

ALAMEDA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 12/21/2021

Approved as Recommended **Other**

Read title, waived the reading of the Ordinance in its entirety and adopted Ordinance O-2021-56

Unanimous **Brown:** **Haubert:** **Miley:** **Valle:** **Carson:** - **5**

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

Ordinance: O-2021-56

Documents to be signed by Agency/Purchasing Agent:

File No. 30727
Item No. 23

Copies sent to:

Maria Palmeri, Qic 50701

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

ATTEST:
Clerk of the Board
Board of Supervisors

By: _____
Deputy

SECOND READING - CONTINUED FROM 12/09/2021



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY PLANNING DEPARTMENT

November 19, 2021

Agenda Item# *823*
December 09, 2021

Chris Bazar
Agency Director

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Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT **ADMINISTRATIVE MINOR USE PERMIT** - Introduction and First Reading of an Ordinance creating an Administrative Minor Use Permit process for expediting minor commercial projects to facilitate permit processing and assist with post COVID-19 business recovery efforts.

RECOMMENDATION

Staff recommends that the Board of Supervisors take public testimony and conduct a First Reading to adopt a new Administrative Minor Use Permit (AMUP) Ordinance per the attached exhibit, and determine that the ordinance is exempt from the requirements of CEQA per Section 15601(b)(3), "Review for Exemption".

BACKGROUND

The Community Development Agency has been actively exploring options for streamlining the approval process for certain key commercial permits. This effort is consistent with the Board of Supervisors-approved "Open for Business" Recommended Strategies 1, 4, 8, 10, and 11. These strategies called for "overall improvements to customer service", streamlining the approval of Administrative Conditional Use Permits (ACUP) and signage, updating the zoning for food trucks, and expediting the permitting process.

The Planning Department's effort resulted in the proposed Administrative Minor Use Permit (AMUP) process, designed to streamline certain uses that will facilitate business recovery and improve the permitting process for applicants. It would also provide a bridge for businesses that took advantage of the Temporary Registration for Outdoor Dining, Retail, and Signage during the pandemic and wish to convert it to a permanent basis. The Temporary Registration is set to expire on December 31, 2021.

Over the past several months, the Planning Department has taken the concept of the AMUP on a wide-ranging community meeting "roadshow". On June 9, 2020, the Eden MAC reviewed the AMUP, and the Castro Valley MAC heard a report on June 15, 2020. The Unincorporated Services Committee reviewed the proposed AMUP Ordinance amendments on two occasions, on June 4, 2020 and again on September 23, 2020. In addition, Planning Department staff presented the AMUP concept to the Chamber of Commerce's Economic Development Committee on May 26, 2021. In every instance, the concept was favorably received, and Planning staff was urged to continue to pursue the streamlining effort. The Planning Commission reviewed the ordinance on November 8th and voted to approve.

DISCUSSION

The AMUP is designed to provide regulatory relief for our businesses and to help with their recovery efforts. Highlights include:

- Continue to accept and process applications electronically;
- Provide a transition from temporary registration to permanent outdoor dining, retail, and signage;
- Add an Administrative Minor Use Permit process that staff can process internally without public hearings that add time and expense for applicants;
- Authorizes the Planning Director to approve new entertainment options for restaurants; and
- Allows for more permanent outdoor improvements (e.g., use of parking lots for outdoor activities, allow coffee-type vendors, etc.).

Applicability: The AMUP is applicable in all Zoning Districts, Specific Plan, and General Plan land use designations where the affected land uses described in this letter are considered Permitted or Conditionally Permitted. The updated language in the proposed AMUP ordinance includes references to the *Ashland and Cherryland Business Districts Specific Plan*, the *Castro Valley Central Business District Specific Plan*, and the *San Lorenzo Village Center Specific Plan*. All other specific plans reference the Zoning Districts in the Alameda County Zoning Ordinance, such that updated reference in the specific plans is not needed.

Permit Fees: The Ordinance adds the AMUP permit review fee of \$500.

Review Authority: Applications for the AMUP Permit will be filed with the Planning Department, together with information to support the required findings and payment of a nominal fee. To approve an application, the Planning Director must make findings that the project is consistent with zoning and compatible with uses in the vicinity, that the site is suitable in terms of time, place of manner of the activity, and that the improvements are of a high quality. See attached ordinance for precise wording of the findings.

Like other discretionary permits there may be conditions of approval, as necessary, to ensure an applicant's proposed project meets expectations. While no hearing will be required, adjacent neighbors will be notified of a pending decision and there is an appeal process. If not used within 12 months of its effective date, an AMUP permit will become null and void. Should a permitted use be abandoned for 6 months, the permit will expire. However, an applicant may apply for a new AMUP permit any time after the expiration.

Finally, the Planning Director may revoke or modify the AMUP permit after determining that conditions of approval have been or are being violated, along with a written notice of revocation. If a permittee then requests a hearing within ten (10) days, the Planning Director will schedule a hearing before the Planning Commission.

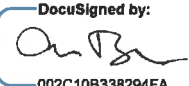
Environmental Review: This ordinance is not subject to the California Environmental Quality Act because the types of allowable uses would not be affected; only the location of an already permitted or conditionally permitted use at the outside of a building would be affected. Therefore, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA, per Section 15601(b)(3), "Review for Exemption".

CONCLUSION

Planning Staff believes the AMUP Ordinance will provide a process for reviewing uses that will foster economic development and help with a post-Covid transition. The purpose of an Administrative Minor Use Permit is to provide flexibility and to reduce processing times for minor projects that are accessory to and consistent with permitted or conditionally permitted uses in the applicable zoning district. Staff therefore recommends that the Board of Supervisors conduct the First Reading to adopt the new Administrative Minor Use Permit (AMUP) Ordinance per the attached exhibit, and determine that the AMUP Ordinance is Exempt from the requirements of CEQA per Section 15601(b)(3), "Review for Exemption".

The complete record is attached.

Very truly yours,

DocuSigned by:

002C10B338294FA...
Chris Bazar, Director
Community Development Agency

ATTACHMENTS

Administrative Minor Use Permit Ordinance

ORDINANCE NO. O-2021-56

AN ORDINANCE AMENDING TITLE 17 OF THE ALAMEDA COUNTY ORDINANCE CODE TO CREATE THE ADMINISTRATIVE MINOR USE PERMIT PROCESS

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION I

The Board of Supervisors makes the following findings in support of this Ordinance:

1. The Community Development Agency has been actively exploring options and approaches for streamlining certain types of permits, as outlined in the Board of Supervisors-approved “Open for Business” Recommended Strategies numbers 1, 3, and 4, among other efforts to improve the permitting process.
2. The Planning Department has developed an Administrative Minor Use Permit process that would streamline the review of certain types of minor use changes and temporary uses to facilitate business development and recovery from the impacts of the COVID-19 pandemic.
3. The Administrative Minor Use Permits would facilitate a transition from the temporary registration process the Community Development Agency implemented in June of 2020 to facilitate outdoor dining, outdoor retail, and additional signage during the pandemic, which process is currently set to expire on December 31, 2021.
4. The Board of Supervisors received the resolution and report from the Planning Commission recommending that the Board adopt a zoning ordinance amendment creating a new Administrative Minor Use Permit (AMUP) to facilitate permit processing and COVID-19 business recovery efforts and to replace the previous permitting process for mobile outdoor businesses, and determined that the Proposal is Exempt from CEQA pursuant to CEQA Guidelines Sections 15601(b)(3) and 15301.
5. On June 9, 2020, the Eden Municipal Advisory Council reviewed the proposed AMUP process, and the Castro Valley MAC heard a report on June 15, 2020. The Unincorporated Services Committee reviewed the proposed AMUP ordinance amendments on two occasions, on June 4, 2020 and again on September 23, 2020. In addition, Planning Department staff presented the AMUP concept to the Chamber of Commerce’s Economic Development Committee on May 26, 2021. The concept was favorably received each time it was presented, and Planning staff was urged to continue to pursue the streamlining effort.
6. The Board of Supervisors’ approval of the proposed AMUP ordinance provides a process for reviewing uses that may be appropriate in the applicable zone but whose effects on a site and

adjacent uses would be subject to review and approval. It also replaces older, more restrictive zoning regulations regarding mobile outdoor businesses (i.e., food trucks) with the AMUP process.

7. The purpose of an AMUP is to provide flexibility and to reduce processing times for minor projects that are accessory to and consistent with permitted or conditionally permitted uses in the applicable zoning district.

8. The proposed ordinance amendment to allow outdoor activities and minor accessory uses for those commercial and service facilities that are already permitted or conditionally permitted, to allow minor facade changes including signage, and to replace the previous permitting process for mobile outdoor businesses, is not subject to the California Environmental Quality Act because the types of allowable uses would not be affected; only the location of an already permitted or conditionally permitted use at the outside of a building would be affected. Therefore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to CEQA, pursuant to Section 15601(b)(3), also known as the “common sense” exemption, and Section 15301, Class 1, “Existing Facilities” involving negligible or no expansion of existing or former use.

SECTION II

Section 17.52.505 is added to Chapter 17.52 of Title 17 of the Alameda County Ordinance Code and reads as follows:

17.52.505 - Administrative Minor Use Permit

- A. Purpose.** The Administrative Minor Use Permit (AMUP) provides a process for reviewing uses that may be appropriate in the applicable zone but whose effects on a site and adjacent uses shall be subject to review and approval. The purpose of an Administrative Minor Use Permit is to provide flexibility and to reduce processing times for minor projects that are accessory to and consistent with permitted or conditionally permitted uses in the applicable zoning district.
- B. Review Authority.** The application for an Administrative Minor Use Permit shall be reviewed and approved or denied by the Planning Director. A decision pursuant to this section shall be final, subject to appeal in compliance with 17.54.670 (Appeals).
- C. Types of Uses and Activities.** An Administrative Minor Use Permit may be issued for the following types of uses and activities that are operating in conjunction with a permitted or conditionally permitted facility:
1. Outdoor Commercial, including but not limited to the uses described in (a) through (e) below. Outdoor Commercial uses shall be subject to any applicable County Specific Plan, which may prohibit or otherwise regulate such uses. Outdoor Commercial uses shall not

be allowed for a “Microenterprise Home Kitchen Operation” (MEHKO) pursuant to Assembly Bill 626 (AB 626) (2018).

This category includes, among other uses:

- a. Outdoor seating for dining purposes;
 - b. Outdoor seating and meal service for on-site alcohol service with on-site meal service as defined by the California Department of Alcoholic Beverage Control (ABC) and in compliance with all applicable ABC licenses and requirements;
 - c. Outdoor personal services (cosmetologists, barber shops, beauty salons, and other similar personal grooming services);
 - d. Outdoor retail including merchandise display areas; and
 - e. Outdoor fitness classes or training.
2. Outdoor community facilities as defined by the Alameda County Zoning Ordinance, section 17.04.010.
 3. Pop-up spaces and uses for food preparation and service or for retail.
 4. Mobile food, beverage or retail uses (e.g. food trucks) located at specified private property locations.
 5. Musical performances (including amplified music) accessory to an existing use.
 6. Minor façade changes including signage.

D. Application Filing, Processing, and Review

1. Application filing and processing. The application shall be filed with the Alameda County Planning Department using the information and materials specified in the most up-to-date Department handout for an Administrative Minor Use Permit, together with the required fee. It is the responsibility of the applicant to provide evidence in support of the findings required by Paragraph F (Findings and Decision), below.
2. Application review. Each application shall be reviewed by the Planning Director to ensure that the proposal complies with all applicable requirements of this Code and any applicable Specific Plan or General Plan. However, notwithstanding any provision in this Code to the contrary, and to the extent required to facilitate an otherwise allowable use pursuant to Paragraph C above:
 - a. Parking requirements may be reduced by up to 50% for uses longer than seven consecutive days in duration or by up to 100% for uses seven consecutive days or fewer in duration.
 - b. Permitted uses may occur outdoors on private property.

E. Administrative Decision and Notice

1. Administrative Decision. An Administrative Minor Use Permit decision shall be issued without a hearing.
2. Notice. Before a decision on an Administrative Minor Use Permit, the Department shall provide notice in compliance with 17.54.830.D for similar approvals which do not require a public hearing. The notice shall state that the Planning Director will decide whether to approve or deny the Administrative Minor Use Permit application on a date specified in the notice and that the decision is appealable.
3. Conditions of Approval. The Planning Director may add conditions of approval as necessary to ensure the use meets the required findings below.
4. Administrative Minor Use Permits shall be subject to time limits and expiration listed in (a) through (e) below. The permittee shall have no right to continue any uses approved pursuant to this ordinance beyond the expiration date of the permit, including expiration pursuant to this Paragraph or Paragraph (G)(2), below.
 - a. Outdoor Commercial – five (5) years
 - b. Outdoor community facilities – five (5) years
 - c. Pop-up spaces and uses – one (1) year
 - d. Mobile food, beverage, or retail uses (such as but not limited to food trucks) – one (1) year
 - e. Musical performances – one (1) year
 - f. Minor façade changes including signage – no time limit.
5. Administrative Minor Use Permits shall be subject to periodic administrative review to determine conformance with the conditions of approval and to determine that the findings upon which the approval was based are still met.

F. Required findings

The Planning Director may approve an Administrative Minor Use Permit only after making all of the following findings:

1. The proposed use is consistent with the General Plan and any applicable Specific Plan;
2. The design, location, size, and operating characteristics of the proposed activity will be compatible with the land uses in the vicinity;
3. The site is physically suitable for the use in terms of:
 - a. Its design, location, shape, and size, and the operating characteristics of the proposed use;
 - b. Access to appropriate services, utilities, and public protection (e.g., fire and medical access, waste collection, and disposal);
4. The site includes physical improvements and/or the permitted facility that are of a high-quality nature consistent with the immediate surroundings;

5. Any new or modified signage conforms to requirements in the Zoning Ordinance and design guidelines included and any applicable Specific Plan; and
6. The proposed use will not be inconsistent with applicable federal, state or local laws or regulations.

G. Abandonment and Revocation

1. An Administrative Minor Use Permit becomes null and void if not implemented within twelve (12) months following its effective date. The Planning Director may, without a hearing, extend the time to implement the use for a maximum period of one additional twelve (12)-month period only, upon application filed with the Planning Department before the expiration of the initial twelve (12)-month time period. Extensions will only be granted if the findings can still be made based on the existing conditions of the site and the use.
2. If a use granted under an Administrative Minor Use Permit is abandoned for a period of six (6) months, the Administrative Minor Use Permit shall expire. An applicant may apply for a new Administrative Use Permit at any time following such expiration.
3. Whenever the Planning Director determines that permit conditions have been or are being violated, the Planning Director may revoke or modify the Administrative Minor Use Permit. The Planning Director shall send a written notice of the revocation or modification to the permittee and the property owner by personal service or by prepaid certified mail, return receipt requested, to the permittee and property owner's notice addresses provided on the application. The notice must include:
 - a. A statement that the permit is being revoked or modified under this chapter;
 - b. The basis for the determination;
 - c. A statement that the permittee may request a hearing before the Planning Commission per Section 17.54.070 on the revocation or modification by submitting a hearing request, in writing, to the Planning Department, within ten (10) calendar days of the date of the notice;
 - d. A statement that the failure to request a hearing on the notice of suspension or revocation will constitute a waiver of all hearing and appeal rights, and the suspension or revocation will be final; and
 - e. Signature of the Planning Director or designee making the determination.
4. Service of notice shall be deemed complete at the time of personal service or the time the notice is deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder.
5. If the permittee requests a hearing within ten (10) days, the Planning Director shall set a date for a public hearing upon the proposed revocation or modification before the Planning Commission.

6. The hearing notice shall be served on the permittee and property owner's notice addresses at least ten (10) days before the date of the hearing, and specify the date, time, and place when and where it will be held.

H. Penalty for violations

1. The violation by any person of any provision of this Section or condition of an Administrative Minor Use Permit granted under the terms of this Section is an infraction and subject to enforcement pursuant to Chapters 17.58 and 17.59 of this Code (with the exception of enforcement as a misdemeanor).
2. Each person is guilty of a separate offense for each and every day during any portion of which a violation is committed, continued, or permitted, and shall be punished accordingly.

SECTION III

Alameda County Code of Ordinances, Title 17 - Zoning, is hereby modified as follows:

In Section 17.04.010, the definition of Mobile Outdoor Business is deleted in its entirety.

SECTION IV

Alameda County Code of Ordinances, Title 17 - Zoning, is hereby modified as follows:

Section 17.52.1100 regarding Mobile Outdoor Businesses is deleted in its entirety.

SECTION V

The Ashland and Cherryland Business Districts Specific Plan is hereby modified to add the following:

6.1.10 Administrative Minor Use Permit (AMUP)

6.1.10.1 Notwithstanding any other provision of this Specific Plan, an Administrative Minor Use Permit application process shall be implemented per Alameda County Ordinance Code Section 17.52.505 - Administrative Minor Use Permit.

SECTION VI

The Castro Valley Central Business District Specific Plan is hereby modified to add the following:

5. Additional Land Use Policies [page 91]

t. Administrative Minor Use Permit (AMUP): Notwithstanding any other provision of this Specific Plan, an Administrative Minor Use Permit application process shall be implemented per Alameda County Ordinance Code Section 17.52.505 - Administrative Minor Use Permit.

SECTION VII

The San Lorenzo Village Center Specific Plan is hereby modified to add the following:

V. LAND USE

A. LAND USE REGULATIONS

3. USE AND BUILDING CONTROLS

e. Administrative Minor Use Permit (AMUP)

Notwithstanding any other provision of this Specific Plan, an Administrative Minor Use Permit application process shall be implemented per Alameda County Ordinance Code Section 17.52.505 - Administrative Minor Use Permit.

SECTION VIII

This ordinance shall authorize the Planning Director to charge an Administrative Minor Use Permit fee of \$500 for each application.

SECTION IX

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 21st day of December, 2021, by the following called vote:

AYES: Supervisors Brown, Haubert, Miley, Valle & President Carson – 5
NOES: None
EXCUSED: None
ABSTAINED: None



Keith Carson, President of the Board

ATTEST:

Anika Campbell-Belton
Clerk of the Board

By: RB
Deputy

Approved as to Form:

Donna R. Ziegler, County Counsel

By: RH
Rachel H. Sommevilla
Assistant County Counsel