




DATE: June 3, 2019

TO: Honorable Mayor and Members of the City Council through City Manager 

FROM: Eric Danly, City Attorney
Heather Hines, Planning Manager

SUBJECT: Adoption of an Ordinance Extending the Timeline of Urgency Ordinance #2681 Which Imposed a Moratorium on Approval of Applications for New Gas Station Uses in the City of Petaluma That are Not Already Complete as of the Effective Date of the Ordinance Pursuant to California Government Code Section 65858 and Other Applicable Laws, and Approval of a Resolution Issuing a Written Report Describing the Measures Taken to Date to Alleviate the Condition Which Led to the Adoption of the Urgency Ordinance.

RECOMMENDATION

It is recommended that the City Council adopt the following:

- An Ordinance extending the timeline of Urgency Ordinance 2681 which imposed a moratorium on the approval of applications for new gas station uses in the City of Petaluma that are not already complete as of the effective date of the ordinance pursuant to California Government Code Section 65858 and other applicable law; and
- A Resolution issuing a written report describing the measures taken to date to alleviate the condition which led to the adoption of the urgency ordinance.

BACKGROUND

On April 1, 2019, the City Council denied the appeal brought against the Planning Commission's approval under the California Environmental Quality Act and the City's Site Plan and Architectural Review requirements of the Safeway Fuel Station project located at 335 South McDowell Boulevard in Petaluma. The Council action upheld the Planning Commission's approval of the project. In response to community concern about the possible location of new gas station uses near sensitive receptors like schools and residences, and in view of the recent holding in *McCorkle Eastside Neighborhood Group v. City of St. Helena* limiting approving bodies' ability to review projects' environmental impacts to their authority to mitigate project impacts, the City Council requested that staff prepare for Council consideration and possible adoption an urgency ordinance pursuant to Section 65858 of the California Government Code that would prohibit the approval of applications for new gas station uses in the City.

On May 6, 2019 the City Council adopted Ordinance 2681 imposing a moratorium on the approval of new gas station/fueling station applications that are not already complete as of the effective date of the ordinance. The urgency ordinance adopted by the City Council was prepared in compliance with Government Code Section 65858 and included findings that there is a current and immediate threat to the public health, safety, or welfare and that adoption of the interim ordinance would protect the public safety, health, or welfare. Ordinance #2681 includes findings of public health, safety and welfare risk resulting based on the effect of the *McCorkle* decision on the City's ability to conduct full environmental review of applications for new gas station uses and based on potential applications for new gas station uses near sensitive receptors.

Ordinance 2681 does not affect the Safeway Fuel Station Project. However, the ordinance does bar approval of new gas station applications that are not yet complete while the City Council considers potential new regulatory options regarding new gas station applications. Adoption of new regulatory requirements for new gas station applications, such as requiring conditional use permits for such applications, would expand the ability of City approving bodies to conduct environmental review and exercise discretionary approval regarding new gas station uses. Such new regulations could permit the approving bodies to order the preparation of an Environmental Impact Report (EIR) regarding future gas station applications, and to disapprove projects that do not satisfy the City's regulations, whether due to emissions or other health impacts, traffic, or other considerations within the City's discretion.

Ordinance 2681 was approved by a unanimous vote of the City Council and is effective for an initial period of 45 days from the date of adoption. In accordance with Government Code Section 65858, the attached ordinance (Attachment 1) would extend Ordinance 2681 for an additional ten months and 15 days. Also, in accordance with Government Code Section 65858 consideration of the ordinance to extend the moratorium was noticed as a public hearing consistent with all applicable state and local regulations. An additional extension of up to 12 months may be approved by the City Council prior to the expiration of this initial extension, for a total potential duration of two years.

Also before the City Council for consideration is a resolution issuing a written report describing the measures that the City has taken to alleviate the condition which led to the adoption of the urgency ordinance (Attachment 2). This Resolution and associated written report (Attachment 2, Exhibit 1) satisfy the requirement of Section 65858 which states that "ten days prior to the expiration of the initial interim ordinance or any extension, the City Council is required to issue a written report describing the measures taken to alleviate the condition that lead to the adoption of the interim ordinance."

Following adoption of an interim ordinance under Section 65858, subsequent interim ordinances affecting the same property are prohibited unless the subsequent ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence or set of circumstances different from those that led to the adoption of the prior interim ordinance. In other words, once an interim ordinance expires, a new interim ordinance cannot be enacted regarding the same health, safety and welfare concerns affecting the same property.

DISCUSSION

Currently, fuel station/gas stations are a permitted use in the C1 and C2 zoning districts in the City. Gas stations are a conditional use in the BP, MU1A, and MU1B zones. In 2013, during the adoption process for the updated SmartCode, the Council adopted modifications to the SmartCode to allow gas stations as a conditional use in the T5 zone within the boundaries of the Petaluma Specific Plan. Gas stations are a permitted use in the D4 district as outlined in the SmartCode.

The Implementing Zoning Ordinance (IZO) does not currently contain any specific use criteria for gas station uses in Petaluma. The definition of a Fueling Station/Gas Station included in Section 27 of the IZO is “A retail business selling gasoline and/or other motor vehicle fuels, and related products. A gas station may also include a convenience store, vehicle services, and restaurant facilities.” The definition adopted in Section 9 of the SmartCode is “A retail business selling gasoline or other motor vehicle fuels, and related products. A gas station may also include a convenience store, vehicle services, restaurant facility and/or trailer rental where authorized by the Conditional Use Permit for the gas station.”

The Urgency Ordinance adopted by the City Council on May 6, 2019, prohibits the approval of any new gas station/fuel station applications in the City not already complete as of the effective date of the ordinance. The ordinance currently before the Council for consideration would extend the effective date of Urgency Ordinance 2681 for an additional 10 months and 15 days. This extension would preserve the status quo of existing gas stations in the City and provide time for the City to study the potential impacts that new gas station uses may have on nearby neighborhood and sensitive receptors, options for regulating gas station uses in the City, and the practical and legal implications of the various regulatory options.

The City Council’s adoption of an extension of the urgency ordinance would allow for continued consideration and discussion regarding options for potential new legislation regarding new gas station uses during which new gas station applications would be processed but could not be approved. Following expiration of the interim ordinance, new gas station applications could be approved, subject to any new regulatory requirements that have taken effect during the moratorium period.

As outlined in the written report (Attachment 2, Exhibit 1), the City has undertaken several measures to date to alleviate the concerns regarding new gas station uses in the City as included in Urgency Ordinance 2681. In addition to the adoption of an urgency ordinance, the City Council has initiated discussion about potential legislative options, including the following:

- Modification to the IZO and/or SmartCode to prohibit new gas stations uses in all zones;
- Modification to the IZO to make new gas station uses subject to a CUP in all zones where they are currently permitted as of right;
- Modification to the use tables in the IZO and/or the City’s zoning map changing the zones in which gas stations are permitted;
- Adoption of specific use criteria for new gas station uses (similar to the approach taken for Bed and Breakfast Inns and Short-Term Vacation Rentals);

- Adoption of specific use criteria for new gas station uses when in proximity to sensitive receptors such as residential neighborhoods, schools, parks, etc.;
- Adoption limitations on the size (number of pumps/dispensers or annual fuel throughput) of new gas station uses; and/or
- Adoption of expanded definitions of gas station uses addressing large gas stations and small gas stations (number or pumps/dispensers or annual fuel throughput), and identification of the appropriate entitlement process (e.g., whether a CUP or use criteria should apply) to address project specific impacts.

The interim ordinance adopted by the Council on May 6 and extended by the attached ordinance temporarily prohibits approval of new gas station applications not already complete as of the effective date of the ordinance. However, the law requires that staff continue to process any pending gas station applications or applications received during the moratorium period. Interim ordinances under Section 65858 only temporarily suspends project approvals subject to a moratorium, but not project processing. For the duration of the interim ordinance on new gas station applications, any proposed new uses will not be brought before the decision-making body until such time as the interim ordinance is repealed (presumably upon new regulation of new gas station uses taking effect) or has expired.

PUBLIC OUTREACH

Adoption of a time extension of an interim urgency ordinance is subject to public noticing pursuant to Government Code Section 65090, which requires published notification in the City's official newspaper at least ten days prior to the hearing. Notification of the June 3, 2019 public hearing was published in the Argus Courier on May 23, 2019. This item had also been distributed along with the rest of the June 3 City Council Agenda and posted on the City's website in accordance with the requirements of the Brown Act and the City's established practice.

FINANCIAL IMPACTS

Staff costs associated with preparation of this urgency ordinance are covered under the City's contract with M-Group under base level services and by the staff budget for the City Attorney's Office and does not have any additional cost impacts to the General Fund.

ATTACHMENTS

Attachment 1	Draft Ordinance extending the effective date of Urgency Ordinance #2681
Attachment 2	Draft Resolution Issuing Written Report
Exhibit 1	Written Report
Attachment 3	Urgency Ordinance 2681

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA EXTENDING THE TIMELINE OF URGENCY ORDINANCE 2681 IMPOSING A MORATORIUM ON THE APPROVAL OF APPLICATIONS FOR NEW GAS STATION USES IN THE CITY OF PETALUMA THAT ARE NOT COMPLETE AS OF THE EFFECTIVE DATE OF THE ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 AND OTHER APPLICABLE LAW

WHEREAS, Article XI, Section 5 of the California Constitution provides that it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to the general laws; and

WHEREAS, Section 54 of Article VIII of the Petaluma Charter provides that the City, by and through its council and other officials shall have and may exercise all powers necessary or appropriate to the municipal corporation and the general welfare of its inhabitants, which are not prohibited by the constitution and which it would be competent for the charter to set forth particularly or specifically, and the specification of any particular powers shall not be held to be exclusive or any limitation on the general grant of powers; and

WHEREAS, California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum to two times and have a maximum total duration of two years; and

WHEREAS, California Government Code Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to public health, safety, or welfare; and

WHEREAS, California Government Code Section 65858, subdivision (c) further provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body, supporting by substantial evidence on the record, that:

- (1) the continued approval of the development of multifamily housing projects would have 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 such impact, and
- (3) there is no feasible alternative to satisfactorily mitigate or avoid such impact as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance; and

WHEREAS, California Government Code Section 65858, subdivision (d) provides that ten days prior to the expiration of an 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; and

WHEREAS, residents in the neighborhood in proximity to the proposed Safeway Fuel Station project at 335 South McDowell Boulevard at the corner of South McDowell Boulevard and Maria Drive have expressed opposition to the project based on concerns related to air quality, health risks, safety, and circulation and traffic impacts;

WHEREAS, teachers, administrators, parents, and students and the adjacent McDowell Elementary School have expressed opposition to the project based on concerns involving potential impacts associated with air quality, health risk, safety, and circulation impacts; and

WHEREAS, public comments received in opposition to the project express a common concern with the incompatibility of the proposed gas station with the surrounding land uses and sensitive receptors, including residential, parks, and schools; and

WHEREAS, the property located at South McDowell Boulevard and Maria Drive is currently zoned C-2 and new gas station uses are a permitted use in the Zone C-2, subject to approval of Site Plan and Architectural Review (SPAR); and

WHEREAS, SPAR approval pursuant to Section 24.010 of the City's Implementing Zoning Ordinance (IZO), Ordinance No. 2300 N.C.S. adopted July 2, 2008, involves consideration of SPAR factors such as appropriate use of materials, architectural style, siting of structures on property, size, location and design of signs, and bulk and height of proposed structures, landscaping to approved City standards, and ingress, egress and internal circulation; and

WHEREAS, currently in the City new gas station uses are permitted in the C1, C2, and D4 zoning districts subject to SPAR, and are permitted in the BP, MU1A, MU1B, and T5 zones subject to SPAR and issuance of a Conditional Use Permit; and

WHEREAS, on December 17 and 18, 2018, respectively, the cases of *Georgetown Preservation Society v. County of El Dorado* and *McCorkle Eastside Neighborhood Group v. City of St. Helena* were published; and

WHEREAS, although the court in *Georgetown* held that evidence of aesthetic impacts of the proposed development in that case was sufficient to trigger the need for an Environmental Impact Report, the court in *McCorkle* held that environmental review in that case was limited to the scope of St. Helena's design review authority, and, specifically, its authority under its zoning regulations to mitigate project environmental impacts; and

WHEREAS, based on the *McCorkle* ruling, legal counsel for Safeway argued that the City Council could not order an Environmental Impact Report based on information in the record concerning project emissions and health risk impacts that are outside of the scope of the City's discretionary approval under its SPAR regulations, and

WHEREAS, on the advice of the City Attorney and following the *McCorkle* ruling, the City Council denied that appeal regarding the Planning Commission's approval of the Safeway Fuel Station project, upholding the Planning Commission approval, despite concerns regarding potential health and other impacts of the project; and

WHEREAS, prior to the *McCorkle* decision, it had been the City's consistent practice to treat applications for SPAR approval as subject to the exercise of discretion of the approving body, up to and including the authority of the approving body to disapprove the project on SPAR grounds, and to conduct full CEQA review, up to and including the ordering of an Environmental Impact Report, if warranted; and

WHEREAS, the *McCorkle* case limits environmental review of development applications to environmental impacts the approving body has authority to mitigate; and

WHEREAS, the California Supreme Court has denied petitions to depublish or overturn the *McCorkle* ruling, which remains in effect and binding on the City and its ability to conduct environmental review regarding projects such as applications for new gas stations that may be subject to only design review in specified zones; and

WHEREAS, the City's SPAR regulations do not address emissions or other project health risks unrelated to aesthetics, siting and internal circulation; and

WHEREAS, City Planning staff has been contacted by a potential applicant for a new gas station use located at the corner of Industrial Drive and Petaluma Boulevard North, near sensitive receptors including a school, and where new gas stations uses are permitted as of right and subject only to SPAR review, posing a threat to the public health, safety and welfare, from environmental and health impacts that the City may be unable to avoid or mitigate following the *McCorkle* decision; and

WHEREAS, there is no information in the record supporting that this interim ordinance regarding new gas station applications in the City of Petaluma that are not complete as of the effective date of the ordinance may have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing as defined in the California Government Code Section 65858, subdivisions (g) and (h); and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, the urgency ordinance was determined exempt from CEQA based on the following:

- (1) This ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately; it prevents changes in the environment related to new gas station use applications pending consideration of possible amendments to the City's Zoning Code or other land use regulations;
- (2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its policy power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and possible adoption of contemplated local legislation, regulation and policies, which local legislation, if adopted, will be subject to CEQA requirements;
- (3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and for the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment;

WHEREAS, on May 6, 2019 the City Council adopted Urgency Ordinance 2681 imposing a moratorium on new gas station uses that are not complete as of the effective date of the ordinance; and

WHEREAS, consistent with California Government Code Section 65858 the urgency ordinance is effective for 45 days unless extended by the City in accordance with Government Code Section 65858; and

WHEREAS, Government Code Section 65858, subsection (a), provides for extension of an urgency ordinance for a period not to exceed 10 months and 15 days with approval by the City and noticing of a public hearing consistent with Government Code Section 65090; and

WHEREAS, consistent with Government Code Section 65090, notification of the June 3, 2019 hearing was published in the Argus Courier on May 23, 2019.

NOW THEREFORE BE IT ORDAINED by the Council of the City of Petaluma as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of Petaluma.

Section 2. Time Extension. This ordinance hereby extends the initial 45-day effective date of Ordinance 2681 for an additional 10 months and 15 days in accordance with California Government Code Section 65858 and other applicable law.

Section 3. Moratorium Imposed. The moratorium imposed by the adoption of Ordinance 2681 hereby remains in effect and prohibits the approval of applications for new gas station uses in the City of Petaluma that are not complete as of the initial effective date of Ordinance 2681 in accordance with the City's powers under Article XI, Section 5 of the California Constitution, Article VII, Section 54 of the City Charter and California Government Code Section 65858 and other applicable law, as follows:

- A. Scope
Applications for land use or development entitlements for new gas station uses in the City of Petaluma not complete as of the effective date of this ordinance may not be approved during the moratorium period.
- B. Statutory Findings and Purpose
Ordinance 2681 is an interim ordinance as defined under California Government Code Section 65858. The Ordinance was deemed necessary for the following reasons:
 - 1. The purpose of this ordinance is to protect the public safety, health, and welfare from a current and immediate threat posed by the issuance of land use or development entitlements for new gas station uses that could result in negative health, safety or other impacts on adjacent or nearby existing uses or neighborhoods with which new gas station uses may not be compatible, absent adequate local regulation addressing compatibility of new gas station uses with adjacent or nearby uses or neighborhoods.
 - 2. New gas station uses have been and/or may be proposed for construction in the City, and unless a moratorium is imposed on the issuance of land use or development entitlements for new gas station uses in the City, such development may result in negative health, safety or other impacts on adjacent or nearby existing uses or

neighborhoods with which new gas station uses may not be compatible, absent adequate local regulation addressing compatibility of new gas station uses with adjacent or nearby existing uses or neighborhoods. This is particularly true regarding City zoning districts where currently new gas stations are permitted uses (C1, C2, and D4 zones) and approval of applications for such proposed new uses is subject only to site plan and architectural review, which review does not take into account such consideration as project emissions and other health impacts unrelated to aesthetics, siting and internal circulation.

3. The imposition of Ordinance 2681 as a moratorium on issuance of land use or development entitlements for new gas station uses in the City that are not complete as of the effective date in order to provide time to evaluate and adopt legislation, guidelines and/or policies as required to address negative health, safety or other impacts of proposed new gas station uses on, adjacent to or nearby existing uses or neighborhoods.

C. Applicability

Ordinance 2681 applies to approval of applications for land use or development entitlements for new gas station uses in the City that are not complete as of the effective date of this ordinance. The ordinance has no effect on the processing of applications for land use or development entitlements for new gas station uses in the City, except that such applications may not be approved during the moratorium period. Subject to the moratorium on approval of applications for land use or development entitlements for new gas station uses, applications for such entitlements will continue to be processed during the moratorium period in accordance with applicable law.

Section 4. Severability. If any provision of the ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date and Duration. This ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 10 months and 15 days there from unless extended by the City in accordance with Government Code Section 65858.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PETALUMA ISSUING A WRITTEN REPORT DESCRIBING THE MEASURES TAKEN TO ALLEVIATE THE CONDITIONS WHICH LED TO THE ADOPTION OF URGENCY ORDINANCE 2681 WHICH IMPOSED A MORATORIUM ON THE APPROVAL OF APPLICATIONS FOR NEW GAS STATION USES IN THE CITY OF PETALUMA THAT ARE NOT COMPLETE AS OF THE EFFECTIVE DATE OF THE ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 AND OTHER APPLICABLE LAW

WHEREAS, Article XI, Section 5 of the California Constitution provides that it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to the general laws; and

WHEREAS, Section 54 of Article VIII of the Petaluma Charter provides that the City, by and through its council and other officials shall have and may exercise all powers necessary or appropriate to the municipal corporation and the general welfare of its inhabitants, which are not prohibited by the constitution and which it would be competent for the charter to set forth particularly or specifically, and the specification of any particular powers shall not be held to be exclusive or any limitation on the general grant of powers; and

WHEREAS, California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum to two times and have a maximum total duration of two years; and

WHEREAS, California Government Code Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to public health, safety, or welfare; and

WHEREAS, on May 6, 2019 the City Council adopted Urgency Ordinance 2681 imposing a moratorium on new gas station uses that are not complete as of the effective date of the ordinance; and

WHEREAS, on May 6, 2019 the City Council deemed the adoption of Urgency Ordinance 2681 necessary to protect the public safety, health, and welfare from the threat posed by the issuance of land use or development entitlements for new gas station uses that could result in negative health, safety or other impacts on adjacent or nearby existing uses or neighborhoods with which new gas station uses may not be compatible, absent adequate local regulation addressing compatibility of new gas station uses with adjacent or nearby uses or neighborhoods.

WHEREAS, on May 6, 2019 the City Council deemed the adoption of Urgency Ordinance 2681 necessary to protect the public health, safety, and welfare due to new gas station uses have been and/or may be proposed for construction in the City, and unless a moratorium is imposed on the issuance of land use or development entitlements for new gas station uses in the City, such development may result in

negative health, safety or other impacts on adjacent or nearby existing uses or neighborhoods with which new gas station uses may not be compatible, absent adequate local regulation addressing compatibility of new gas station uses with adjacent or nearby existing uses or neighborhoods. This is particularly true regarding City zoning districts where currently new gas stations are permitted uses (C1, C2, and D4 zones) and approval of applications for such proposed new uses is subject only to site plan and architectural review, which review does not take into account such consideration as project emissions and other health impacts unrelated to aesthetics, siting and internal circulation.

WHEREAS, on May 6, 2019 the City Council deemed the adoption of Urgency Ordinance 2681 necessary in order to provide time to evaluate and adopt legislation, guidelines and/or policies as required to address negative health, safety or other impacts of proposed new gas station uses on, adjacent to or nearby existing uses or neighborhoods.

WHEREAS, consistent with California Government Code Section 65858 the urgency ordinance is effective for 45 days unless extended by the City in accordance with Government Code Section 65858; and

WHEREAS, on June 3, 2019 the City Council adopted an extension of urgency ordinance 2681 for a period not to exceed an additional 10 months and 15 days consistent with noticing requirements outlined in Government Code Section 65090; and

WHEREAS, California Government Code Section 65858, subdivision (d) provides that ten days prior to the expiration of an 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; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Based on the review of the entire record herein, including the June 3, 2019 City Council staff report, all supporting, referenced, and incorporated documents, and all comments received, the City Council issues the written report included at Exhibit 1 describing the measures that the City has taken to alleviate the condition which led to the initial adoption of Urgency Ordinance 2681.

On April 1, 2019, the City Council denied the appeal brought against the Planning Commission's approval under the California Environmental Quality Act and the City's Site Plan and Architectural Review requirements of the Safeway Fuel Station project located at 335 South McDowell Boulevard in Petaluma. The Council action upheld the Planning Commission's approval of the project. In response to the unprecedented community concern about the possible location of new gas station uses near sensitive receptors like schools and residences, and in view of the recent holding in *McCorkle Eastside Neighborhood Group v. City of St. Helena* limiting approving bodies' ability to review projects' environmental impacts to their authority to mitigate project impacts, the City Council requested that staff prepare for Council consideration and possible adoption an urgency ordinance pursuant to Section 65858 of the California Government Code that would prohibit the approval of applications for new gas station uses in the City.

On May 6, 2019 the City Council adopted Ordinance 2681 imposing a moratorium on the approval of new gas station/fueling station applications that are not already complete as of the effective date of the ordinance. The urgency ordinance adopted by the City Council was prepared in compliance with Government Code Section 65858 and included findings that there is a current and immediate threat to the public health, safety, or welfare and that adoption of the interim ordinance would protect the public safety, health, or welfare. Ordinance 2681 includes findings of public health, safety and welfare risk resulting based on the effect of the *McCorkle* decision on the City's ability to conduct full environmental review of applications for new gas station uses and based on potential applications for new gas station uses near sensitive receptors.

In addition to approving Urgency Ordinance 2681, the City Council provided general direction at their meeting on May 6, 2019 to explore potential legislative options to alleviate the condition which led to the initial concern and adoption of the moratorium. These potential legislative options included:

- Modification to the IZO and/or SmartCode to prohibit new gas stations uses in all zones;
- Modification to the IZO to make new gas station uses subject to a CUP in all zones where they are currently permitted as of right;
- Modification to the use tables in the IZO and/or the City's zoning map changing the zones in which gas stations are permitted;
- Adoption of specific use criteria for new gas station uses (similar to the approach taken for Bed and Breakfast Inns and Short-Term Vacation Rentals);
- Adoption of specific use criteria for new gas stations uses when in proximity to sensitive receptors such as residential neighborhoods, schools, parks, etc.;
- Adoption limitations on the size (number of pumps/dispensers or annual fuel throughput) of new gas station uses; and/or
- Adoption of expanded definitions of gas station uses addressing large gas stations and small gas stations (number or pumps/dispensers or annual fuel throughput), and identification of the appropriate entitlement process (e.g., whether a CUP or use criteria should apply) to address project specific impacts.

To provide adequate time for the City to explore these and other potential options, the City Council adopted an extension of urgency ordinance 2681 for an additional 10 months and 15 days.

<p>EFFECTIVE DATE OF ORDINANCE</p>

<p>May 6, 2019</p>

ORDINANCE NO. 2681 N.C.S.

Introduced by

Seconded by

Gabe Kearney

Kathy Miller

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA IMPOSING A MORATORIUM ON THE APPROVAL OF APPLICATIONS FOR NEW GAS STATION USES IN THE CITY OF PETALUMA THAT ARE NOT COMPLETE AS OF THE EFFECTIVE DATE OF THE ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 AND OTHER APPLICABLE LAW

WHEREAS, Article XI, Section 5 of the California Constitution provides that it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to the general laws; and

WHEREAS, Section 54 of Article VIII of the Petaluma Charter provides that the City, by and through its council and other officials shall have and may exercise all powers necessary or appropriate to the municipal corporation and the general welfare of its inhabitants, which are not prohibited by the constitution and which it would be competent for the charter to set forth particularly or specifically, and the specification of any particular powers shall not be held to be exclusive or any limitation on the general grant of powers; and

WHEREAS, California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum to two times and have a maximum total duration of two years; and

WHEREAS, California Government Code Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to public health, safety, or welfare; and

WHEREAS, California Government Code Section 65858, subdivision (c) further provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body, supporting by substantial evidence on the record, that:

- 1 (1) the continued approval of the development of multifamily housing projects would
2 have a significant, quantifiable, direct, and unavoidable impact, based on
3 objective, identified written public health or safety standards, policies, or conditions
4 as they existed on the date that the ordinance is adopted by the legislative body,
5
6 (2) the interim ordinance is necessary to mitigate or avoid such impact, and
7
8 (3) there is no feasible alternative to satisfactorily mitigate or avoid such impact as well
9 or better, with a less burdensome or restrictive effect, than the adoption of the
10 proposed interim ordinance; and
11

12 **WHEREAS**, California Government Code Section 65858, subdivision (d) provides that ten days
13 prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a
14 written report describing the measures taken to alleviate the condition which led to the adoption of
15 the ordinance; and
16

17 **WHEREAS**, residents in the neighborhood in proximity to the proposed Safeway Fuel Station
18 project at 335 South McDowell Boulevard at the corner of South McDowell Boulevard and Maria
19 Drive have expressed opposition to the project based on concerns related to air quality, health risks,
20 safety, and circulation and traffic impacts;
21

22 **WHEREAS**, teachers, administrators, parents, and students and the adjacent McDowell
23 Elementary School have expressed opposition to the project based on concerns involving potential
24 impacts associated with air quality, health risk, safety, and circulation impacts; and
25

26 **WHEREAS**, public comments received in opposition to the project express a common
27 concern with the incompatibility of the proposed gas station with the surrounding land uses and
28 sensitive receptors, including residential, parks, and schools; and
29

30 **WHEREAS**, the property located at South McDowell Boulevard and Maria Drive is currently
31 zoned C-2 and new gas station uses are a permitted use in the Zone C-2, subject to approval of Site
32 Plan and Architectural Review (SPAR); and
33

34 **WHEREAS**, SPAR approval pursuant to Section 24.010 of the City's Implementing Zoning
35 Ordinance (IZO), Ordinance No. 2300 N.C.S. adopted July 2, 2008, involves consideration of SPAR
36 factors such as appropriate use of materials, architectural style, siting of structures on property, size,
37 location and design of signs, and bulk and height of proposed structures, landscaping to approved
38 City standards, and ingress, egress and internal circulation; and
39

40 **WHEREAS**, currently in the City new gas station uses are permitted in the C1, C2, and D4
41 zoning districts subject to SPAR, and are permitted in the BP, MU1A, MU1B, and T5 zones subject to
42 SPAR and issuance of a Conditional Use Permit; and
43

44 **WHEREAS**, on December 17 and 18, 2018, respectively, the cases of *Georgetown*
45 *Preservation Society v. County of El Dorado* and *McCorkle Eastside Neighborhood Group v. City of*
46 *St. Helena* were published; and
47

48 **WHEREAS**, although the court in *Georgetown* held that evidence of aesthetic impacts of the
49 proposed development in that case was sufficient to trigger the need for an Environmental Impact
50 Report, the court in *McCorkle* held that environmental review in that case was limited to the scope
51 of St. Helena's design review authority, and, specifically, its authority under its zoning regulations to
52 mitigate project environmental impacts; and
53

1 **WHEREAS**, based on the *McCorkle* ruling, legal counsel for Safeway argued that the City
2 Council could not order an Environmental Impact Report based on information in the record
3 concerning project emissions and health risk impacts that are outside of the scope of the City's
4 discretionary approval under its SPAR regulations, and
5

6 **WHEREAS**, on the advice of the City Attorney and following the *McCorkle* ruling, the City
7 Council denied that appeal regarding the Planning Commission's approval of the Safeway Fuel
8 Station project, upholding the Planning Commission approval, despite concerns regarding potential
9 health and other impacts of the project; and
10

11 **WHEREAS**, prior to the *McCorkle* decision, it had been the City's consistent practice to treat
12 applications for SPAR approval as subject to the exercise of discretion of the approving body, up to
13 and including the authority of the approving body to disapprove the project on SPAR grounds, and
14 to conduct full CEQA review, up to and including the ordering of an Environmental Impact Report, if
15 warranted; and
16

17 **WHEREAS**, the *McCorkle* case limits environmental review of development applications to
18 environmental impacts the approving body has authority to mitigate; and
19

20 **WHEREAS**, the California Supreme Court has denied petitions to depublish or overturn the
21 *McCorkle* ruling, which remains in effect and binding on the City and its ability to conduct
22 environmental review regarding projects such as applications for new gas stations that may be
23 subject to only design review in specified zones; and
24

25 **WHEREAS**, the City's SPAR regulations do not address emissions or other project health risks
26 unrelated to aesthetics, siting and internal circulation; and
27

28 **WHEREAS**, City Planning staff has been contacted by a potential applicant for a new gas
29 station use located at the corner of Industrial Drive and Petaluma Boulevard North, near sensitive
30 receptors including a school, and where new gas stations uses are permitted as of right and subject
31 only to SPAR review, posing a threat to the public health, safety and welfare, from environmental
32 and health impacts that the City may be unable to avoid or mitigate following the *McCorkle*
33 decision; and
34

35 **WHEREAS**, there is no information in the record supporting that this interim ordinance
36 regarding new gas station applications in the City of Petaluma that are not complete as of the
37 effective date of the ordinance may have the effect of denying approvals needed for the
38 development of projects with a significant component of multifamily housing as defined in the
39 California Government Code Section 65858, subdivisions (g) and (h); and
40

41 **WHEREAS**, pursuant to Section 15001 of the California Environmental Quality Act (CEQA)
42 Guidelines, this ordinance is exempt from CEQA based on the following:
43

- 44 (1) This ordinance is not a project within the meaning of Section 15378 of the CEQA
45 Guidelines, because it has no potential for resulting in physical change in the
46 environment, directly or ultimately; it prevents changes in the environment related to
47 new gas station use applications pending consideration of possible amendments to the
48 City's Zoning Code or other land use regulations;
49
- 50 (2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA
51 Guidelines as a regulatory action taken by the City pursuant to its policy power and in
52 accordance with Government Code Section 65858 to assure maintenance and
53 protection of the environment pending the evaluation and possible adoption of

1 contemplated local legislation, regulation and policies, which local legislation, if
2 adopted, will be subject to CEQA requirements;
3

- 4 (3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to
5 projects which have the potential for causing a significant effect on the environment,
6 and for the reasons set forth in subparagraphs (1) and (2) above, it can be seen with
7 certainty that there is no possibility that this ordinance will have a significant effect on the
8 environment;
9

10 **NOW THEREFORE BE IT ORDAINED** by the Council of the City of Petaluma as follows:
11

12 **Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and
13 correct and findings of the City Council of the City of Petaluma.
14

15 **Section 2. Moratorium Imposed.** A moratorium is hereby imposed on the approval of
16 applications for new gas station uses in the City of Petaluma that are not complete as of the
17 effective date of this ordinance in accordance with the City's powers under Article XI, Section 5 of
18 the California Constitution, Article VII, Section 54 of the City Charter and California Government
19 Code Section 65858 and other applicable law, as follows:
20

21 A. Scope

22 Applications for land use or development entitlements for new gas station uses in the
23 City of Petaluma not complete as of the effective date of this ordinance may not be
24 approved during the moratorium period.
25

26 B. Statutory Findings and Purpose

27 This ordinance is declared to be an interim ordinance as defined under California
28 Government Code Section 65858. This ordinance is deemed necessary for the
29 following reasons:
30

- 31 1. The purpose of this ordinance is to protect the public safety, health, and welfare
32 from a current and immediate threat posed by the issuance of land use or
33 development entitlements for new gas station uses that could result in negative
34 health, safety or other impacts on adjacent or nearby existing uses or
35 neighborhoods with which new gas station uses may not be compatible, absent
36 adequate local regulation addressing compatibility of new gas station uses with
37 adjacent or nearby uses or neighborhoods.
38
- 39 2. New gas station uses have been and/or may be proposed for construction in the
40 City, and unless a moratorium is imposed on the issuance of land use or
41 development entitlements for new gas station uses in the City, such development
42 may result in negative health, safety or other impacts on adjacent or nearby
43 existing uses or neighborhoods with which new gas station uses may not be
44 compatible, absent adequate local regulation addressing compatibility of new
45 gas station uses with adjacent or nearby existing uses or neighborhoods. This is
46 particularly true regarding City zoning districts where currently new gas stations
47 are permitted uses (C1, C2, and D4 zones) and approval of applications for such
48 proposed new uses is subject only to site plan and architectural review, which
49 review does not take into account such consideration as project emissions and
50 other health impacts unrelated to aesthetics, siting and internal circulation.
51
- 52 3. It is, therefore, necessary to impose a moratorium on issuance of land use or
53 development entitlements for new gas station uses in the City that are not
54 complete as of the effective date of this ordinance to provide time to evaluate

and adopt legislation, guidelines and/or policies as required to address negative health, safety or other impacts of proposed new gas station uses on, adjacent to or nearby existing uses or neighborhoods.

C. Applicability

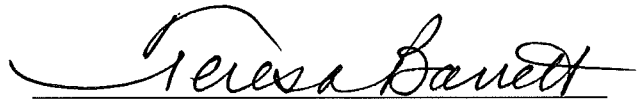
This ordinance applies to approval of applications for land use or development entitlements for new gas station uses in the City that are not complete as of the effective date of this ordinance. This ordinance has no effect on the processing of applications for land use or development entitlements for new gas station uses in the City, except that such applications may not be approved during the moratorium period. Subject to the moratorium on approval of applications for land use or development entitlements for new gas station uses, applications for such entitlements will continue to be processed during the moratorium period in accordance with applicable law.

Section 3. Severability. If any provision of the ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. Effective Date and Duration. This ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days there from unless extended by the City in accordance with Government Code Section 65858.

INTRODUCED, ordered posted, and **ADOPTED** this 6th day of May 2019, by the following vote:

Ayes:	Mayor Barrett, Fischer, Healy, Kearney, King, Vice Mayor McDonnell, Miller
Noes:	None
Abstain:	None
Absent:	None


Teresa Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:


Samantha Pascoe, Deputy City Clerk


Lisa Tennenbaum, City Attorney