

ORDINANCE NO. 2520

AN ORDINANCE OF THE CITY OF CHULA VISTA ADDING SECTION 19.14.270 TO THE MUNICIPAL CODE OF THE CITY OF CHULA VISTA ADOPTING PROCEDURES FOR THE ENFORCEMENT OF CONDITIONAL USE PERMITS AND VARIANCES

THE CITY COUNCIL OF THE CITY OF CHULA VISTA DOES ORDAIN AS FOLLOWS:

SECTION I: That Section 19.14.270 is added to the Chula Vista Municipal Code to read as follows:

Sec. 19.14.270 Procedures for enforcing conditional use permits and variances:

- A. The planning director shall investigate evidence presented to him or her to determine whether probable cause exists that any of the following has occurred or is substantially likely to occur regarding any variance or conditional use permit:
1. Fraud: That the variance or conditional use permit approval was obtained by fraud;
 2. Non-Use: That the uses and privileges authorized by the variance or conditional use permit have not been initiated in the manner and within the twelve (12) months specified in Section 19.14.260, and no extension of time has been granted;
 3. Abandonment: That the property or any structure thereon subject to the variance or conditional use permit has been abandoned or the use authorized has ceased for a period exceeding twelve (12) months;
 4. Violation of Conditions: That the variance or conditional use permit is being or has been exercised contrary to the conditions of said permit, or in violation of any applicable licenses, permits, regulations or laws;
 5. Violation of Use: That the variance or conditional use permit is being or has been exercised in excess of the use right granted.
 6. Public Health, Safety and Welfare: That the use for which the variance or conditional use permit was obtained is being or has been exercised so as to be detrimental to the public health, safety, or general welfare or so as to constitute a public nuisance.

If the planning director has probable cause to believe that any of the foregoing has occurred or is substantially likely to occur, he/she shall issue a recommendation as to what action should be

taken. The recommendation shall be submitted to the individual or body which issued the conditional use permit or variance (hereinafter referred to as "Permitting Authority").

- B. The Permitting Authority shall hold a public hearing to consider the planning director's recommendation regarding the conditional use permit or variance.
- C. Notice of any public hearing to consider violations of variances and conditional use permits shall be given consistent with the procedures set forth in Section 19.12.070. The notice shall contain the following information:
 - 1. The date, time, and place of the public hearing;
 - 2. The identity of the Permitting Authority;
 - 3. A general explanation of the matter to be considered including the nature of the planning director's recommendation;
 - 4. A general description, either in text or by diagram, of the location of the property.
- D. Procedures for Public Hearing: The following procedures shall be followed for public hearings provided for in this section:
 - 1. Recommendation and Reports: The planning director's recommendation and any accompanying staff reports, if any, shall be made available to the public prior to commencement of the public hearing provided for herein.
 - 2. Recordation: The public hearing may, at the written request of an interested party, be recorded by either a recording device or stenographer.
 - 3. Testimony: Any witness offering evidence or testimony may be placed under oath and subject to cross-examination at the request of the Permitting Authority or any party interested in the matter which is the subject of the hearing.
 - 4. Relevancy: Evidence or testimony must be relevant or material to the fact or facts at issue. Any relevant evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which would otherwise make improper the admission of such evidence in civil actions. All irrelevant and unduly repetitious evidence may be excluded.
 - 5. Hearsay: Hearsay evidence shall be admissible, but the fact that evidence is hearsay may affect the weight given to the evidence in reaching any a determination of any question of fact. Hearsay evidence may be used for the purpose of

supplementing or explaining other evidence, but may not be sufficient by itself to support a decision unless it would be admissible over objection in civil actions.

6. Privileges: The rules regarding privileges shall be effective to the extent they are raised and otherwise required by law to be recognized at the hearing.
 7. Procedural Compliance: The hearing need not be conducted under rules relating to evidence. Failure of the Permitting Authority to strictly enforce rules of evidence and reject certain matters which may be irrelevant or immaterial shall not be sufficient to constitute reversible error on the part of the Permitting Authority if basic procedural due process is granted to all affected parties and a fair hearing has been conducted. Errors which do not affect substantial rights will be disregarded and no presumption of prejudicial error is raised by the failure to strictly adhere to procedural requirement
- E. The Permitting Authority, after public hearing, shall make a finding or findings whether any or all of the factors articulated in subsection (A) apply to a conditional use permit or variance.
- F. Based on its findings, the Permit Authority may do any one or a combination of the following:
1. Maintain the existing variance or conditional use permit without modification;
 2. Modify or delete any provision or condition of the variance or conditional use permit;
 3. Establish any new condition or provision;
 4. Revoke the variance or conditional use permit;
 5. Establish any fine or charge which may be paid in lieu of revocation, modification, or imposition of a condition.
- G. Written Decision: The Permitting Authority must issue a written decision explaining the factual basis for its decision. Notice of the Permitting Authority's written decision and action shall be mailed to the affected party and any interested party requesting such notice consistent with section 19.12.070. Said notice shall be filed with the city clerk.
- H. Right of Appeal: Within ten (10) days after the notice of the written decision is filed, unless the date is waived by the appellate body upon a showing of good cause, any interested party who participated in the public hearing or the planning director may appeal the written decision to the appropriate appellate body as

follows:

1. If the Permitting Authority is the zoning administrator, appeal shall be filed with planning commission;
2. If the Permitting Authority is the planning commission appeal shall be filed with the city council;
3. If the Permitting Authority is the city council no further appeal is available.

The appeal shall include a statement of the reasons supporting the appeal, including a demonstration that any issues being raised were raised during the public hearing.

- I. After an appeal is filed and accepted, the appellate body shall hold a public hearing consistent with the provisions set forth in this section. The appellate body may, in its discretion, consider additional evidence not presented at the public hearing.
- J. The appellate body may reverse, uphold, or modify in any manner a written decision or take any action consistent with this section, after public hearing, upon a written appellate decision. Notice of the written appellate decision shall be mailed to the affected party and any interested party requesting such notice consistent with section 19.12.070. Said notice shall be filed with the city clerk.
- L. Appeal to City Council: If the appellate body is not the city council, an appeal may be filed by any interested party who participated in the appeal or by the planning director may request an appeal to the city council within ten (10) days after the notice of the written appellate decision is filed, unless waived by the city council upon a showing of good cause. The appeal shall include a statement of the reasons supporting the appeal, including a demonstration that any issues being raised were raised during the public hearing.

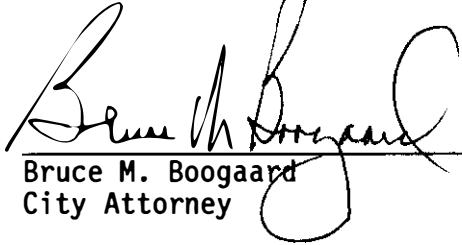
The appeal shall include a statement of the reasons supporting the appeal, including a demonstration that any issues being raised were raised during the public hearing.

- M. Any written decision regarding an appeal shall be final on the eleventh (11th) day after its filing, unless an appeal is timely filed, if such an appeal is available to an issuing body or a waiver is obtained. All written decisions issued by the city council shall become final when notice of such written decision is filed.
- N. After the written decision becomes final, it shall be filed with the director of planning, director of building and housing, and a copy may be filed with the County Recorder of San Diego County. Uses and structures must be brought into compliance with the final decision or otherwise brought into compliance with the underlying zone.

Where a variance or conditional use permit is revoked, it shall become void.

SECTION II: This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

Presented and Approved as to form by



Bruce M. Boogaard
City Attorney


PASSED, APPROVED and ADOPTED by the City Council of the City of Chula Vista, California, this 30th day of June, 1992, by the following vote:

AYES: Councilmembers: Grasser Horton, Malcolm, Moore, Rindone, Nader

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None



Tim Nader, Mayor

ATTEST:

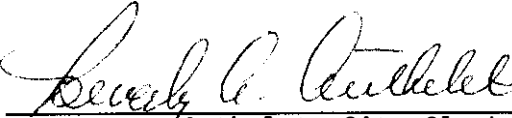


Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2520 had its first reading on June 23, 1992, and its second reading and adoption at a regular meeting of said City Council held on the 30th day of June, 1992.

Executed this 30th day of June, 1992.



Beverly A. Authelet, City Clerk