

ORDINANCE NO. 21.16

AN ORDINANCE AMENDING ARTICLE III, SECTION 36.06.80 AND SECTION 36.06.85, OF THE MOUNTAIN VIEW CITY CODE, RELATING TO SEISMIC RETROFITS OF LEGAL NONCONFORMING SOFT-STORY STRUCTURES

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Council Findings. The City Council finds and determines the following Zoning Text Amendment is consistent with the General Plan of the City of Mountain View based upon the following findings made pursuant to Section 36.52.60 of the City Code:

a. The Zoning Text Amendments are consistent with the General Plan because they ensure: (1) a well-prepared community that has developed plans to minimize risks from environmental and human-induced disasters as per Goal PSA-4; (2) minimized impacts of natural disasters per Policy PSA 4.2; and (3) protection of life and property from seismic hazards per Goal PSA-5; and

b. The Zoning Text Amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City as the proposed amendments in the development standards are minor and will ensure public safety and preserve existing housing units in the City; and

c. The Zoning Text Amendments are internally consistent with Chapter 36 of the Mountain View City Code; and

d. The Zoning Text Amendment is in compliance with the provisions of the California Environmental Quality Act (CEQA) because the proposed amendment is categorically exempt under the CEQA pursuant to Section 15301 ("Existing Facilities"), Section 15302 ("Replacement or Reconstruction"), and Section 15305 ("Minor Alterations in Land Use Limitations"), and because it does not "have the potential for causing a significant effect on the environment"—Section 15061(b)(3) of the CEQA Guidelines; and

e. The following Zoning Text Amendment is in conformity with the procedures set forth in Chapter 36, Article XVI, Division 13, Sections 36.52.35 through 36.52.60 of the Mountain View City Code.

Section 2. Chapter 36, Article III, Section 36.06.80 of the Mountain View City Code is hereby amended to read as follows:

"SEC. 36.06.80. - Nonconforming uses of structures or buildings.

a. The nonconforming use of any commercial, industrial or office building located in an "R" district, or in an area designated for residential use in the Mountain View general plan shall be terminated within forty (40) years of the date the use became nonconforming, unless a conditional use permit is obtained from the zoning administrator in accordance with the provisions of Sec. 36.48 (Conditional Use Permit) to authorize the continuation of such use.

In considering whether or not such a permit may be issued, in addition to procedures and criteria contained in Sec. 36.48 (Conditional Use Permit), the following criteria shall be applied:

1. The degree to which the use serves a need, which is directly related or complementary to permitted uses of the property;

2. The degree to which the nonconforming use creates parking, traffic or congestion problems;

3. The degree to which the nonconforming use can be assured not to be detrimental to the habitability of adjacent properties throughout the period of its continued use; and

4. The degree to which the general appearance will not detract from the neighborhood character or desirability.

- b. The use of a nonconforming residential building or mobile home, located in a "C" or "M" district, shall be allowed to continue for the structural life of the building.

- c. The nonconforming use of a conforming building or structure may be continued for a period of five (5) years from the date the use becomes nonconforming, at the end of which period such nonconforming use shall be changed to a conforming use or be terminated.

- d. No existing building, structure or land devoted to a nonconforming use shall be enlarged, extended, reconstituted or substituted, or substantially altered, unless the use thereof is changed to a permitted use in the district in which such building, structure or land is located, except as follows:

1. When authorized by the zoning administrator and in accordance with the provisions of Sec. 36.48 (Conditional Use Permit), a nonconforming use may be changed to a use of the same or more restrictive nature.

2. When authorized by the zoning administrator and in accordance with the provisions of Sec. 36.48 (Conditional Use Permit), a nonconforming use of a building may be extended throughout those parts of the building which were manifestly designed or arranged for such use prior to the date when such use or such building became nonconforming, if no structural alterations, except for those required by law, are made therein.

3. When authorized by the zoning administrator and in accordance with the provisions of Sec. 36.48 (Conditional Use Permit), minor alterations to nonconforming residential developments may be authorized which do not exceed four hundred (400) square feet or twenty-five (25) percent of the floor area of the residential structure when it became nonconforming, whichever is less, and are only intended to increase the habitability of the residential unit.

4. Repairs and maintenance may be made to a legal nonconforming use of buildings or structures as required to keep it in safe condition provided no structural alteration or replacement shall be made except as required by law or ordinance, or for seismic retrofit (as approved by the chief building official or his/her designee) related to soft-story buildings. For purposes of this provision, a "soft-story" building shall be a wood frame building, including a multi-unit residential building, constructed before January 1, 1978, where the ground-floor portion of the structure contains parking or other similar open floor space that causes soft, weak or open-front wall lines.

Seismic retrofit means either structural strengthening or providing the means necessary to modify the seismic response that would otherwise be expected by an existing building during an earthquake, to significantly reduce hazards to life and safety while also providing for the substantial safe ingress and egress of the building occupants immediately after an earthquake.

e. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

f. If the nonconforming use of a building, structure or premises ceases for a period of six (6) months or more, said use shall be considered abandoned; and said building, structure or premise shall thereafter be used only for uses permitted in the district in which it is located.

g. Where a structure or building containing a nonconforming use is damaged or destroyed by any natural disaster or accident and repair or replacement exceeds fifty (50) percent of the cost of construction of a comparable new building (as determined by the chief building official), it shall not be reconstructed to accommodate a nonconforming use. It may only be restored and used in conformity with the provision of the district.

h. All uses nonconforming at the time of adoption of this chapter, by reason of noncompliance with the performance standards stipulated, shall adopt necessary measures and conform within three (3) years of the adoption of this chapter or shall be discontinued.

i. All uses, nonconforming by reason of noncompliance with the provisions related to private swimming pools, shall be made to conform therewith prior to April 1, 1971."

Section 3. Chapter 36, Article III, Section 36.06.85 of the Mountain View City Code is hereby amended to read as follows:

"SEC. 36.06.85. - Nonconforming structures or buildings.

a. Any nonconforming commercial, industrial or office building located in an "R" district or in an area designated for residential uses in the Mountain View general plan shall be removed within forty (40) years of the date the building or structure became nonconforming unless a conditional use permit is obtained from the zoning administrator in accordance with the provisions of Sec. 36.48 (Conditional Use Permit), to authorize the continuation of the building or structure.

b. Any nonconforming residential building, structure or mobile home located in a "C" or "M" district shall be allowed to continue for the structural life of the building, structure or mobile home.

c. Any expansion of a nonconforming building or structure must comply with the latest applicable property development standards of the district and not increase the degree of nonconformity which exists on the property.

d. Repairs and maintenance may be made to a legal nonconforming building or structure as required to keep it in safe condition provided no structural alteration or replacement shall be made except as required by law, ordinance or for seismic retrofits (as approved by the chief building official or his/her designee) of soft-story buildings. For purposes of this provision, a "soft-story" building shall be a wood frame building, including a multi-unit residential building, constructed before January 1, 1978, where

the ground-floor portion of the structure contains parking or other similar open floor space that causes soft, weak or open-front wall lines.

e. An existing nonconforming building or structure which is damaged by natural disaster or accident and the cost of restoration does not exceed fifty (50) percent of the cost of construction of a comparable new building (as determined by the chief building official) may be restored and used as before, provided that such restoration be completed within one (1) year of such happening. Where damage exceeds fifty (50) percent, such building may only be restored or replaced in accordance with the latest applicable property development standards of the district except as provided in Sec. 36.06.80.f.

f. If a nonconforming residential development located in any residential district is destroyed by any natural disaster or accident by more than fifty (50) percent of the cost of construction of a comparable new building (as determined by the chief building official), the building or structure may be reconstructed within one (1) year of such happening with the same number of units, provided that the reconstructed portions conform to the latest property development standards of the district applicable to the total number of units on the site at the time of reconstruction (e.g., R3 development standards must be complied with of any development having three (3) or more units).

g. When authorized by the zoning administrator in accordance with the provisions of Sec. 36.48 (Conditional Use Permit), minor alterations to nonconforming residential developments may be authorized which do not exceed four hundred (400) square feet or twenty-five (25) percent of the floor area of the residential structure when it became nonconforming, whichever is less, and are only intended to increase the habitability of the residential unit.

h. When a development does not meet development standards of the zone, modifications which bring the development more into conformance with the zone may be permitted with development review approval.

i. If an existing nonconforming structure in the R1 district is expanded such that the expanded structure is more than twice the size of the original structure, the entire structure must comply with the latest applicable property development standards of the district."

Section 4. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 6. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 7. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct

or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

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The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 22nd day of November 2016, and thereafter adopted at the Regular Meeting of said Council, duly held on the 13th day of December 2016, by the following roll call vote:

AYES: Councilmembers Clark, Inks, Kasperzak, McAlister, Siegel, Vice Mayor Rosenberg, and Mayor Showalter

NOES: None

ABSENT: None

NOT VOTING: None

ATTEST: APPROVED:

LORRIE BREWER, MMC
CITY CLERK

PATRICIA SHOWALTER
MAYOR

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 13th day of December 2016, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 9th day of December 2016, and posted in three prominent places in said City.

City Clerk
City of Mountain View

DP/7/ORD
807-11-22-16o-E