

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Urgency Zoning Ordinance of the City Council)
of the City of Lafayette in accordance with California) Ordinance No. 664
Government Code Section 65858 Enacting for a Period)
of Forty-Five (45) Days a Moratorium on Uses)
Inconsistent with the Low Density Single Family)
Residential (SFR-LD) General Plan Land Use Designation)
on or within that Certain Real Property Located at)
3233 Deer Hill Road (APN 232-150-027) Pending the)
Rezoning of the Subject Property)

WHEREAS, the City of Lafayette, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, as of March 2011, that certain real property located at 3233 Deer Hill Road, Lafayette, California (APN 232-150-027) (the "Subject Property") was zoned APO (Administrative Professional Office) and had a General Plan land use designation of Administrative/Professional Office/Multifamily Residential, which permitted a density of up to 35 dwelling units per acre; and

WHEREAS, in March 2011, the City of Lafayette received an application for the Terraces of Lafayette project, which proposed 315 moderate-income apartments in 14 buildings on the Subject Property; and

WHEREAS, in December 2013, a project alternative known as the Homes at Deer Hill was presented to the City Council which proposed 44-45 single-family residences and community park facilities; and

WHEREAS, on January 22, 2014, the City and Anna Maria Dettmer, as Trustee of the AMD Family Trust and O'Brien Land Company entered into the Terraces Project Alternative Process Agreement, which has been amended from time to time; and

WHEREAS, in August and September 2015, the Homes at Deer Hill project was approved, pursuant to which the General Plan land use designation for the Subject Property was amended to Low Density Single Family Residential (SFR-LD) by Resolution 2015-51, and the Subject Property was rezoned to Single Family Residential District -20 (R-20) and to Planned Unit Development by Ordinance 641; and

WHEREAS, a referendum on the legislative acts of Ordinance 641 was placed on the June 5, 2018 ballot as Measure L; and

WHEREAS, it appears that the majority of voters voted "No" on Measure L, which had the effect of repealing the zoning of the Subject Property accomplished under Ordinance 641, but not the General Plan land use designation for the Subject Property under Resolution 2015-51; and

WHEREAS, with the referendum of Ordinance 641, the Subject Property now has a General Plan land use designation of Low Density Single Family Residential (SFR-LD) and a zoning designation of APO (Administrative Professional Office); and

WHEREAS, the APO zoning category, which permits multiple family buildings with a density of up to 35

dwelling units per acre, is inconsistent with the Subject Property's current General Plan designation of Low Density Single Family Residential (SFR-LD) which permits maximum densities of 2 dwelling units per acre; and

WHEREAS, Government Code section 65860 provides that city zoning ordinances shall be consistent with the general plan of a city, and in the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended; and

WHEREAS, the Planning and Zoning Law, California Government Code, Section 65858 authorizes cities to adopt an interim urgency ordinance prohibiting any uses which may be in conflict with a contemplated general plan or zoning proposal which the City is considering, studying or intends to study within a reasonable time to protect the public safety, health and welfare; and

WHEREAS, the City Council desires to adopt a moratorium as set forth herein to prohibit use of the Subject Property in a manner inconsistent with the current General Plan designation of Low Density Single Family Residential (SFR-LD) while the City considers appropriate zoning proposals for the Subject Property.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Urgency Findings. The City Council hereby finds, determines and declares as follows that there is a current and immediate threat to the public health, safety, and welfare and this Urgency Ordinance adopted pursuant to California Government Code Section 65858 is necessary to protect the public safety, health and welfare because:

- (a) The failure of Measure L created an inconsistency between the General Plan designation of Low Density Single Family Residential (SFR-LD) and the zoning designation of Administrative and Professional Office (APO) on Subject Property. Among other things, the APO zoning category permits multifamily housing with a density of up to 35 dwelling units per acre, which would not comply with the allowable land use and significantly exceeds the density provided by the General Plan designation of SFR-LD, which permits single-family dwellings with maximum densities of up to 2 dwelling units per acre.
- (b) The failure of Measure L demonstrates the voters' intent to maintain the low density, single-family character of the Subject Property. Without the imposition of this moratorium, the APO zoning could permit high density, multiple-family residential development on the Subject Property.
- (c) Pleasant Hill Road serves the City's high school and one elementary school; both within walking distance of the Subject property. Deer Hill Road serves as one of the primary routes to the BART station. The City has seen a significant increase in traffic along Deer Hill Road and Pleasant Hill Road causing increased delays for commuters and school traffic. For instance, on Pleasant Hill Rd, north of Stanley Blvd/Deer Hill Rd the traffic count was 37,000 per day as of February 2016, representing 13% daily volume growth since 2010; on Deer Hill Rd, west of Pleasant Hill Road as

of December 2011 the traffic count was 9,000 per day; on Stanley Blvd at 3157 Stanley Blvd as of November 2010 the traffic count was 1,700 per day; and on Reliez Valley Rd at Reliez Manor as of September 2017 the traffic count was 3,800 per day.

A higher density multi-family project with the significant increased density would exacerbate the congestion and delays already experienced and will increase air pollution.

- (d) A higher density multi-family project will result in an increased amount of excavation and grading of the property to accommodate the increased number of units. For the short term this will result in increased levels of pollution due to increased traffic and grading operations.
- (e) Consequently, the City Council finds that this Urgency Ordinance is necessary to protect the public safety, health, and welfare by providing the City with a mechanism to prevent the approval of certain permits and land use entitlements that may be inconsistent and in conflict with the current rezoning effort. The City Council further finds that the approval of additional subdivisions, building permits, or other entitlements would result in a current and immediate threat to the public safety, health, or welfare because consideration and approval of such uses may be inconsistent with the SFR-LD General Plan designation and the proposed rezoning now being studied. Such prohibitions on entitlements protect and promote the planning process by, among other things, prohibiting the introduction of potentially nonconforming land uses that could defeat the City's later-adopted zoning ordinance.

Section 3. Moratorium. The City Council hereby declares a moratorium on any use on real property located at 3233 Deer Hill Road, Lafayette, California (APN 232-150-027) that is inconsistent with the Low Density Single Family Residential (SFR-LD) General Plan Land Use designation of the property. The City of Lafayette shall not issue or approve any building permit, conditional use permit, variance, subdivision map or other land use entitlement or permit required to comply with the provisions of the City of Lafayette Zoning Ordinance for development of any use, building or structure that would conflict with the General Plan designation of Low Density Single Family Residential (SFR-LD) on or within that real property located at 3233 Deer Hill Road, Lafayette, California (APN 232-150-027) during the time that this interim urgency ordinance is in effect.

Section 4. Effective Date. This Ordinance shall become effective immediately upon adoption by at least a four-fifths vote of the City Council and shall be in effect for 45 days from the date of adoption unless extended by the City Council as provided for in the Government Code Section 65858.

Section 5. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) as it can be seen with certainty that it will not have a significant effect on the environment.

Section 6. Written Report. At least 10 days before this Urgency Ordinance or any extension expires, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Ordinance.

Section 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this

Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 8. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Lafayette at a special meeting of the City Council held on the 13th day of June, 2018 by the following vote:

AYES: **Tatzin, Burks, Anderson and Samson**

NOES: **None**

ABSTAIN: **None**

ABSENT: **Mitchell**

ATTEST:

APPROVED:

Joanne Robbins, City Clerk

Don Tatzin, Mayor