

**STAFF REPORT****City Council****Meeting Date:****6/11/2019****Staff Report Number:****19-122-CC****Regular Business:**

Direction to city attorney on whether to draft an interim ordinance imposing temporary moratorium on development and direction regarding scope of potential temporary moratorium

Executive Summary

This regular business item seeks City Council direction on the following issues:

1. Should the city attorney be directed to draft a temporary moratorium on all new non-residential construction (including hotels) citywide?
2. Should the city attorney be directed to draft a temporary moratorium on any increased floor area ratio (FAR) for existing non-residential construction (including hotels) citywide?
3. Should the city attorney be directed to draft a temporary moratorium on all new residential construction on developments containing over 100 units applicable only to District 1?
4. Should the city attorney be directed to draft a temporary moratorium on any increased FAR for existing residential developments containing over 100 units applicable only to District 1?
5. If the City Council directs the city attorney to draft a temporary moratorium, should certain projects be exempt (e.g., projects that are currently in the pipeline; mixed use projects, retail projects, hotel projects, affordable housing projects, public projects?)

Policy Issues

The actions requested of the City Council in this report are best summarized by the following three policy questions:

1. Does the City Council desire to reopen any of the current land use policies in a way that would impact new development?
2. Does the City Council want to procure and/or dedicate additional planning resources toward studying current land use policies?
3. Does the City Council believe there are specific, adverse public health or safety impacts that would be mitigated or avoided by limiting residential development for an interim period?

Analysis

On June 5, Mayor Pro Tem Taylor and City Councilmember Nash requested the Mayor to agendize the topic of a moratorium. The June 5 letter proposed the following moratorium on the following:

- All new non-residential construction (including hotels) citywide?
- Any increased FAR for existing non-residential construction (including hotels) citywide?

- All new residential construction on developments containing over 100 units applicable only to District 1?¹
- Any increased FAR for existing residential developments containing over 100 units applicable only to District 1?²

The purpose of the request was to ensure that the City's current general plan and El Camino Real and downtown specific plan reflect current community values and address present day opportunities and challenges (Attachment A.)

State law governs the City's ability to adopt temporary moratorium ordinances. A moratorium is a stringent temporary land use control based on documented, health, safety and general welfare concerns made pursuant to the police power. Cities may adopt temporary ordinances prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the city plans to study within a reasonable time (Government Code Section 65858.) To adopt a moratorium, the City must follow the prescribed statutory process and must make written statutory findings.

Procedures for adopting moratorium ordinances

A moratorium ordinance is adopted on a temporary basis and may be adopted as an urgency measure or not. An urgency ordinance is adopted without notice and becomes effective immediately. An interim non-urgency ordinance is adopted following notice and a public hearing, but also becomes effective immediately. Whether the moratorium is adopted as an urgency or non-urgency basis, a moratorium requires a four-fifths vote of the City Council to approve and has an initial duration of 45 days.

If the initial ordinance is adopted as an urgency measure without following the notice and adoption procedures required for other ordinances, after notice and a public hearing, the interim ordinance may be extended for up to 10 months and 15 days and subsequently extended for up to one additional year. Any extension requires a four-fifths vote of the City Council for adoption. No more than two extensions may be adopted for a total duration of up to two years.

Alternatively, if the moratorium is adopted following notice and a public hearing, after the expiration of the initial 45 days, an ordinance may be adopted by a four-fifths vote of the City Council following notice and a public hearing that extends the ordinance for up to 22 months and 15 days (for a total duration of two years.)

Regardless of whether notice is provided when adopting the moratorium, such an ordinance may be adopted at either a regular or special meeting and goes into effect immediately without the need to conduct a second reading.

Ten days before the expiration of the interim ordinance or any extension, the City Council must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance (Government Code Section 65858 (d).)

It is important to note that the City may only prohibit the issuance of development permits. It may neither prohibit developers from submitting new permit applications nor prohibit the processing of permits during

¹ MidPen's pending application at 1345 Willow is for less than 100 units.

² Based on a preliminary staff analysis, there are currently three existing housing projects over 100 units in District 1: Greenheart, St. Anton and Greystar.

the moratorium. *Building Indus. Legal Defense Found. v. Superior Court* (1999) 72 Cal.App.4th 1410. Projects that have an approved Development Agreement are exempt from a moratorium³.

Required statutory findings

When adopting a moratorium, the City must make two statutory findings: (1) there is a current and immediate threat to the public health, safety or welfare, and (2) the approval of additional entitlements under the zoning ordinance would result in that threat to public health, safety or welfare. (Government Code 65858 (c).)

Some of the reasons for adopting the moratorium identified in the June 5 letter are:

- To analyze the jobs/housing imbalance by district
- Review zoning and how/where additional housing can be encouraged
 - Consider re-zoning areas from commercial to residential or some mixture of residential and retail or other commercial use
 - Consider up-zoning current housing in some areas
 - Consider city housing affordability policy
- Analyze development caps and the remaining allowable net new development
- Analyze development revenues and expenditures
- Analyze impacts of development by type of development, including:
 - Access to quality education
 - Access to community services
 - Access to emergency services
 - Access to clean air and clean water
 - Traffic and access to public transit

If the moratorium would have an effect on projects with a significant component of multifamily housing⁴, the City must make three additional findings if it elects to extend the moratorium beyond the initial 45-day period:

(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1.)

³ Projects with approved Development Agreements include: Stanford, Menlo Gateway, Facebook and Greenheart.

⁴ The statute defines “projects with a significant component of multifamily housing” to mean project in which multifamily housing consists of at least one-third of the total square footage of the project.

(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

The July 5 letter identified the unique significant and irreversible development impacts that could be caused by additional housing, including

- Unprecedented development and influx of traffic
- Sensitive population
 - Lack of affordable housing causing displacement, especially vulnerable seniors
 - Lack of local quality education
- Location in middle of major roadways with environmental and physical impacts, such as:
 - Air quality
 - Traffic gridlock
 - Flood zone
- Historical under-investment of infrastructure

Other considerations

If the City Council directs the city attorney to draft a moratorium, the City Council may want to consider whether there should be any exceptions to the moratorium. It is legally permissible to impose a temporary moratorium on any development project that has not yet acquired a vested right to develop. Traditionally, vested rights are acquired once the City has issued a building permit and the developer has incurred costs in reliance on such permit. However, many cities elect as a policy matter to exempt from a moratorium projects that have submitted formal complete applications to the City and are in the review process (e.g., “pipeline” projects.) For example, the MidPen Housing affordable housing project has received its compliance letter and funding from the City’s BMR funds and is preparing its construction drawings for a building permit. Similarly, the proposed Hampton Inn project at 1704 El Camino Real has submitted an application and is set for a Planning Commission hearing for final review June 24. A list of similar pipeline projects is attached as Attachment B.

In addition, the City Council should identify whether it plans to include mixed use projects in the definition of non-residential projects as the higher standard for housing related findings would apply to such projects. Other issues to consider are whether the City Council plans to exclude retail projects and public projects (e.g., the Belle Haven Library.)

Next steps

If the City Council elects not to direct the city attorney to draft a moratorium ordinance, no further action is needed. If more information is needed before the City Council is prepared to provide direction on preparing a moratorium, the City Council should request the desired information.

If the City Council decides to direct the city attorney to draft a moratorium ordinance, it may want to appoint a subcommittee to work with the city attorney and community development director. The City Council should also discuss whether to agendize the moratorium for its upcoming July 16 or subsequent regular meeting or a special meeting. If there does not appear to be a 4/5 vote to adopt the moratorium, the City Council may want to consider whether this work effort is warranted.

Impact on City Resources

If the City elects to adopt a moratorium in order to study new land use policies, additional planning staff time would be required to work on these initiatives. A moratorium will likely result in significant unbudgeted costs and expenses to consider changes to the general plan, specific plan, zoning ordinance and prepare associated environmental review. This may draw senior staff time away from other planning projects. While a moratorium can limit the issuance of permits, moratorium law prohibits cities from preventing the processing of a development application. Thus, even with a moratorium in place, staff must still process development applications as they are submitted. It is likely that additional contract planning staff would be needed to work on processing applications while existing staff is working on updates to the general plan or specific plan. Given the current planning market it may be difficult to promptly retain additional contract staff. Staff will need until at least July 16 to better analyze the staffing needs and resources and the resulting impact on other projects.

Public Engagement

There was no public engagement process conducted in the preparation of this report. The issue of a moratorium was raised in connection with the City Council's recent study sessions on Connect Menlo and the Willow Village project. A City press release was issued to raise awareness that this matter would be scheduled June 11 and applicants with pending projects that could be affected by the moratorium were notified of the item.

Environmental Review

Since the City Council is not adopting an ordinance or taking any final action, the direction provided by City Council is not subject to the California Environmental Quality Act (CEQA). If and when the City Council takes action on a moratorium ordinance, it will fall under the CEQA exemption found in Title 14 California Code of Regulations Section 15061(b)(3) because it is designed to preserve the status quo and therefore does not have the potential to significantly impact the environment. The ordinance would also be categorically exempt under CEQA Section 15308 as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of potential local legislation, regulation and policies. Adoption of the proposed interim ordinance is categorically exempt from review under Section 15301 (Class One - Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines since it will temporarily perpetuate existing environmental conditions.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Letter from Vice Mayor Taylor and City Councilmember Nash
- B. List of pipeline projects as of June 5

Staff Report #: 19-122-CC

Report prepared by:
Cara E. Silver, Assistant City Attorney
William M. McClure, City Attorney

June 5, 2019

Dear Mayor Mueller, City Manager Jerome-Robinson, and City Attorney McClure,

The City of Menlo Park has two comprehensive, long-term land use documents, under which there has been unprecedented development:

- General Plan adopted November 29, 2016
- El Camino Real and Downtown Specific Plan adopted in June 2012 with several modest modifications approved in October 2014.

We request that Council consider moratoriums in the City of Menlo Park as follows:

1. A citywide moratorium covering:
 - all new non-residential construction (including hotels) and
 - any increased FAR for existing non-residential construction (including hotels).

The purpose of this citywide moratorium is to ensure that these plans reflect current community values and address present day opportunities and challenges:

- analyze the jobs/housing imbalance including:
 - determine the current jobs/housing situation by district
 - review zoning and how/where additional housing can be encouraged
 - consider re-zoning areas from commercial to residential or some mixture of residential and retail or other commercial use
 - consider up-zoning current housing in some areas
 - consider city housing affordability policy
 - analyze development caps and the remaining allowable net new development
 - analyze development revenues and expenditures
 - analyze impacts of development by type of development including (but not limited to):
 - access to quality education
 - access to community services
 - access to emergency services
 - access to clean air and clean water
 - traffic and access to public transit
2. An additional District 1 moratorium covering:
 - all new residential construction for developments over 100 units and
 - any increased FAR for existing residential developments over 100 units.

District 1 has unique significant and irreversible development impacts including:

- unprecedented development and influx of traffic
- sensitive population
 - lack of affordable housing causing displacement, especially vulnerable seniors
 - lack of local quality education
- location in middle of major roadways with environmental and physical impacts:
 - air quality
 - traffic gridlock
 - flood zone
- historical under investment

This is our formal request to agendize the topic of a moratorium. Our definition of a moratorium is to allow us to step back and look at the City's goals and quality of life for residents – here is where we are, now how do we fix it? Please let us know if you need additional direction.

Sincerely,

Councilmember Betsy Nash and Mayor Pro Tem Cecilia Taylor

Pending Projects - New Construction and/or Additions - Residential, Non-Residential and Hotels

Project Address	Description	Development Level	Entitlement Status	Building Permit Status	Net New Res. Units	Net New Non-Res. SF	Net New Hotel Rooms
District 1							
1305 Willow Rd	Commercial - Retail	n/a	Approved/Council approved right-of-way abandonment	n/a	0	709	0
1345 Willow Rd	Residential - 100% affordable	n/a	Determined in substantial conformance/Council Approved BMR Funds for Project	n/a	58	0	0
Willow Village	Mixed Use - Office, Residential, Commercial and Hotel	Bonus	Under Review	n/a	1,735	926,789	250
111 Independence	Residential - Rental	Bonus	Pending - EIR Scoping Session scheduled for June 14, 2019	n/a	105	-14,400	0
1105 O'Brien Drive	Life Science	Bonus	Under Review	n/a	0	66,404	0
151 Commonwealth/164 Jefferson	Office	Bonus	Under Review - EIR Scoping Session conducted on 6/3/19	n/a	0	249,500	0
1350 Adams Court	Life Science	Bonus	Under Review	n/a	0	260,400	0
3723 Haven Avenue (Hotel Moxy)	Hotel	n/a	Under Review	n/a	0	-13,700	167
1 Facebook Way (Citizen M)	Hotel	n/a	Under Review	n/a	0	81,293	240*
180-186 Constitution/141 Jefferson/172 Constitution (Menlo Uptown)	Residential - Mix Rental and For-Sale Townhomes	Bonus	Under Review	n/a	483	-108,411	0
115 Independence, 104 & 110 Constitution - Menlo Portal	Mixed Use - Office, Residential, and Commercial	Bonus	Planning Commission study session scheduled on June 24, 2019	n/a	320	-30,123	0
District 3							
1704 El Camino Real/Hampton Inn	Hotel	Public Benefit Bonus	Planning Commission meeting scheduled for 6/24/19	n/a	0	29,228	42
555 Willow Rd	New Boardinghouse	n/a	Pending - conducted study session on 5/20/19	n/a	16 bedrooms	-1,400	0
1540 El Camino Real (former Beltramo's)	Mixed-use office and residential development	Base	Approved	Plans under review	27	17,223	0
556 Santa Cruz Ave (556-558 Santa Cruz Ave)	Mixed-use retail/office/residential development	Base	Approved	Plans under review	-3	4,085	0
725 Oak Grove Ave	Renovation and small expansion of an existing commercial building	Base	Approved	Plans under review	0	1,718	0
40 Middlefield Rd	Office	n/a	Approved	n/a	0	3,600	0
250 Middlefield Rd	Office Addition	n/a	Approved	n/a	0	3,853	0
District 4							
949 El Camino Real	Live entertainment venue	Public Benefit Bonus	Approved	Plans under review	0	6,682	0
1021 Evelyn St (formerly 840 Menlo Avenue)	Mixed-use office and residential development	Base	Approved	n/a	3	6,610	0
975 Florence	Condominium conversion of 6 units and add 2 new units	n/a	Pending City Council review - tentatively scheduled for 7/18/19	n/a	2	0	0
706-716 Santa Cruz Avenue	Mixed-use - retail, office, and residential development	Base	Under Review	n/a	4	22,731	0
115 El Camino Real	Mixed-use - commercial space on the first floor and residential units on the second and third floors	Base	Pending - Planning Commission review anticipated summer 2019	n/a	4	-6,868	-13
201 El Camino Real	Residential/medical office mixed-use building	Public Benefit Bonus	Pending Planning Commission study session on public benefit tentatively scheduled for 7/15/19	n/a	12	1,322	0

* The approved conditional development permit and development agreement for the Facebook Campus Expansion project is permitted to have 200 hotel rooms. The applicant is requesting to increase the number of hotel rooms to 240.