

Minor Amendment Procedure

Small Business Task Force recommendation

The SBTF specifically recommended that the minor amendment procedure be changed to allow more flexibility so that businesses who wish to change their operations over time are not required to go through the full SUP process. The existing minor amendment procedure, at section 11-511 of the zoning ordinance, was adopted in 1992, but has only rarely been used. Staff predicts that, even with the changes proposed by staff in May, or with the potential changes now included in the attached chart, the process is one that will not be appropriate for many circumstances, and will have limited application.

Minor amendments are generally accepted practice in land use systems

There is no question but that the minor amendment to an approval – whether the approval authorizes development, a comprehensive plan or an SUP – is difficult to define. However, there is also no question but that in the course of a construction project, over the years that a comprehensive plan exists or, in the case of an SUP approval, in the course of a business, small changes are sometimes required or desired even though they present different circumstances from the original application and/or the original approval. The concept of a minor amendment is well established in land use practices as a way of dealing with such matters.

General definition

As a general matter, a minor amendment is defined to mean a minor variation to an approved scheme which does not raise significant new issues (requiring submission of a new application) provided that, cumulatively, the changes would not result in substantial departure from what was originally approved.

Examples of minor amendments in the SUP context

- A light auto repair business that seeks to add a small amount of floor space or a new, additional lift for repairs, or to increase its hours, and its location is not near residential uses.
- A general auto repair business that seeks to include painting of vehicles, even though when it was approved it had no plan for painting, with conditions added regarding the need for a paint booth and other environmental protections.
- A computer school with five classrooms that seeks to add a sixth classroom, or to add hours, and there is sufficient parking to meet parking requirements.
- A car rental agency that seeks a small expansion of floor area, or a small area for an additional number of parked rental cars, or that seeks to expand its hours slightly.
- A health club that seeks to add a sauna room, spa services or a juice bar for members only, with no expansion to floor space.
- A 100 seat restaurant that wants to add 10 seats.

While important, these examples could be handled administratively, and arguably do not reasonably justify the submission of a new application.

Examples of SUP changes that would NOT constitute a minor amendment

- Adding 50 seats to a 100 seat restaurant.
- Adding a nightclub to a hotel.
- Adding alcohol service to an SUP that says either “no alcohol” or “beer and wine only.”
- A day care home approved for 6 children that seeks to include 9 children.
- A health club that wants to add a restaurant that is open to the public.
- Adding general auto repair services to light auto repair business.

Potential new language for staff proposal

The attached chart points out the existing zoning language for minor amendments and compared it with the changes staff proposed that were considered by the Planning Commission on May 6. Several concerns were raised at that time about the staff proposal, and staff’s chart shows potential changes to two areas of the text that were the source of much of the concern:

1. **Violations.** One question about minor amendments is whether to allow the administrative procedure to apply in the case of a SUP use which has been in violations of its conditions. Currently, any violation in the past, no matter how distant, and any complaint of violation, even if not substantiated, is a bar to proceeding with a minor amendment. Any change would require a new SUP application and the full public hearing process. The staff recommended for minor amendments the same test as to violations currently applied to change of ownership applications:

No substantiated violations of SUP conditions which were not corrected immediately, constitute material or repeat violations or which created a material or direct adverse impact on the surrounding community.

In light of concerns about distinguishing among different degrees and types of violations, staff’s chart shows the potential for a different approach for minor amendments: allowing a use to proceed with a minor amendment only if it has been violation-free for the last five years. In this way, a use with a poor enforcement history that improved over time and has not had violations in the recent past may proceed, but those with any violations in the last five years may not.

2. **Examples of increases in intensity.** Another area of concern was section 11-511(A)(2)(b) of staff’s proposed minor amendment language because, while it states that minor amendments may not change the character of the use or increase the overall intensity of it, the examples that would appear in the ordinance relate mainly to restaurants, and do not give the public a sense of what is and what is not acceptable. In response, staff is doing two things. First, this paper helps to explain the process in the land use as well as the SUP context. Secondly, the attached chart lists some different and additional examples that could be included in the ordinance text that may more clearly express the criteria for this rarely used process.

3. **Incremental changes over time.** One issue relating to minor amendments that could use refinement in the text is the potential for a business to seek a series of “minor” amendments over time, with the result that the changes since the time of Council approval become significant. Language can be added to proposed text making clear that amendments will be considered in the aggregate; an amendment can be approved only when, in conjunction with all amendments since approval, they remain “minor” as defined by the zoning ordinance and when compared to the original approval. Thus, a 100 seat restaurant may seek 10 additional seats only once. A subsequent request for additional seats would trigger the need for a full SUP process.

4. **Sunset clause.** If there is concern about changing the procedures and criteria for minor amendments, but there is support for change, in keeping with the recommendations of the Small Business Task Force, then language can be added to the ordinance whereby the new process is adopted for only two years, allowing a close review of the cases considered and decisions rendered during that time. The ordinance could also indicate that if not specifically renewed by City Council, the prior, now-existing, procedures and criteria would return as the effective zoning rules.