



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: June 26, 2018

Subject: Hearing to Consider Adoption of a Zoning Text Amendment to Increase Exempted Fence Height and Change Highway Setback Exception Procedures

RECOMMENDATION(S):

1. OPEN the public hearing on Ordinance No. 2018-15, RECEIVE testimony, and CLOSE the public hearing;
2. DETERMINE that adoption of Ordinance No. 2018-15, is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) ("General Rule" exemption);
3. ADOPT Ordinance No. 2018-15, amending Section 82-4.270 of the County Zoning Code increasing the exempt fence height to seven feet from six feet, amending Section 82-38.814(d)(1) of the Zoning Code increasing potentially required sound wall height to seven feet from six feet, and amending Section 82-12.404 of the County Ordinance Code requiring a variance instead of a land use permit for placement of buildings or structures within County highway setback lines.
4. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **06/26/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 26, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Jennifer Cruz, (925)
674-7790

cc:

FISCAL IMPACT:

The cost of preparing this ordinance has been funded by the Department of Conservation and Development, Land Development Fund.

BACKGROUND:

The proposed zoning text amendments are minor or "clean-up" amendments to the County Zoning Code meant to make the zoning code consistent with the updated building code in terms of exempt fence height and to amend the highway setback exception process to be consistent with other provisions of the zoning code.

The County has adopted the most recent California Building Code and that Code became effective January 1, 2017. The California Building Code exempts fences not over seven feet (CRC Section 105.2 and CBC Section 105.2) from requiring a building permit. However, this conflicts with the County's Zoning Code Section 82-4.270 which exempts fences up to six feet in height.

The proposed zoning text amendment to Highway Ordinance (Article 82-12.4) involves amending section 82-12.404 of the ordinance to require approval of a variance instead of a land use permit in order to allow a building or structure within the highway setback lines.

Proposed Zoning Code Text Amendments

Fence Height

The zoning text amendments relating to fence height involve modifying Sections 82-4.270 and 82-38.814 (d) (1) of the zoning code. The purpose of the amendment is to bring the Zoning Code into conformance with the recently updated County/State Building Code, which exempts fences with a maximum height of seven feet from the requirement to obtain a building permit. Currently, the definition of structure in Section 82-4.270 of the Zoning Code exempts fences with a maximum height of 6 feet. Fences taller than 6 feet are considered a structure based on the current definition and therefore need to meet required setbacks and side yards. If the setbacks cannot be met, then a variance application would be required and findings to grant the variance request would need to be supported. The inconsistency between the Building Code and Zoning Code is often confusing to the public.

Amending Section 82-4.270 also requires amendment of Section 82-38.814(d)(1), which identifies construction of a six-foot tall sound wall as a potential condition of approval that may be imposed if a deemed approved retailer is caught violating the County Alcohol Ordinance. The Alcohol Ordinance would be amended to require construction of a seven-foot tall sound wall instead of a six-foot wall in order to increase benefit of the wall while being consistent with other parts of the zoning code and building code.

Highway Setback Requirements

Amendment to Section 82-12.404 would require a variance permit rather than a land use permit to modify highway setback requirements. The purpose of amending this section is to be consistent with other sections of the code that require a variance process for relief from lot dimensions, setbacks and height. The current requirement of a land use permit does not permit administrative decisions and always requires a public hearing. The proposal to require a variance permit would allow for an administrative decision rather than an automatic public hearing. This could potentially cut processing time in half. Variance findings would need to be supported to grant the variance request for relief from the required highway setback requirement similar to other requests for relief from dimensions. Moreover, Section 26-2.1204 indicates that the Zoning Administrator hear and decide all applications for variance permits, including off-street parking and loading requirements, highway setback requirements and sign requirements. Amending Sec 82-12.404 will result in an internally consistent ordinance.

County Planning Commission Hearing

The County Planning Commission held a public hearing on the draft Ordinance on May 9, 2018. The County Planning Commission opened the hearing, but there were no speakers and the Commission closed the public hearing. The County Planning Commission voted 5-0 to recommend that the Board approve the proposed ordinance.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not approve the proposed zoning text amendments the zoning code will continue to be inconsistent with the building code and internally inconsistent with other parts of the code in relation to the processing of land use permits and variances.

CLERK'S ADDENDUM

CLOSED the public hearing; DETERMINED that adoption of Ordinance No. 2018-15, is exempt from the California Environmental Quality Act (CEQA); ADOPTED Ordinance No. 2018-15, amending Section 82-4.270 of the County Zoning Code increasing the exempt fence height to seven feet from six feet, amending Section 82-38.814(d)(1) of the Zoning Code increasing potentially required sound wall height to seven feet from six feet, and amending Section 82-12.404 of the County Ordinance Code requiring a variance instead of a land use permit for placement of buildings or structures within County highway setback lines; and DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

ATTACHMENTS

Ordinance No. 2018-15

CPC Staff Report

Relevant California Building Codes
Zoning Code Section 26-2.1204