DEPARTMENT OF REGIONAL PLANNING

Memorandum

August 28, 2013

TO: DRP Staff

FROM: Richard J. Bruckner
Director

DLS for RJB

SUBDIVISION AND ZONING ORDINANCE POLICY NO. 01-2013 PARKING REQUIREMENTS FOR PROPOSED EATING OR DRINKING ESTABLISHMENTS WITHIN EXISTING COMMERCIAL BUILDINGS NONCONFORMING DUE TO PARKING

The purpose of this interpretation memo is to clarify parking requirements for establishments proposing to sell food or drinks within an existing building nonconforming due to parking.

Background

When a business owner applies for a change of use, the Department requires the site to comply with current parking standards. Current parking standards for entertainment, assembly, and dining uses require a ratio of one parking space per three occupants or a minimum of ten parking spaces, whichever is greater (Section 22.52.1100.A). However, many existing commercial buildings were constructed (prior to parking requirements) in the early to mid 1900's, at a time when the County required less parking. As such, many properties do not have adequate space to provide the additional required onsite parking.

Issue

To resolve this issue, small business owners are required to file an application for a minor parking deviation or parking permit. The entitlement process is costly and lengthy, with no guarantee of approval, particularly in older commercial areas in need of reinvestment. This creates an undue hardship for small business owners and discourages new businesses from occupying existing commercial buildings. As such, many commercial buildings remain vacant or underutilized.

Interpretation

Staff has examined current parking requirements (Chapter 22.52 Part 11) and the nonconforming uses and standards (Chapter 22.56 Part 10) sections of the Zoning Code to assess if there is a mechanism to allow eating or drinking establishments to occupy existing commercial buildings that are nonconforming due to parking without requiring additional parking and/or discretionary entitlements. In consultation with County Counsel,

the Department finds that new eating or drinking establishments shall comply with the parking requirements in effect at the time that the building was constructed. Prior to 1970, parking requirements for eating or drinking establishments were the same as general commercial; however, subsequent amendments to commercial parking requirements differentiated dining uses (September 22, 1970-urgency ordinance became effective) and establishments that sell food or drink for off-site consumption with no seating or on-site eating (October 14, 1983). These amendments increased parking requirements for said uses; thus, many commercial properties were rendered nonconforming due to parking. This policy memo will alleviate an undue burden on small business owners with a negligible impact on the community since many food and drink establishments are similar to retail uses.

Implementation

Effective immediately, this policy memo is applicable Countywide. Department of Regional Planning approval through the Site Plan review process is necessary to determine and acknowledge the applicability of this policy memo.

Unless there were previous discretionary entitlements specifying otherwise, parking for proposed eating or drinking establishments within existing commercial buildings shall be based on the requirements in effect at the time the building was legally constructed, as follows:

1) Prior to September 22, 1970: Any eating or drinking establishment may be permitted without requiring additional parking.

2) From September 22, 1970 to October 13, 1983:
   a. Dining uses require one (1) parking space for each 45 square feet of floor area for uses where seats are not fixed, or one (1) space for every three (3) fixed seats with a minimum of 10 parking spaces, whichever is greater;
   b. Establishments that sell food or drink for off-site consumption with no seating or on-site eating require one (1) parking space per 400 square feet with a minimum of 10 parking spaces.

3) From October 14, 1983 to October 15, 1988
   a. Dining uses require one (1) parking space for every three (3) persons based on the occupant load with a minimum of ten (10) parking spaces;
   b. Establishments that sell food or drink for off-site consumption with no seating or on-site eating require one (1) parking space per 400 square feet of building floor area with a minimum of ten (10) parking spaces.

4) From October 16, 1988 to Present – Proposed eating establishments are subject to current parking requirements pursuant to Section 22.52.1110.

This policy memo does not supersede or apply to Specific Plan parking requirements or Community Standards District regulations with specific parking requirements for establishments selling food and/or drinks for off-site or on-site consumption. It shall not apply to illegal buildings, new building construction or expansion, uses which require discretionary entitlements, or commercial buildings nonconforming due to use. It does not authorize the reduction of existing parking spaces nor does it apply to rebuilds as specified in Title 22.

RJB:JS:CS:cr:lm

Attachments: References 22.52.1100, 22.52.1110, 22.56.1510.E
History of Parking Provisions for Eating Establishments

History of Parking Provisions for Eating Establishments

October 16, 1988 to present:
Section 22.52.1110 Entertainment, assembly and dining
(including: dining rooms, cafes, cafeterias, coffee shops, nightclubs, restaurants, bars, cocktail lounges, soda fountains, tasting rooms, taverns, and other similar dining/drinking establishments)

- 1 space for every 3 persons based on occupant load for on-site consumption
- 1 space for every 250 square feet for off-site consumption
- Minimum 10 spaces for other uses

October 14, 1983 to October 15, 1988:
Section 22.52.1110 was added to the Code and became effective on 10/14/1983. All the words are the same as above, except that the requirement for off-site consumption was initially 1 space per 400 square feet.

January 2, 1981 to October 13, 1983:
Section 703.11 was amended (as underlined) to read:
Parking – Assembly, Entertainment and Dining
"Except as otherwise provided in this Article, every structure used for amusement, assembly, drinking, eating or entertainment shall provide on the same lot or parcel one (1) or more automobile parking spaces:"

a. for each 45 square feet of floor area for uses where seats are not fixed, including but not limited to:

...

2. dining rooms, cafes, cafeterias, coffee shops, nightclubs, restaurants and other similar uses;

3. drinking establishments, bars, cocktail lounges, night clubs, soda fountains, tasting rooms, taverns, and other similar uses;

...

b. for every 3 fixed seats. Each 18 inches of fixed bench shall be the equivalent of one seat.

A business containing a use enumerated in this section shall have a minimum of 10 parking spaces."

September 22, 1970 to December 17, 1970 (urgency) and
December 18, 1970 to January 1, 1981:
Section 745.5 was added to the Code, effective 9/22/70 as an urgency ordinance and 12/18/70 as permanent ordinance. *This is the first addition that specifically distinguishes assembly, entertainment and dining uses from other commercial uses for parking. It lists the same provisions as 703.11 above, except that the wording started with* "Every structure used for amusement, assembly, drinking, eating,...." Section 745.5 was renumbered to 703.11 in 1977, but the provisions remained intact.

Prior to 1970, *all restaurant parking was listed under general commercial parking* (section 749).

July 27, 1958 to September 21, 1970:
"Section 749. Other Commercial Uses.

"Except as otherwise provided in this Article, every lot or parcel of land which is used for a **use permitted in Zone C-4 but not permitted in Zone R-4**, ... shall have on the same lot or parcel of land, an area equal to the area so used, which area shall be developed and used for the parking of motor vehicles in conjunction with such other use. Such area also shall be of sufficient size so that it contains **one** automobile storage space plus adequate access thereto for each **four hundred square feet of floor area** of any building or structure so used."

January 12, 1950 to July 26, 1958:
Zone C-H (if a dining establishment is located within a hotel or motel)
Zone C-1 to C-4 – all parking requirements must comply with Zone P (Section 260-261)
No numbers were given for different types of commercial businesses. Generally, for most commercial zones, "...an area not less than the area otherwise used for a use not permitted in Zone R-4, except in the case of electrical substations and similar public utilities in which there are no offices or other places visited by the public, is developed and used for the parking of motor vehicles in conjunction with such other use. Such area used for parking shall be developed and used as provided in Section 261."
Section 261 only provides requirements for paving materials, fences and walls, and lighting.

April 17, 1941 to January 11, 1950:
According to 1944, 1946, and 1948 Zoning Ordinances:
Section 41 Zone C-1 Regulations: "Conditions under which the use described in Section 40 are permitted to be erected, constructed, ore established in Zone C-1 as follows:
...
(d) That provision be made for free off-street automobile storage or parking space sufficient in area to accommodate the automobiles of the operators and patrons of any such commercial use."
Same rules applied for Zones C-2, C-3, C-4, M-1, M-2 and M-3.
(No required numbers of spaces for each type of business were given except for public assembly uses, but dining/drinking establishments were not defined as public assembly, and no entertainment were allowed in conjunction with a café or restaurant)

Prior to 1941:
Nothing in the earlier Zoning Ordinances addressed parking or storage of automobile vehicles in commercial zones at all.

22.56.1510 - Regulations applicable.

The following regulations shall apply to all nonconforming uses and to all buildings or structures nonconforming due to use and/or standards as specified herein:

A.

Continuation. A nonconforming use or a building or structure nonconforming due to use and/or standards may be continuously maintained provided there is no alteration, enlargement or addition to any building or structure; no increase in occupant load; nor any enlargement of area, space or volume occupied by or devoted to such use, except as otherwise provided in this Title 22

B.

Additions to a Nonconforming Use or a Building or Structure Nonconforming Due to Use and/or Standards. This section does not authorize the extension, expansion, or enlargement of the area of land or the area within a building or structure devoted to a nonconforming use, or the alteration, enlargement of, or addition to a building or structure nonconforming due to use and/or standards, or permit the addition of land, buildings, or structures used in conjunction with a nonconforming use or a building or structure nonconforming due to use and/or standards except:

1.

To the extent required by a subsequently enacted or subsequently adopted law, ordinance or regulation, and the director so finds. Such additions as are permitted by this subsection shall not be construed to extend the termination date of the subject nonconforming use, or a building or a structure nonconforming due to use.

2.

Additions may be made to a building nonconforming due to use and/or standards which is designed for and used as a residence without requiring any additional parking space or driveway paving; provided, that such additions neither increase the number of dwelling units in such structure, nor occupy the only portion of an area which can be used for required parking space or access thereto. Notwithstanding the foregoing, a second unit in compliance with Part 16 of Chapter 22.52 may be developed on a lot or parcel of land containing a single-family residence nonconforming due to standards, provided that where the single-family residence is nonconforming due to parking standards, sufficient parking shall be provided to ensure that both the single-family residence and the second unit comply with the applicable provisions of Section 22.52.1180

C.

Additions to a Building or Structure Nonconforming Due to Standards. Additions may be made to a building or structure nonconforming due to standards which is not in violation of any provisions of this Title 22 and is

nonconforming only because it does not meet the following standards of development as provided herein:

1. Yards, provided such addition or expansion is developed pursuant to the yard requirements of this title;

2. Building height limits, but not including floor area ratio or maximum lot coverage provisions, provided such addition or expansion is developed pursuant to the height requirements of this title;

3. Parking facilities including width of access and paving, improvement, number of spaces and landscaping of parking areas; provided, that parking spaces for such addition, increase in occupant load or expansion shall be developed pursuant to the provisions of Part 11 of Chapter 22.52. Such addition or expansion shall not occupy the only portion of an area which can be used for the required parking space or access thereto. Where the number of parking spaces provided prior to such addition is sufficient to comply with said Part 11 of Chapter 22.52 after such expansion, the existing development of such parking facilities shall be deemed to comply with this subsection;

4. Such additions as are permitted by this subsection shall not be construed to authorize the modification of any provision of this title nor extend the termination date of the subject nonconforming use.

D. Conforming Uses in a Building or Structure Nonconforming Due to Standards Other Than Parking. A building or structure nonconforming due to standards other than parking may be occupied by any use permitted in the zone in which it is located, subject to the limitations and conditions governing such use as specified in the zone.

E. Conforming Uses in a Building or Structure Nonconforming Due to Parking. A building or structure nonconforming due to parking standards may be occupied by any use permitted in the zone in which it is located subject to the limitations and conditions governing such use as specified in the zone; provided, that:

1. The use has the same or lesser parking requirement as the existing or previous use; or

2. If the use has a greater requirement than the existing or previous use, a sufficient number of additional parking spaces is developed to accommodate the increased amount of space required by the new use.

F.

Buildings or structures, for which a valid building permit has been issued prior to the effective date, or operative date where later, of the ordinance codified herein, or any amendments thereto, making such building or structure nonconforming due to use and/or standards, may be completed and used in accordance with the provisions of this title, provided:

1. That such construction or the proposed use of such building or structure under construction is not in violation of any other ordinance or law at said effective or operative date; and

2. That such building or structure is completed within:

   a. One year from said effective or operative date, if two stories or less in height and not more than 70,000 square feet in floor area, except that one additional month shall be permitted for each 15,000 square feet in excess of said 70,000 square feet,

   b. One and one-half years from said effective or operative date, if three to six stories in height and not more than 100,000 square feet in floor area, except that one additional month shall be permitted for each 15,000 square feet in excess of said 100,000 square feet,

   c. Two years from said effective or operative date if seven stories or more in height and not more than 150,000 square feet in floor area except that one additional month shall be permitted for 15,000 square feet in excess of said 150,000 square feet;

3. That such building or structure is completed in accordance with the plans and specifications on which such building permit was issued.

G. Repair of Damaged or Partially Destroyed Buildings or Structures Nonconforming Due to Use and/or Standards. Any building or structure nonconforming due to use and/or standards which is damaged or partially destroyed may be restored to the condition in which it was immediately prior to the occurrence of such damage or destruction, provided:

1. That the cost of reconstruction does not exceed 50 percent of the total market value of the building or structure as determined by:

   a. The current assessment roll immediately prior to the time of damage or destruction, or

   b.

A narrative appraisal prepared by a certified member of a recognized professional appraiser's organization; provided, that such appraisal is first submitted to and approved by the director. Submission of an appraisal shall be at the option of the applicant. In verifying the accuracy of the appraisal submitted, the director may request additional supporting information from the applicant and/or conduct his own investigation including a request for technical assistance from any source which is his opinion can contribute information necessary to complete such evaluation. Further, the director may also obtain an independent narrative appraisal of the applicant's property in order to verify the accuracy of the appraisal submitted by the applicant. Where a discrepancy exists between the applicant's appraisal and the appraisal prepared pursuant to the director's request the director may at his discretion determined the market value of the applicant's property based on the evidence submitted and his decision is final; provided, that the applicant shall first have the opportunity to file additional information to substantiate the accuracy of the appraisal submitted by him. Where the director undertakes his own investigation and/or requests that an independent appraisal be prepared as provided herein, the applicant shall pay to the county the actual cost of conducting such investigation and/or the appraisal. Value shall be determined by the use of the assessment roll in all instances where an appraisal prepared pursuant to this subsection is not approved by the director. Such costs shall not include the land or any factor other than the building or structure itself; and

2.

That all reconstruction shall be started within one year from the date of damage and be pursued diligently to completion.

H.

Maintenance of Buildings or Structures Nonconforming Due to Use. When maintenance or routine repairs within any 12-month period exceed 25 percent of the current market value of a building or structure nonconforming due to use, or a building or structure nonconforming due to standards which is subject to termination by operation of law as specified in subsection B of Section 22.56.1520, such building or structure shall be made to conform to the requirements for new buildings or structures as specified by this Title 22. This provision does not apply to additions permitted by this part or to Section 22.52.160. Market value shall be determined by the method specified in subsection G of this section.

I.

Limitation on Additional Development. No new use, building or structure shall be developed on any lot or parcel of land containing a nonconforming use or a

building or structure nonconforming due to use and/or standards unless the following conditions prevail:

1. That each existing and proposed use, building or structure, including appurtenant structures, improvements and open space, will be located on a lot or parcel of land having the required area as provided in Part 2 of Chapter 22.52; and
2. That such lot or parcel of land can be divided into smaller lots or parcels of land each of which when considered as a separate lot or parcel of land will contain not less than the required area; and
3. That each such lot or parcel of land so divided into smaller lots or parcels of land will comply with the requirements of this title as to the number and location of structures.

J. The provisions of this section shall not be construed to extend the termination date of such nonconforming uses, buildings and structures.

(Ord. 2004-0012 § 10, 2004; Ord. 83-0161 §§ 74—76, 1983; Ord. 1494 Ch. 5 Art. 9 § 509.1, 1927.)

22.52.1100 - Commercial areas.

Except as otherwise provided in this Part 11, every lot or parcel of land which is used for a use permitted in Zone C-3 but not permitted in Zone R-4-( )U, except an electrical substation or similar public utility in which there are no offices or other places visited by the public, shall provide an area of sufficient size so that it contains one automobile parking space plus adequate access thereto for each 250 square feet of floor area of any building or structure so used. Except for medical offices, the preceding provisions shall not apply to business and professional offices, which shall instead provide an area of sufficient size so that it contains one automobile parking space plus adequate access thereto for each 400 square feet of floor area of any building or structure so used.

(Ord. 92-0026 § 1, 1992: Ord. 90-0155 § 2, 1990: Ord. 88-0156 § 2, 1988: Ord. 83-0161 § 46, 1983: Ord. 1494 Ch. 7 Art. 3 § 703.18, 1927.)

22.52.1110 - Entertainment, assembly and dining.

A.

Except as otherwise provided in this Part 11, every structure used for amusement, assembly, drinking, eating or entertainment shall provide one or more automobile parking spaces:

1.

For each three persons based on the occupant load as determined by the county engineer. These uses include but are not limited to:

a.

Conference rooms;

b.

Dining rooms, cafes, cafeterias, coffee shops, nightclubs, restaurants, and other similar uses;

c.

Drinking establishments, bars, cocktail lounges, nightclubs, soda fountains, tasting rooms, taverns, and other similar uses;

d.

Exhibit rooms, stages, lounges, and other similar uses;

e.

Theaters, auditoriums, lodge rooms, stadiums or other places of amusement and entertainment, not otherwise enumerated in this Part 11;

f.

Mortuaries;

g.

Dancehalls, skating rinks, and gymnasiums; and,

h.

Health clubs and centers.

2.

For each 250 square feet for an eating establishment selling food for off-site consumption and having no seating or other areas for on-site eating where approved by the director in accordance with Section 22.56.1762

B.

A business establishment, other than that described in subsection A2 of this section, containing a use or uses enumerated in this section shall be subject to a minimum of 10 automobile parking spaces.

C.

The parking requirement for that portion of a business described in subsection A of this section that is conducted outside of a building shall be calculated in accordance with the method of determining the occupant load contained in the Building Code (Title 26 of this code).

(Ord. 2001-0071 § 1, 2001: Ord. 88-0156 § 3, 1988; Ord. 83-0161 § 48, 1983: Ord. 1494 Ch. 7 Art. 3 § 703.11, 1927.)