

TUNE UP SERIES 003: RECOMMENDED REMOVAL OF SECTION 2 EXCERPT FROM THE DRAFT ORDINANCE (VOLUME 1)

To allow for further public input and discussion, Staff recommends the removal of Section 2 from the Draft Ordinance (Volume 1). The content of Section 2 is provided below for reference:

SECTION 2. Section 22.02.070 is hereby amended to read as follows:

22.02.070 – Application Where Violation Exists.

A. ~~No~~ Unless otherwise required by State or federal law, an application required by pursuant to this Title 22 shall not be accepted for processing or approved where an existing land use, not previously authorized by any statute or ordinance, is being maintained or operated in violation of any applicable provision of this Title 22, or any condition of approval of a land use permit. This provision applies to the operation of land uses only, and does not affect buildings or structures which do not conform to development standards, on a lot where:

1. An existing land use was not previously authorized by statute, ordinance, or land use permit;

2. An existing land use, previously authorized, has had its authorization expire or otherwise be invalidated; or

3. A valid authorization exists but such authorization does not include an existing land use.

B. ~~Where in the sole discretion of~~ Notwithstanding Subsection A, above, the Director, whose determination shall be final, the Director determines that the use in question is consistent with the objectives, goals, and policies of the General Plan, or that

~~the continuation of said use is essential or desirable to the public convenience or welfare,~~
~~this provision shall not apply.~~ may accept an application after determining, through the
issuance of a clean hands waiver, all of the following:

1. The land use is consistent with the objectives, goals, and policies of
the General Plan;

2. The land use is allowed in the underlying zone and is consistent with
this Title 22, including all applicable development standards;

3. The land use was previously authorized through the issuance of a land
use permit, if one was required, or is subject to a Type I Review—Ministerial (Chapter
22.226);

4. The land use in question does not adversely affect locally regulated
biological, historical, or coastal resources;

5. The lot containing the land use does not have a history of documented
non-compliance with this Title 22; and

6. The lot containing the land use does not have a history of documented
non-compliance with other local, State, or federal laws, rules, or regulations.

C. Notwithstanding Subsections A and B, above, the Director may accept an
application if, in the sole discretion of the Director, the land use is compatible with the
surrounding community, including existing legally established land uses nearby. In making
this determination, the Director may consider, among other factors, whether the
continuation of said use is essential or desirable to the public's health, safety, or welfare.

D. The Director's determination pursuant to Subsection B or C, above, shall be final and not subject to appeal.