



**Council Meeting: July 23, 2013**

**SUBJECT: Discussion and Possible Action on a Potential Ordinance for Development Projects within the Peery Park Specific Plan Study Area During Preparation of the Plan.**

**BACKGROUND**

On June 25, 2013 the City Council approved a contract for the preparation of the Peery Park Specific Plan (PPSP) and Environmental Impact Report (EIR) and requested staff to return to discuss a possible interim ordinance for future development applications within the PPSP area (Attachment A) to be utilized during the specific plan development process. Completion of the PPSP and EIR for City Council public hearing and adoption should occur in late summer or early fall of 2014.

**EXISTING POLICY**

**Land Use and Transportation Element**

**Goal LT-4 Quality Neighborhoods and Districts** – Preserve and enhance the quality character of Sunnyvale’s industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

**Goal LT-6 Supportive Economic Development Environment** – An economic development environment that is supportive of a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal and land use constraints.

**CEQA REVIEW**

Action associated with this report is not subject to CEQA. A standard zoning ordinance would be subject to environmental review per CEQA.

**DISCUSSION**

Staff has received four applications for new office developments in Peery Park that would be processed while the PPSP is being prepared. The Council has asked staff to provide more information on an ordinance to address the processing of these applications as well as future applications that may be filed during the plan preparation period. Staff has met with the City Attorney and discussed possible regulations and preparation of an ordinance for the PPSP area.

The term “interim ordinance” has a very specific legal meaning in the California Government code. Interim ordinances are sometimes referred to as moratoriums. The maker of the motion directing staff to return with options specifically stated that a moratorium was not what was contemplated. To assist in the understanding of the difference between the two types of ordinances both are discussed below.

**Interim Ordinance:** Government Code Section 65858 allows a City to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated specific plan without following the procedures otherwise required for adopting a standard zoning ordinance if the legislative body of the City finds that “there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.” (Gov’t Code §65858(c).) An interim ordinance, or moratorium, may be drafted to allow currently pending applications to be processed. Additionally, ministerial projects such as tenant improvements and other building alterations could be exempt from the moratorium. This option is a stricter approach and could be appropriate if the Council feels strongly that new development applications should not be considered until the PPSP is adopted.

In order to adopt a moratorium, a four-fifths vote of the City Council is required. The initial ordinance is adopted for a 45 day period, and then brought back to Council for renewal after noticing. A moratorium can be extended for no more than two years, including the initial 45 day period. Any renewal or extension requires a four-fifths vote of Council as well.

If this approach is chosen by the City Council, staff would work with the City Attorney to develop an interim ordinance to limit new development within the PPSP area. The interim ordinance could allow projects that are deemed complete prior to the adoption of the ordinance to proceed under the existing process and regulations. The ordinance could prohibit the filing of new applications within the study area while the specific plan is being prepared.

**Standard Ordinance:** A standard ordinance, to be reviewed by the Planning Commission and City Council (with typical noticing standards), for the PPSP area could be prepared to address procedures for project reviews in the Peery Park area. This ordinance could allow for the processing of existing development applications and submittal of new applications during the preparation of the Specific Plan. However, a higher level of review could be required for any project located within the PPSP that involves the request for a Use Permit, Special Development Permit, or a Design Review request for a Floor Area Ratio (FAR) floor area above 35%, or 45% with the green building incentive (regardless of base zoning). The higher level of review would require

that these applications be considered by the Planning Commission for a recommendation and the City Council would be the final decision-making body. The analysis of these projects would consider the preliminary studies and recommendations coming out of the concurrent specific plan process. Additionally, these applications could provide useful input to the City Council and staff for shaping the policies and development standards in the PPSP. Council could direct staff to prepare an ordinance that has different thresholds or requirements for application review than suggested above.

A standard ordinance would give the City Council an opportunity to consider development projects within the PPSP that they may not typically review, and would also allow property owners to submit their application requests during the preparation of the PPSP. A standard ordinance is not an interim ordinance (or moratorium), but would be rescinded when the PPSP is adopted and new PPSP regulations are enacted. Implementing this option requires the standard process for adopting a zoning code amendment. The ordinance would be fully noticed per City standards and the Planning Commission would make a recommendation to the City Council. The Council could approve the ordinance by a simple majority of voting Councilmembers.

If this approach is selected, staff would work with the City Attorney's office to prepare an ordinance; schedule public hearings for Planning Commission and City Council, notice property owners of the hearings, and place a notice in the newspaper.

### **FISCAL IMPACT**

The fiscal impact of preparing and implementing either of these ordinance options would require minimal staff time. If applications were not allowed in the Peery Park area there could be lost opportunities for property reinvestment which could affect tax revenues to the City. Also, the tenants of these projects would generate additional property taxes, sales taxes, and Transient Occupancy Tax (TOT). The fiscal impact could be significant, depending on the tenants.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site. In addition, staff notified Peery Park property owners, developers and businesses that have contacted the City Planning Division about redeveloping a site in Peery Park.

**ALTERNATIVES**

1. Direct staff to prepare a standard ordinance for the Peery Park Specific Plan area that requires Planning Commission and City Council review of all Use Permits, all Special Development Permits and any Design Review applications for a Floor Area Ratio greater than 35% or 45% with the Green Building incentive.
2. Direct staff to prepare an interim ordinance (moratorium) for the Peery Park Specific Plan area allowing projects with complete applications to continue to be processed.
3. Provide further direction to staff on the type of ordinance to be prepared.
4. Do not prepare an ordinance regarding property development within the Peery Park Specific Plan and allow development applications to be submitted under the current regulations.

**RECOMMENDATION**

Staff recommends Alternative 1 because it allows the City Council to review projects within the PPSP area without restricting the submittal of development applications. As opposed to a moratorium under Alternative 2, Alternative 1 allows the City Council to review applications while also maintaining the option to deny individual projects if it was felt that further progress on relevant specific plan issues was needed first. It is expected that the specific plan process will be underway with opportunity for community and Council input before the pending applications are considered by the Council. If Alternative 1 is selected by the City Council, staff expects to return to the City Council in early September with the proposed ordinance and Planning Commission recommendation.

Reviewed by:

Hanson Hom, Director of Community Development

Reviewed by: Trudi Ryan, Planning Officer

Prepared by: Amber El-Hajj, Senior Planner

Approved by:

Gary M. Luebbers

City Manager

Attachments

- A. Map of the Peery Park Specific Plan Study Area
- B. Government Code 65858



## California Government Code 65858

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, 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. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

(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) 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.

(d) Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.

(g) For purposes of this section, "development of multifamily housing projects" does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or that will result in an increase in the price or reduction of the number of affordable units in a multifamily housing project.

(h) For purposes of this section, "projects with a significant component of multifamily housing" means projects in which multifamily housing consists of at least one-third of the total square footage of the project.