CITY OF SANTA BARBARA

ORDINANCE COMMITTEE REPORT

AGENDA DATE: January 15, 2008

TO: Ordinance Committee

FROM: Planning Division, Community Development Department

SUBJECT: Proposed Amendments To Municipal Code Title 28, Zoning Ordinance

RECOMMENDATION:

That the Council Ordinance Committee review, discuss, and give direction to Staff on the proposed amendments to the Municipal Code.

EXECUTIVE SUMMARY:

Staff proposes a number of Municipal Code amendments that range in complexity from simple numbering corrections to more complicated clarifications and revisions of Municipal Code provisions. Staff presented the entire package of Zoning Ordinance Amendments to the Ordinance Committee on September 11, 2007. Given the scope of the proposed amendments, they were divided into smaller groups to facilitate review and discussion of the amendments. The first group of amendments was discussed by the Ordinance Committee on October 2, 2007. Topics that were discussed at that workshop pertained to open yards in the single-family and R-2 zones, new and revised definitions and setbacks along alleys and private streets.

Major topics for discussion at today's workshop include nonconforming open yard, yard encroachments, renting of rooms in single family zones, nonconforming fences/walls/screens, parking, and reasonable accommodations. Other minor amendments regarding the definition of family day care, storage on residentially zoned property, and the clarification that a modification may be sought in connection with the required minimum distance between buildings will also be discussed. Staff proposes that a final group of amendments will be discussed at the Ordinance Committee in February.

REVIEWED BY: _____Attorney

Agenda Item No._____

DISCUSSION:

The Ordinance Committee meeting will be in a workshop format. Diagrams illustrating the topics below will be provided and discussed at the meeting.

Proposed Changes

Nonconforming Open Yard

Single family and two-family zoned lots are required to have an open yard of at least 1,250 square feet with a minimum dimension of 20 feet in any direction. Certain small structures are allowed by the Zoning Ordinance to encroach into the required open yard (see Yard Encroachments discussed below).

There are instances where existing properties do not meet the open yard requirement. Either they do not provide the required minimum amount, or the open yard does not meet the minimum 20 foot dimension, or the open yard does not meet the locational requirements (e.g. not in the front yard). The open yard is considered nonconforming if it legally existed at the time the open yard regulations became effective.

One of the City's basic premises regarding nonconforming development is that the nonconformity should not be increased (e.g. further encroachments into setbacks or decreases in parking provided etc. are not allowed). Because there are multiple requirements to open yard, when a property with nonconforming open yard is proposed for additional development (i.e. additions), the issue of further reducing the nonconforming open yard arises. There are multiple methods to address this issue, from one extreme (the property does not have an area that meets all open yard requirements, therefore any area can be built upon) to the other (no areas can be built on), to somewhere in between. The City's current practice is that additions to properties with nonconforming open yard are prohibited, unless a Modification is approved. The City's past practice had been less restrictive and a variety of additions were allowed without a Modification. Staff would like to adopt a compromise that we believe meets the intent of the ordinance to maintain useable open yard areas, but does require a modification for certain areas.

Therefore, Staff is proposing an amendment to the Zoning Ordinance that would create criteria whereby a certain open yard area would be designated, and additions would not be allowed in that area, but would be allowed in other areas. Using these criteria, Staff would examine each proposal, and designate the nonconforming open yard on the plans, so that any future development would be limited to the area outside the nonconforming open yard, unless a Modification was approved.

In designating the nonconforming open yard, the area that provides the single largest area (closest to the 20' x 20' minimum) and that meets the most requirements regarding location will be chosen first. Areas towards the rear of the lot are more preferable to areas located in the front yard. Adjoining areas that may not meet the minimum open

yard dimension will be added to the main area until the minimum open yard size (usually 1,250 s.f.) requirement is met.

Staff would like to discuss with the Ordinance Committee the minimum dimension of an area that would be included in the nonconforming open yard. An option could be to include areas that exceed the minimum setback dimension. In some instances, this area could be as small as 6.5 feet. Another option could be to include areas that have a minimum dimension of 10 feet. The minimum 10 foot distance would be consistent with the minimum required distance of private outdoor living space in multiple unit developments or condos. A third option would be not to establish the nonconforming open yard provision and continue to require a modification for any additions proposed on those nonconforming properties.

Yard Encroachments

Throughout the Municipal Code, including in this Section, the term "yard" is used to describe setbacks, open yard, distance between buildings, or common outdoor living space. Reference to the word "yard" is being changed to reflect the actual term it denotes.

Currently, Section 28.04.430.5 (definition of "Open Yard") allows an unenclosed patio cover, summer house, arbor, canopy or other similar structure, except where attached to a wall of a main building, to encroach into the required open yard provided the structure does not occupy more than 20% (250 square feet) of the required open yard. If the existing open yard is less than 1,250 square feet in area (i.e. nonconforming to size), then a structure would be allowed to occupy not more than 20% of the provided open yard.

These provisions are being moved from the Definition section to the General Provision section, and being joined to Section 28.87.062 (Yard Encroachments), which specifies the types of structures that currently can encroach into a required yard. These structures include:

- Uncovered balconies, cornices, canopies, chimneys, eaves or other similar architectural features not providing additional floor space within the building may extend into a required yard not to exceed two feet. The provision for the encroachment of balconies into a required yard does not pertain in the single-family zones.
- Porches, terraces and outside stairways, unroofed, unenclosed above and below floor or steps, and not extending above the level of the first floor, may project not more than three feet into any required interior yard.
- Solar energy systems, that are installed roughly parallel to, and protrude no higher than ten inches above a roof eave, may extend into a required yard the same amount as the roof eave but in no case more than two feet.

The existing provisions for yard encroachments are proposed to be changed or clarified, as follows:

- Allow decks less than ten inches in height above grade in the setbacks. This is codification of a long-standing City policy.
- Allow window seats which are at least three feet above grade or the finished floor to encroach up to two feet into the front setback.
- Allow a small entrance landing (either covered or uncovered) and/or entrance stairs to encroach a total of 3 feet into the required front setback.
- Clarify that unenclosed structures attached to a wall of a main building may encroach a maximum of 20 percent into the required open yard. Currently this provision is ambiguously worded.
- Specify that if the open yard is provided in more than one area, then the 20 percent encroachment applies to each individual area.
- Allow uncovered second story decks above patio covers to encroach a maximum of 20 percent into the required open yard.
- Clarify the existing allowance that cantilevered architectural features may encroach no more than two feet by specifying that the cantilevered architectural feature must be at least three feet above finished grade or three feet above the finished floor if the feature is proposed on an upper floor.
- Clarify that roof eaves cannot be located closer than two feet from any property line.
- Allow the following types of structures to encroach into the required minimum distance between main buildings on the same lot. This is a codification of long-standing City policy.
    - Detached accessory structures (as long as the 5 foot minimum distance between main buildings and accessory buildings is maintained)
    - Uncovered parking
    - Planters less than 10 inches in height from grade
    - Paving
    - Fences, hedges, and walls
    - The following structures can encroach a maximum of three feet into the required distance between buildings:
        - Balconies, decks, porches and terraces on the first or higher floor, that do not provide additional floor area, roofed or unroofed, cantilevered or not. However, any structure that is located on an upper floor may not be enclosed below.
        - Structures built to enclose trash, water heaters, or water softeners.
        - Exterior stairways on the first or higher floors that are unenclosed by solid walls.

These types of development standards are routinely discussed with property owners and designers. Major debates have occurred regarding Staff's interpretation and application of the standards. These debates can ensue for months and applicants can become quite frustrated. By defining the standards more clearly, better customer service will result. However, it is likely that some applicants will continue to express that these standards are not flexible enough.

As part of the Zoning Ordinance amendment package, the Planning Commission has reviewed the proposed encroachments and has indicated their support.

Renting of Rooms in Single-Family Zones

From time to time, the City receives complaints from neighbors that single-family homes in their neighborhood are being rented to several individuals as a boarding house. The complaints focus mainly on the transient nature of the residents, excessive cars, noise, and lack of upkeep of the residential unit. The Mayor has requested that Staff explore options that may be available to the City to deal with issues associated with the renting of rooms in single-family zones.

In the 1970s, the City had a definition of boarding house that distinguished between related and unrelated persons in setting occupancy limits for single-family homes. In 1980, the California Supreme Court ruled that the distinction based on family relation violated the right to privacy in the State Constitution.

Following the court decision, the City amended the definition of boarding house (SBMC §28.04.100) to remove the distinctions based on family relation. Boarding houses are not an allowed use in the single family zones. In the R-2, R-3 and R-4 Zones, a Conditional Use Permit (CUP) is required.

Enforcement based on the current definition of boarding house is problematic for several reasons. First, there are several factual elements that must be established in order to determine that a particular residence is a boarding house as opposed to a single-family home. These facts include: (1) the home is being occupied by five or more "guests," (2) the guests are occupying the building for definite pre-arranged periods of seven or more days, and (3) the individual rooms do not have kitchens. Each of these elements must be established before a dwelling can be treated as a boarding house. It is difficult to establish the required elements without the assistance of the residents. Many times the residents are coached on what to say. If a property owner or resident asserts that they are a “family” or “housekeeping unit,” it is very difficult to prove otherwise.

Second, the use of the term “guest” in the definition of boarding house makes distinctions based on the identity of the residents as opposed to the nature of the use. The Municipal Code does not define the term "guest." In 1996, the Court of Appeal invalidated an ordinance that distinguished between owners and non-owners. The Court stated that the ordinance violated the renters' equal protection rights because there was no rational connection between the City's stated purpose of preventing overcrowding and the ordinance's differing treatment of owners and renters (i.e., more than five renters prohibited, but more than five owners allowed). With the use of the undefined term “guest,” it could be argued that the City's current definition of boarding house suffers from a similar infirmity.

Some jurisdictions have looked for other ways to regulate the renting of rooms in single-family residences. In 2003, the California Attorney General issued an opinion in response to a request by the City of Lompoc that stated a city may regulate the operation of a boarding house in a single family zone where a boarding house is defined

as a dwelling in which three or more rooms are rented to individuals under separate rental agreements, with or without individual cooking facilities and whether or not an owner or manager is in residence. The Attorney General concluded an ordinance directed at a commercial use of property that is inconsistent with the residential character of the neighborhood and which is unrelated to the identity of the users is a reasonable exercise of legislative power.

Both the cities of Lompoc and Santa Maria have adopted an ordinance that regulates the number of residential leases that may be let in dwellings in single-family zones based on the Attorney General's opinion. Staff has contacted each of these cities to inquire about their enforcement efforts regarding boarding houses. According to the Lompoc City Attorney's Office, the City of Lompoc is not actively enforcing their boarding house ordinance. The Lompoc ordinance was developed in response to a single incident that has since resolved itself, and the City has not received further requests for enforcement. Conversely, the City of Santa Maria has a relatively active enforcement posture that includes uniformed zoning enforcement officers interviewing residents of a suspected boarding house in order to establish the necessary factual basis for enforcement. When this effort is not successful, usually due to tenants being coached to not discuss the rental status, Santa Maria's zoning enforcement officers usually fall back to strict enforcement of parking, setback and nuisance ordinances for the property.

Due to the enforcement challenges outlined above, the City Attorney's Office does not recommend enforcement under the current definition of boarding house. Staff recommends that the boarding house definition be amended to define a boarding house based on form and function, rather than occupancy. This would enable property owners who want to propose a boarding house or whose property may be already developed with a building that could easily be converted to a boarding house (such as the conversion of a large senior care facility to a boarding house), the opportunity to do so in the R-2, R-3 or R-4 zones with the approval of a CUP. The underlying theme of an amended definition would be that a situation in which people share a house with common kitchen and living areas would not be considered a boarding house (i.e., if it looks like a house, it is a house, regardless of who's living in it).

Staff does not recommend that the Ordinance Committee pursue an ordinance amendment regulating the number of leases for a single residence, in line with the Attorney General's opinion. Enforcement of an ordinance which focuses on the length or number of leases can be easily thwarted by coaching tenants. Staff is concerned that this would continue to foster unrealistic expectations of the neighbors for enforcement.

For complaints of room rentals in houses, Staff would continue to enforce the noise ordinance, parking requirements, setback and open yard standards. Concerns relating to overcrowding and illegal garage and room conversions would continue to be enforced upon by Community Development Department staff.

On November 16, 2006, the Planning Commission held a public hearing on proposed boarding house regulations, and concurred with the Staff's recommendation.

Parking

The proposed amendments to Chapter 28.90, Automobile Parking Requirements, relate to multi-family dwelling unit definition, parking requirements for disabled/handicapped developments, and the storage of unregistered vehicles.

Three or More Units on a Lot

Currently, parking is prohibited in any required setback except that uncovered parking or turnaround areas are allowed in the required interior setback in the R-3 or less restrictive zone for multi-family dwellings if at least five percent of the area used for parking/turnaround is landscaped. A multi-family dwelling is defined as three or more attached units. An amendment is proposed to allow this exemption to apply to R-3 zoned properties that have three or more residential units on one lot, whether or not the units are attached.

Handicapped/Disabled Residential Unit

At the request of the Housing Authority, this proposal would create a new parking standard of ½ space per unit for residential units developed or operated by non-profits or governmental agencies that will be occupied by handicapped or disabled tenants.

The Institute of Transportation Engineers (ITE) manual does not specifically call out parking for this type of use; however, the ITE manual has rates for congregate care, assisted living, nursing home and continuing care retirement community facilities which are similar land uses. These uses are below one parking space per unit. Historically, Staff and the Planning Commission have supported parking modifications requested for units developed for disabled tenants to provide parking at the same rate as low income senior housing units.

Unregistered Vehicles

Currently, vehicles incapable of movement under their own power must be kept in a garage or carport. For enforcement purposes, the proposed change would extend the applicability of this provision to include unregistered vehicles, and require that these vehicles be stored in a garage and not a carport. However, owners would not be allowed to park inoperable vehicles in any required parking space(s). For example, if a property contained a house and a two car garage, an inoperable vehicle could not be parked in the garage; however, if a property contained a house and a three car garage, one inoperable vehicle could be parked in the garage.

Storage

This section is proposed to be clarified so that the locations where storage is not allowed are stated explicitly. This amendment will specify that no portion of any front yard or required setback, open yard, private outdoor living space or front porch shall be used for the permanent storage of items such as appliances, motor vehicles, trailers, boats, loose rubbish, garbage or rubbish receptacles, building materials, compost pile,

or any similar item for 48 or more consecutive hours. Additionally, an existing provision regarding storage on corner lots is proposed to be deleted, as it is not clear in its meaning and therefore has never been used.

Reasonable Accommodation

State and Federal law requires local governments to make reasonable accommodations (modifications or exceptions) to their land use regulations and practices, when necessary, to provide disabled persons an equal opportunity for housing. In response to this law, the City of Santa Barbara Housing Element (2004) includes strategy 1.1.5 which states *"The City shall amend the Municipal Code to provide persons with disabilities seeking equal access to housing to request reasonable accommodation in the application of City zoning laws."* Amendments to the parking standards, yard encroachments, and allowed modifications are proposed to implement Housing Element Strategy 1.1.5. to enable people with disabilities flexibility in zoning standards when seeking access to housing.

Parking

Currently, the Planning Division's administrative practice is to allow existing required parking spaces to be converted from a standard parking space to an accessible space or access aisle without triggering the requirement for a modification. This is true even if the conversion results in fewer spaces than required by the Zoning Ordinance as long as the accessible parking requirements are not triggered by an expansion of an existing use or new development. An amendment is proposed to codify this existing administrative practice.

Yard Encroachments

Presently, if a structure or improvement is proposed within one of the required yards, an applicant must seek approval of a modification of the zoning standard. An amendment to the Zoning Ordinance yard standards is proposed to allow certain accommodating structures and improvements, such as accessible parking spaces, access aisles or accessibility ramps, to be placed within required yards without the need of a modification. This proposed change would not eliminate the need for a building permit, building code compliance, or design review if required.

Modifications

Currently, the modification process is available to applicants requesting relief from zoning standards. Staff recognizes that it may not be possible to anticipate every potential accessibility improvement in order to revise the zoning standards to allow for accessibility improvements as a matter of right. Therefore, Staff recommends amending Section 28.92.026 of the Municipal Code to allow for modifications to any zoning standard when necessary to make an existing residential unit accessible to persons with a disability.

Fences/Walls/Screens

Currently, nonconforming fences, walls and screens are allowed to remain, provided there is no physical change except necessary repair and maintenance. However, there is no definition of "necessary repair and maintenance." As a result, entire fences (posts, stringers and board) have been demolished and rebuilt, which is contrary to the intent of the Zoning Ordinance, which is to eliminate over-height fences and replace them with conforming fences. The proposed changes to this section would add language that would define this phrase to be the replacement of up to 10% of the existing wall length, and codify existing policy on how to determine whether a hedge is nonconforming. Staff believes that these changes would, over time, reduce the number of nonconforming fences, walls and hedges, as those in need of replacement of more than 10% of their length would need to be rebuilt to meet current standards, or apply for a Modification. The following summarized the proposed changes:

- No more than 10% of the length of any nonconforming fence, screen or wall may be replaced per year.
- A hedge shall be determined to be nonconforming upon receipt of sufficient supporting evidence, as determined by the Community Development Director, indicating that a hedge existed in 1957, the year when the hedge height restrictions became effective.

Staff would like to attempt to address the overall issues of fence/hedge height in a future Zoning Ordinance amendment, and such a comprehensive discussion has not yet occurred with the Planning Commission. When a full discussion takes place it is likely that varied opinions will be expressed, and some controversy generated. Therefore, at this time, the proposed amendments are limited to quick fixes to assist in the enforcement process.

Family Day Care

Since the City adopted regulations regarding family day care, the State regulations were changed to increase the number of children allowed without a Conditional Use Permit or Performance Standard Permit from six to eight for Small Family Day Care, and from 12 to 14 for Large Family Day Care (with a PSP). The proposed change would refer to State law for the number of children allowed in family day care establishments, so that any change in State law would not require a future amendment to the Zoning Ordinance in order to be consistent.

Distance Between Buildings

The proposed change to the Modification section would specifically state that a modification of the required minimum distance between buildings may be granted subject to the standard yard findings. This change is consistent with existing administrative policy and numerous actions by the Planning Commission and Staff Hearing Officer.

NEXT STEPS

A subsequent workshop with the Ordinance Committee has been scheduled for Tuesday, February 12, 2008. Topics that will be discussed at that workshop include:

- Multi-Family and Multi-Family/Hotel/Motel Zones (R-3/R-4)
  - Common open area and private living space
  - Setbacks for garages, carports and uncovered parking
  - Setback and lot area coverage for remodels of existing hotels, motels, B&Bs and other non-residential uses
  - Revise/clarify the third-story setback requirement. The amendment would also apply in Non-Residential Zones too
- Setbacks for residential and mixed-use projects in certain non-residential zones.
- Allow Churches, Convents, Monasteries and Educational Institutions; branch banks and businesses specializing in sick room supplies; and, birth centers without the requirement for a Conditional Use Permit (CUP) in certain non-residential zones
- Temporary Seasonal Uses
- Minor changes to the allowed uses in certain zones

Following the conclusions of the workshops on the entire amendment package, the City Attorney's Office will draft the ordinance text amendments and the draft ordinance will return to the Ordinance Committee for a recommendation to the City Council.

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Susan Reardon, Project Planner

SUBMITTED BY: Dave Gustafson, Acting Community Development Director

APPROVED BY: City Administrator's Office