

ORDINANCE 2017-

**AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ESTABLISHING A TEMPORARY MORATORIUM PROHIBITING THE PROCESSING AND ISSUANCE OF FUTURE LAND USE DEVELOPMENT ENTITLEMENTS WITHIN THE NORTH 40 SPECIFIC PLAN AREA UNTIL AN UPDATE TO THE NORTH 40 SPECIFIC PLAN HAS BEEN COMPLETED**

WHEREAS, on September 6, 2016, Town Council denied the proposed development applications submitted by Grosvenor USA Limited, SummerHill Homes, and Eden Housing (Petitioners), contained within in the North 40 Specific Plan area, consisting of 260 residential condominiums/rowhomes, 10 rental apartments, 49 affordable senior rental units, one additional unit to be reserved for a moderate-income manager of the senior units, and 66,791 square feet of commercial floor area; and

WHEREAS, On October 6, 2016, the Petitioners filed a lawsuit against the Town asserting that: (1) the Town of Los Gatos violated the Town’s Housing Element; (2) the Town violated the State’s Housing Accountability Act; and (3) the Town violated the State Density Bonus Law; and

WHEREAS, on June 9, 2017, the Santa Clara County Superior Court issued a Decision and Judgment that states the following:

- A. A Writ of mandamus shall issue directing Respondent, Town of Los Gatos, to:
  - 1. Set aside Town of Los Gatos Resolution 2016-046 denying the applications for Vesting Tentative Map and Architecture and Site;
  - 2. Reconsider Petitioners' applications and the Project under the additional provisions of Government Code §65589.5, and specifically subsection (j);
  - 3. If, in the course of reconsideration, Respondent determines to again deny the applications and Project, Respondent shall determine whether the Project complies with applicable, objective general plan and zoning standards and criteria.

- a. If Respondent determines that the Project does not so comply, Respondent shall specify the applicable, objective criteria which the Project failed to comply.
  - b. If Respondent determines that the Project does so comply, then Respondent shall make written findings, supported by substantial evidence on the record, that (1) the project would have a specific, adverse impact upon the public health or safety unless the project is disapproved, and (2) there is no feasible method to satisfactorily mitigate or avoid that specifically identified adverse impact other than the disapproval of Petitioners' applications.
- B. The Town's findings in "1. a to c and 1. e to h" of Resolution 2016-046 are supported by substantial evidence.
- C. Approval of the proposed project shall require compliance with the applicable provisions of the Map Act and Housing Affordability Act.

WHEREAS, On August 1, 2017, in accordance with the Decision and Judgment, the Town Council set aside the denial of the project (Resolution 2017-44) and thereafter approved the project (Resolution 2017-45); and

WHEREAS, the Decision and Judgment by the Court has made it apparent that the Town of Los Gatos should evaluate the effectiveness of the North 40 Specific Plan. For example, the Court held that:

1. There is no specific allocation requirement in the Specific Plan.
2. The Town's finding that the proposed project overly concentrates all of the residential units on the southern portion of the North 40 Specific Plan area and finds the allocation excessively disproportionate and inconsistent with the Specific Plan is a discretionary determination of a subjective policy.
3. The Town's finding that the proposed project is inconsistent with the North 40 Specific Plan Section requirements for lower intensity residential uses in the Lark District is a discretionary determination of a subjective policy in the Specific Plan.
4. The Town's finding that buildings 18 through 27 are inconsistent with the Lark District is a discretionary determination of inconsistency with a subjective policy.

5. The Town's finding that buildings 24 and 25 are inconsistent with the Specific Plan as it eliminates a fourth access point off of Los Gatos Boulevard is not a requirement and there is no objective factor or subjective goal or vision which a fourth access is material.
6. The Town's finding that the project is inconsistent with North 40 Specific Plan as it does not address unmet housing needs for seniors and Gen Y is a discretionary determination of a subjective policy.
7. The Town's finding that the project is inconsistent with the Residential Unit Size Mix and should have smaller units to come closer to the income distribution of affordable housing identified in the Town's Housing Element is neither a requirement nor objective standard, but rather, an example how the North 40 site could assist the Town to meet affordable housing needs of the community.

WHEREAS, there is approximately 20 acres in the northern portion of the North 40 Specific Plan area that has not been entitled following the approval of the development applications submitted by the Petitioners; and

WHEREAS, the remaining development capacity in the northern portion of the North 40 Specific Plan area is up to 33 residential units and up to approximately 368,000 square feet (333,000 square feet if no hotel or office uses are proposed) of commercial uses; and

WHEREAS, the Town intends to study, within a reasonable time, the adequacy of the Specific Plan and the Town Council, and the residents of Los Gatos require a reasonable, yet sufficient period of time to consider and study legally appropriate and reasonable policies regulating the further development in the North 40 Specific Plan; and

WHEREAS, given the time required to undertake adequate study and planning, the Town Council finds that this Ordinance is necessary to prevent new development that might conflict with the Town's contemplated new North 40 Specific Plan policies, zoning regulations, or design standards, as well as possible amendments to the Specific Plan; and

WHEREAS, the Town Council has the authority to adopt an interim ordinance pursuant to Government Code Section 65858(b) and finds that there is a current and immediate threat to

the public health, safety, and welfare presented by potential new development in the Specific Plan Area caused by the Court's Decision and Judgment; and

WHEREAS, the processing and issuance of entitlements for development within the North 40 Specific Plan area could result in new development that conflicts with potential changes to the North 40 Specific Plan and such approvals could undermine the orderly development of property within the Town, resulting in a reduction of the quality, caliber, and aesthetics of the development of such property within the North 40 Specific Plan area and may threaten the public health, safety, and welfare in that they could alter, in a radical and fundamental manner, the current way of life for the Town's residents; and

WHEREAS, in order to ensure sufficient time for staff to undertake the comprehensive planning required to revise the North 40 Specific Plan in response to the Court's decision, it will be necessary to temporarily suspend the processing and granting of land use entitlements in the North 40 Specific Plan area; and

WHEREAS, Government Code Sections 65858, 36934, and 36937 expressly authorize the Town Council to adopt an urgency ordinance prohibiting any uses which may be in conflict with the contemplated zoning ordinance which the legislative body of the Town is considering or studying or intends to study within a reasonable time.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS, DOES ORDAIN AS FOLLOWS:

SECTION 1. The Town Council of the Town of Los Gatos finds that the above recitals are true and correct.

SECTION 2. From and after the date of this Interim Urgency Ordinance, neither the Town Council, Planning Commission, nor the Community Development Department shall process or approve any land use development entitlements in the North 40 Specific Plan Area pending completion of the updates to the North 40 Specific Plan.

SECTION 3. This Interim Urgency Ordinance shall not apply to any application within the North 40 Area where such application has been submitted to Town Staff prior to the effective date of this Interim Urgency Ordinance and said application has a vested right by law.

SECTION 4. This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the Town Council of the Town of Los Gatos by Government Code Sections 65858, 36934, and 36937, and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the Town Council as if and to the same extent that such Ordinance had been adopted pursuant to each of the individual sections set forth hereinabove.

SECTION 5. In adopting this Interim Urgency Ordinance, the Town Council finds and determines that each of the recitals contained in this Interim Urgency Ordinance are true and correct, and that the adoption of this Interim Urgency Ordinance is necessary to protect the public safety, health, and welfare, as those terms are defined in Government Code Section 65858(a).

SECTION 6. Adoption of this Interim Urgency Ordinance is exempt from further environmental review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because it establishes rules and procedures for minor alterations in land use. This Interim Urgency Ordinance, therefore, is categorically exempt from further CEQA review under the CEQA Guidelines §15305. This Interim Urgency Ordinance does not authorize any new construction or development entitlements. Any proposed project that will utilize the changes set forth in this Interim Urgency Ordinance will be subject to CEQA review as part of the entitlement review of the project. The Interim Urgency Ordinance will not adversely impact the environment and is therefore exempt from the provisions of CEQA.

SECTION 7. This Interim Urgency Ordinance shall be of no further force or effect forty-five (45) days from and after the date of its adoption, unless the same is extended pursuant to the authority conferred upon the Town Council by Government Code Section 65858(a). Not later than ten (10) days prior to the expiration of this Interim Urgency Ordinance, the Town Council shall issue a written report describing the measures taken to alleviate the condition that has led to the adoption of this Interim Urgency Ordinance.

SECTION 8. If any section, subsection, sentence, clause, or phrase of this Interim Urgency Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this Interim Urgency Ordinance. The Town Council hereby declares that it would have passed this Interim Urgency Ordinance, and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the Interim Urgency Ordinance would be subsequently declared invalid or unconstitutional.

PASSED AND ADOPTED by the Town Council of the Town of Los Gatos at a regular public meeting held on the 15th day of August 2017 on a motion of \_\_\_\_\_, seconded by \_\_\_\_\_, and on the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA