

**EFFECTIVE DATE
OF ORDINANCE**

June 3, 2019

ORDINANCE NO. 2688 N.C.S.

Introduced by

Seconded by

Miller

Fischer

**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 (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, the urgency ordinance was determined 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 **WHEREAS**, on May 6, 2019 the City Council adopted Urgency Ordinance 2681 imposing a
11 moratorium on new gas station uses that are not complete as of the effective date of the
12 ordinance; and
13

14 **WHEREAS**, consistent with California Government Code Section 65858 the urgency ordinance
15 is effective for 45 days unless extended by the City in accordance with Government Code Section
16 65858; and
17

18 **WHEREAS**, Government Code Section 65858, subsection (a), provides for extension of an
19 urgency ordinance for a period not to exceed 10 months and 15 days with approval by the City
20 and noticing of a public hearing consistent with Government Code Section 65090; and
21

22 **WHEREAS**, consistent with Government Code Section 65090, notification of the June 3, 2019
23 hearing was published in the *Argus-Courier* on May 23, 2019.
24

25
26 **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Petaluma as follows:
27

28 **Section 1. Recitals Made Findings.** The above recitals are hereby declared to be true and
29 correct and findings of the City Council of the City of Petaluma.
30

31 **Section 2. Time Extension.** This ordinance hereby extends the initial 45-day effective date of
32 Ordinance 2681 for an additional 10 months and 15 days in accordance with California
33 Government Code Section 65858 and other applicable law.
34

35 **Section 3. Moratorium Imposed.** The moratorium imposed by the adoption of Ordinance 2681
36 hereby remains in effect and prohibits the approval of applications for new gas station uses in the
37 City of Petaluma that are not complete as of the initial effective date of Ordinance 2681 in
38 accordance with the City's powers under Article XI, Section 5 of the California Constitution, Article
39 VII, Section 54 of the City Charter and California Government Code Section 65858 and other
40 applicable law, as follows:
41

42 A. Scope
43 Applications for land use or development entitlements for new gas station uses in the
44 City of Petaluma not complete as of the effective date of this ordinance may not be
45 approved during the moratorium period.
46

47 B. Statutory Findings and Purpose
48 Ordinance 2681 is an interim ordinance as defined under California Government
49 Code Section 65858. The Ordinance was deemed necessary for the following
50 reasons:
51

- 52 1. The purpose of this ordinance is to protect the public safety, health, and welfare
53 from a current and immediate threat posed by the issuance of land use or
54 development entitlements for new gas station uses that could result in negative

1 health, safety or other impacts on adjacent or nearby existing uses or
2 neighborhoods with which new gas station uses may not be compatible, absent
3 adequate local regulation addressing compatibility of new gas station uses with
4 adjacent or nearby uses or neighborhoods.
5

- 6 2. New gas station uses have been and/or may be proposed for construction in the
7 City, and unless a moratorium is imposed on the issuance of land use or
8 development entitlements for new gas station uses in the City, such development
9 may result in negative health, safety or other impacts on adjacent or nearby
10 existing uses or neighborhoods with which new gas station uses may not be
11 compatible, absent adequate local regulation addressing compatibility of new
12 gas station uses with adjacent or nearby existing uses or neighborhoods. This is
13 particularly true regarding City zoning districts where currently new gas stations
14 are permitted uses (C1, C2, and D4 zones) and approval of applications for such
15 proposed new uses is subject only to site plan and architectural review, which
16 review does not take into account such consideration as project emissions and
17 other health impacts unrelated to aesthetics, siting and internal circulation.
18
- 19 3. The imposition of Ordinance 2681 as a moratorium on issuance of land use or
20 development entitlements for new gas station uses in the City that are not
21 complete as of the effective date in order to provide time to evaluate and adopt
22 legislation, guidelines and/or policies as required to address negative health,
23 safety or other impacts of proposed new gas station uses on, adjacent to or
24 nearby existing uses or neighborhoods.
25

26 C. Applicability

27 Ordinance 2681 applies to approval of applications for land use or development
28 entitlements for new gas station uses in the City that are not complete as of the
29 effective date of this ordinance. The ordinance has no effect on the processing of
30 applications for land use or development entitlements for new gas station uses in the
31 City, except that such applications may not be approved during the moratorium
32 period. Subject to the moratorium on approval of applications for land use or
33 development entitlements for new gas station uses, applications for such entitlements
34 will continue to be processed during the moratorium period in accordance with
35 applicable law.
36

37 **Section 4. Severability.** If any provision of the ordinance or the application thereof to any
38 person or circumstance is held invalid, the remainder of the ordinance, including the application of
39 such part or provision to other persons or circumstances shall not be affected thereby and shall
40 continue in full force and effect. To this end, provisions of this ordinance are severable. The City
41 Council hereby declares that it would have passed each section, subsection, subdivision,
42 paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more
43 sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held
44 unconstitutional, invalid, or unenforceable.
45

46 **Section 5. Effective Date and Duration.** This ordinance shall become effective immediately
47 upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council
48 and shall be in effect for 10 months and 15 days there from unless extended by the City in
49 accordance with Government Code Section 65858.
50

51 **INTRODUCED**, ordered posted, and **ADOPTED** this 3rd day of June 2019, by the following vote:

52 Ayes: Mayor Barrett, Fischer, Healy, King, Vice Mayor McDonnell, Miller
53


Noes: None
Abstain: None
Absent: Kearney


Teresa Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:


Samantha Pascoe, Acting City Clerk


Eric Danly, City Attorney