



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 08/15/2017

ITEM NO: 9

DATE: August 10, 2017

TO: MAYOR AND TOWN COUNCIL

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: CONSIDERATION AND ADOPTION OF AN INTERIM URGENCY ORDINANCE 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.

RECOMMENDATION:

Staff recommends that the Town Council open the public hearing, take testimony and documentary evidence, consider the evidence, and adopt the Interim Urgency Ordinance (Attachment 1) by at least four-fifths vote to be read by title only and waive further reading.

BACKGROUND:

At its August 1, 2017 regular meeting, the Town Council directed the Town Attorney to draft an Interim Urgency Ordinance for a moratorium on processing future development applications within the North 40 Specific Plan area.

Government Code Section 65858 (see Attachment 1) contains procedures the Town must follow prior to adoption of an interim ordinance establishing a development moratorium. The Moratorium Power allows a local government to adopt a development "freeze" without following normal procedures such as preparing an Environmental Impact Report, noticing, and holding a public hearing, adopting an ordinance over two meetings at least five days apart, and allowing thirty days before the ordinance goes into effect.

PREPARED BY: ROBERT SCHULTZ
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

DISCUSSION:

California law states that "the legislative body ..., to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." *Government Code Section 65858*. With legislative findings that there is a current and immediate threat to the public health, safety, and welfare, and with a four-fifths vote of the body, the interim ordinance may be in effect for 45 days. The legislative body may extend an interim ordinance for a 10 month and 15 day period, and again for another one year period, with a four-fifths vote, to a total period of two years.

Interim Urgency Ordinances are often referred to as "stop-gap" or "incubation period" ordinances that prohibit a property owner from using his or her property for a specified use for a limited period of time. *CEEED v. California Coastal Zone Conservation Com. (1974) 43 Cal.App.3d 306, 314*. They protect and promote the planning process by, among other things, prohibiting the introduction of potentially non-conforming land uses that could defeat a later adopted general plan or zoning ordinance. *216 Sutter Bay Associates v. County of Sutter (1997) 58 Cal.App.4th 860, 869*; see also *Freilich, Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning (1971) 49 Journal Urb. L. 65, 77*.

The use of interim urgency ordinances has a long history in California. The first case to address the validity of an urgency ordinance was *Miller v. Board of Public Works (1925) 195 Cal. 477*. There, the city issued a building permit for construction of a "four-family flat dwelling." But the city immediately adopted an urgency ordinance making it unlawful to erect multi-family buildings in the area where the petitioner intended to build and revoked his building permit. In upholding the permit revocation, the Supreme Court explained that, "It is a matter of common knowledge that a zoning plan of the extent contemplated in the instant case cannot be made in a day. Therefore, we may take judicial notice of the fact that it will take much time to work out the details of such a plan and that obviously it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan." *Id. at p. 496*.

Some years after *Miller* was decided, the Legislature enacted Government Code Section 65806. The precursor to Section 65858, it set forth the conditions and restrictions under which a city or town could adopt a "temporary interim zoning ordinance." *Anderson v. City Council (1964) 229 Cal.App.2d 79, 92*. Other than several minor amendments, such as limiting the length of an interim ordinance (see *Bank of the Orient v. Town of Tiburon (1990) 220 Cal.App.3d 992, 1001-1002*), the statute has not changed significantly over the years.

DISCUSSION (Cont'd):

Cases that have upheld the validity of urgency ordinances adopted pursuant to this statute have involved situations where local agencies were faced with immediate threats of development. *216 Sutter Bay Associates v. County of Sutter, supra, 58 Cal.App.4th at p. 871; Conway v. City of Imperial Beach (1997) 52 Cal.App.4th 78, 90 ; Metro Realty v. County of El Dorado (1963) 222 Cal.App.2d 508*

The need to adopt an Interim Urgency Ordinance and re-evaluate and potentially modify the North 40 Specific Plan is directly related to, and linked to, the litigation entitled *Eden Housing, Inc. et al. v. Town of Los Gatos*, Santa Clara County Superior Court, Case No. 16CV300733. That litigation was a result of the denial by the Town Council for development within the North 40 Specific Plan area. In that litigation, the Court determined that:

1. The Town's findings has no findings of compliance or lack of compliance with objective standards under the Town's Housing Element or the HAA, and recites only findings of subjective criteria.
2. There is no specific allocation requirement in the Specific Plan.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. The Town's finding that the project, specifically buildings 18 through 27, would result in an anomaly of residential uses within an existing commercial land use

DISCUSSION (Cont'd):

context is primarily a subjective policy.

10. The Town's finding that the only promised Below Market Rate housing is 49 units above Market Hall and the remainder would have home values estimated at \$900,000 to \$1,500,000 requiring a 20 percent down payment and income of approximately \$130,000 to \$200,000 per year is not an objective requirement, but a subjective goal.

Based upon the Court findings and decision in the above referenced litigation, the Town Council was forced to reconsider the project in the North 40 Specific Plan area that was the subject of that litigation. Both statutory and case authority now support the Town Council's right to consider and enact a moratorium on processing new applications within the North 40 Specific Plan area while the Town studies the Specific Plan to address the Court ruling and the repercussions that have occurred due to the approval of the project that was the subject of that litigation.

As mentioned above, the Interim Urgency Ordinance attached hereto must be adopted by a 4/5 vote of the Council and is effective immediately upon adoption. It would be valid for no more than 45 days from the date of enactment: thus, if enacted tonight, until September 29, 2017. It may be extended for an additional period of 10 months and 15 days upon action at a noticed public hearing. A moratorium ordinance cannot be extended more than twice and cannot exceed a total of two years. Additionally, ten days prior to the expiration of this Interim Urgency Ordinance, the Council must issue a report describing the measures taken to alleviate the conditions that led to the adoption of the Ordinance. If enacted, Staff would return before the Interim Urgency Ordinance expires (September 19, 2017) with such a report and an extension for your consideration.

CONCLUSION:

Adoption of the Interim Urgency Ordinance will provide a temporary prohibition on processing future development applications within the North 40 Specific Plan area. The temporary prohibition would allow staff and the Town Council time to consider amendments to the North 40 Specific Plan. Town staff estimates that the entire process will be completed within two to four months.

NEXT STEPS:

If the Interim Urgency Ordinance is enacted the next steps would be:

- Council will issue a report describing the measures taken to alleviate the conditions that led to the adoption of the Interim Urgency Ordinance.
- Council will consider an extension of the Interim Urgency Ordinance for up to 10 months

NEXT STEPS:

and 15 days.

- Study Session on October 3, 2017, regarding potential North 40 Specific Plan amendments.
- Consideration of potential North 40 Specific Plan amendments at a future Council meeting.

FISCAL IMPACT:

To date, all work on the potential Specific Plan amendments has involved staff time paid at the Town's expense. The adoption of the Interim Urgency Ordinance will require additional staff time to process the amendments and updates to the North 40 Specific Plan.

COORDINATION:

This report was coordinated with the Town Attorney's Office, Town Manager's Office, and Community Development Department.

CEQA:

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

Attachments:

1. Government Code Section 65858
2. Proposed Interim Urgency Ordinance
3. Public comments received before 11:00 a.m. August 10, 2017