Commission and the public of those cases that have been approved administratively by including a list of approved cases on each month's docket. Publicity about administrative approvals provides accountability for staff, applicants and the public regarding administrative actions on SUPs.

These changes collectively assist businesses by allowing minor violations and changes in the life of a business to be addressed administratively, but requiring substantive, serious, or repeated violators or major changes to be docketed for hearing before the Planning Commission and City Council.

STAFF: Eileen P. Fogarty, Director, Planning and Zoning;
Barbara Ross, Deputy Director.

Attachments: 1. Memorandum of March 3, 2004, from City Attorney to City Council, with excerpts from January 22, 2004 City Manager memorandum to City Council.
2. Standard SUP Conditions