



PUBLIC HEARING

Agenda Item # 3

AGENDA REPORT SUMMARY

Meeting Date: September 21, 2021

Subject: Public Land Preservation Overlay District Ordinance

Prepared by: Jon Biggs, Community Development Director

Approved by: Gabriel Engeland, City Manager

Attachment(s):

1. Draft Public Land Preservation Overlay District Ordinance Reviewed by Planning Commission
2. February 18, 2021 Planning Commission Meeting Minutes

Initiated by:

City Council

Previous Council Consideration

September 8, 2020 and November 10, 2020

Fiscal Impact:

No fiscal impact is anticipated as work on ordinance is being developed using existing resources.

Environmental Review:

Based on all the evidence presented in the administrative record, including but not limited to the staff reports, the proposed Ordinance relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is exempt from California Environmental Quality Act (“CEQA”) CEQA Guidelines Section 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment” as the Ordinance has no potential to result in a direct, or reasonably foreseeable, indirect impact on the environment.

Policy Question for Consideration:

Shall a change to the Los Altos Municipal Code that will put in place regulations that, if applied, will help protect City owned land, like the Civic Center complex, be introduced and adopted.

Summary:

The addition of a Public Land Preservation (PLP) Overlay District to Title 14, Zoning, of the Los Altos Municipal Code may make it more difficult for City owned land to be sold or have title transferred. Any City owned land to which this PLP Overlay designation is applied could not be sold unless approved by a vote of the people or a future City Council votes to repeal the subject code and the PLP Overlay designation.



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Recommendation:

City Staff recommends introduction of this Ordinance with the addition of a qualifying statement to the Ordinance that a future City Council, by simple majority vote, may repeal this Ordinance.

The Planning Commission voted 6-0 to not recommend adoption of the Ordinance.

Purpose

The City Council has expressed an interest in enacting rules that would limit the City's ability to sell, transfer fee ownership, or re-designate land of the Los Altos Civic Center.

Background

At a meeting in September of 2020, the City Council considered some options that would limit the City's ability to sell, transfer fee ownership, or re-designate portions of land within the Los Altos Civic Center. Staff recommended that a new zoning or land use designation and/or possibly an overlay district, which could be applied to the entire Civic Center complex, be developed. Following its deliberation, the City Council voted to direct staff to proceed with developing a change Title 14, Zoning, to achieve the desired public land preservation. In November of 2020, staff returned to the City Council with a draft ordinance for a PLP Overlay District that, if applied, would, provide the desired protections. The City Council agreed with this approach and directed that staff take the Ordinance to the Planning Commission for its review and a recommendation. One item the City Council asked staff to explore was a requirement that a super majority vote of the City Council (4/5) be required to apply this PLP Overlay designation. In discussions with the City Attorney, it was advised that this is not recommended due to other rules in place that govern zoning code and zoning map amendments. Similarly, it has been determined that adoption of this Ordinance, as drafted, will not -guarantee a vote of the people to approve the sale of or transfer of City owned land in which the PLP Overlay is applied, as a vote of a simple majority of the City Council may repeal it.

Attached with this agenda report is a draft Ordinance that adds a PLP Overlay District to Title 14, Zoning, of the Los Altos Municipal Code. This PLP Overlay District will be in conjunction with the underlying zone district of a property but provides that those properties with this PLP Overlay designation would require voter approval of the sale or transfer of title of any City owned land that has the PLP designation.



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Once this code change takes effect, an amendment to the Zoning Map that applies the PLP Overlay to the Civic Center Complex will be brought forward and taken through the standard zoning review process.

Discussion

The Planning Commission took up consideration of this draft Ordinance at its meeting of February 18, 2021.

Prior to starting its deliberations, Commissioners asked if, assuming this Ordinance is adopted, a future City Council would have the ability to rescind the Ordinance and repeal the PLP Overlay designation to any City owned land to which it had been applied. The City Attorney advised that a future Council could repeal this ordinance and since it is not a ballot initiative that would require a majority vote of the electorate to impose or repeal the PLP Overlay.

In the deliberations leading to their recommendation, the Planning Commissioners noted this is an overreaching approach to a problem that does not exist. That is, there are no plans or stated intentions to sell or transfer title of all or portions of the Civic Center Complex or any other City owned lands. All the Commissioners agreed that they want park lands and open space protected but felt this Ordinance goes way beyond this intended purpose. They also felt that decisions to sell or transfer title to City owned land was up to the elected City Council and that citizens help determine how the City will manage its lands by those that are elected every two years.

Following a lengthy discussion, including the consideration of staff suggestion that the Ordinance be referred back to staff so that it might have an opportunity to develop some amendments to address the Commission's concerns, the Commission voted 6-0 to recommend that the City Council not adopt the Ordinance.

The full deliberation by the Planning Commission can be reviewed in attachment 2, the minutes of the February 18, 2021 meeting.

Staff Analysis

As the Planning Commission correctly observed, this Ordinance, if adopted, may be repealed by a future City Council. If repealed, a future City Council can then exercise its authority without need



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of voter approval if it believes that the sale or transfer of title of City owned land achieves one of its goals.

The City currently has a code section like the proposed. Current Section 14.66.271 of the Los Altos Municipal Code requires voter approval for the sale or transfer of title of City owned land with a “Parks” or “Other Open Space” General Plan Land use designation. At the time this section of the code was adopted, concerns similar to those expressed by the Planning Commission were raised; however, the former City Council believed that having this code section in place would provide some protection of City owned lands and allow for a broad community discussion if Section 14.66.271 of the code were ever considered for repeal. Staff believes the City Council had a similar line of reasoning when it directed the drafting of the Ordinance currently under consideration. It is also worth noting that this Ordinance provides an opportunity to protect City owned land because it is one more step, an amendment to the City’s zoning map, that is still required to impose a PLP Overlay designation.

If the City Council seeks a greater level of protection of City owned land, it can direct staff to prepare a ballot measure to be submitted to the voters that would amend the code in a manner like the proposed Ordinance. Timing and expense would be two key points of discussion when considering this action as a general election is not on the near-term horizon and holding a special election would result in significant costs to the City. If the City Council would like to review this option further, staff recommends that it refer this back to staff so that it can develop some more detailed information on the timing and costs based on feedback from the Santa Clara County Registrar of Voters.

Likewise, the City Council may, in the broader context of a General Plan Update that is expected to start in 2023, direct that the protection of City owned land be developed and supported by goals, policies, and programs in conjunction with guidance specific to each property that the City owns. This does not provide for the immediate protection of City owned land but it does evaluate the protection of these lands in a broader context.

Options

- 1) Introduce the Ordinance and waive further reading.

Advantages: Provides a path that can help protect City owned land.



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Disadvantages: If the Ordinance is adopted as written it does not guarantee that a vote of the people is needed to sell or transfer the title of City owned land.

- 2) Amend the Ordinance to add a qualifying statement that a future City Council by simple majority may repeal the Ordinance.

Advantages: This Ordinance would provide some further protection against the sale or transfer of title of City owned land and serve to further the policy goals of the City Council.

Disadvantages: The Ordinance does not guarantee voter approval for the sale or transfer of title of City owned land, which was the policy direction of the former City Council.

- 3) Direct that staff prepare a ballot measure to be submitted to the voters that requires voter approval of the sale or transfer of title of City owned land.

Advantages: If adopted by the electorate, it provides a high level of protection for City owned land.

Disadvantages: Referring the sale or transfer of title of City land to a vote of the people is expensive and time-consuming process.

- 4) Direct that goals, policies, and programs to protect City owned land be developed as part of the General Plan update.

Advantages: Provides for a broad and inclusive discussion on the future uses of City owned land and sets in place goals, policies, and programs that support a collective vision for their use.

Disadvantages: Timing and expense.

- 5) Decline introduction of the Ordinance.

Advantages: Other alternatives may seem more appropriate, and it allows the City Council time to consider the use or future of City owned land on a case-by-case basis.



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Disadvantages: May not provide the expected level of protection for City owned lands.

Staff Recommendation

For the reasons noted in the staff analysis section of this agenda report, staff recommends Option 2.

ORDINANCE NO. 2021-XX**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ADDING CHAPTER, 14.64, A PUBLIC LAND PRESERVATION (PLP)
OVERLAY DISTRICT TO TITLE 14, ZONING, OF THE LOS ALTOS
MUNICIPAL CODE THAT PROHIBITS: (1) THE SALE OR TRANSFER OF
TITLE OF CITY-OWNED LAND WITH THE PLP OVERLAY
DESIGNATION; AND (2) THE REMOVAL OF A PLP DESIGNATION
WITHOUT VOTER APPROVAL**

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require regulations and standards that preserve the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, under the City’s police power, the City may enact comprehensive land-use and zoning regulations to promote health, safety and welfare; and

WHEREAS, the Open Space, Conservation, and Community Facilities Element of the Los Altos General Plan provide for public facilities and services and ensure a high quality of living for residents of and visitors to Los Altos; and

WHEREAS, the “Public and Institutional” General Plan Land Use designations provide for appropriate land uses and certain site development standards that help protect and maintain public parks, open space, facilities and services; and

WHEREAS, the City Council desires to amend the City of Los Altos Municipal Code to prohibit the sale, transfer of title, or re-designation of any City owned lands without voter approval, except that voter approval shall not be required for leases (including ground leases), licenses and/or any other instruments which do not convey fee title interest; and

WHEREAS, Chapter 14.64, Public Property Preservation Overlay District (PLP), would require 1. Voter approval of the sale or transfer of title of any City-owned land to which this overlay designation is applied, except that voter approval shall not be required for leases (including ground leases), licenses and/or any other instruments which do not convey fee title interest; and 2. Voter approval to remove the PLP designation once applied; and

WHEREAS, at its XXXXX meeting the Planning Commission of the City of Los Altos reviewed the proposed addition of Chapter 14.64, to the Los Altos Municipal Code and voted to recommend their approval to the City Council.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. After considering the record before it, including but not limited to the agenda report, presentation of staff, public comment, and discussion, the City Council hereby finds

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REVIEWED BY CC ON SEPTEMBER 21, 2021

that adoption of this Ordinance will help protect and promote public health, safety, comfort, convenience, prosperity and welfare by adding this Chapter to the City's existing regulations.

SECTION 2. AMENDMENT OF CODE. The following Chapter, 14.64, Public Property Preservation Overlay District, is hereby added to Title 14, Zoning, of the Los Altos Municipal Code.

14.64.010. Public Land Preservation Overlay District (PLP). The purpose of this Chapter is to establish a PLP overlay district that once applied requires voter approval for the sale or transfer of title or re-designation of any City-owned land to which this overlay designation is applied, except that voter approval shall not be required for leases (including ground leases), licenses and/or any other instruments which do not convey fee title interest.

The regulations set forth in this chapter shall apply to all properties to which this overlay designation has been applied and shall supplement and be used in conjunction with the standards and requirements of the underlying zoning district.

14.64.020. Voter approval shall be required for the sale or transfer of title of any City-owned land to another party, whether public or private, with a PLP overlay designation, except that voter approval shall not be required for leases (including ground leases), licenses and/or any other instruments which do not convey fee title interest.

14.64.030. Once adopted, the PLP overlay designation shall not be removed unless by voter approval. The PLP shall be as set forth in the PLP Map Exhibit "A" and incorporated by this reference.

14.64.040. For purposes of this Ordinance, voter approval is accomplished when a City measure is placed on the ballot at a general or special election as authorized by the California Elections Code, and a majority of the voters voting on the measure vote in favor of it.

14.64.050. The voter approval requirement may be waived by the City Council when it is necessary to comply with State or Federal law governing the provision of housing, including but not limited to affordable housing requirements.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. Based on all the evidence presented in the administrative record, including but not limited to the staff reports, the proposed Ordinance relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is exempt from California Environmental Quality Act ("CEQA") CEQA Guidelines

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Section 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment” as the Ordinance has no potential to result in a direct, or reasonably foreseeable, indirect impact on the environment.

SECTION 5. CUSTODIAN OF RECORDS. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council’s findings and determinations are based are located at Los Altos City Hall, One North San Antonio Road, Los Altos, California. The City Clerk is the custodian of the record of proceedings.

SECTION 6. NOTICE OF EXEMPTION. The City Council hereby directs City staff to prepare and file a Notice of Exemption with the Santa Clara County Clerk.

SECTION 7. PUBLICATION. This Ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This Ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing Ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on XXXXXX and was thereafter, at a regular meeting held on XXXXXX passed and adopted by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Neysa Fligor, MAYOR

Attest:

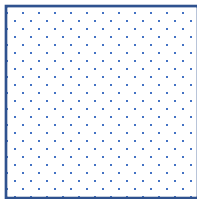
Andrea Chelemengos, MMC, CITY CLERK

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EXHIBIT “A”

PUBLIC LAND PRESERVATION OVERLAY (PLP)

The Official Zoning Map of the City of Los Altos is modified by adding the following category to the Land Use Designations to the Official Zoning Map legend.



- PUBLIC LAND PRESERVATION OVERLAY (PLP)

MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF LOS ALTOS, HELD ON THURSDAY, FEBRUARY 18, 2021 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

Please Note: Per California Executive Order N-29-20, the Commissions will meet via teleconference only. Members of the public may call (650) 242-4929 to participate in the conference call (Meeting ID: 148 028 0704 or via the web at <https://meetings.ringcentral.com/j/1480280704?pwd=MjRNN0F3WU4MHYvdHc3ay9Vclg3UT09> (Password: 017212). Public testimony will be taken at the direction of the Commission Chair and members of the public may only comment during times allotted for public comments. You may watch the meeting live at <https://www.facebook.com/CityOfLosAltos>. Members of the public are also encouraged to submit written testimony prior to the meeting at PlanningCommission@losaltosca.gov or Planning@losaltosca.gov. Emails received prior to the meeting will be included in the public record.

ESTABLISH QUORUM

PRESENT: Chair Ahi, Vice-Chair Bodner (arrived for item #2), Commissioners Doran, Marek, Mensinger, Roche and Steinle

STAFF: Community Development Director Biggs, Planning Services Manager Persicone and City Attorney Houston

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. Planning Commission Minutes

Approve minutes of the regular meetings of January 21, 2021 and February 4, 2021.

Action: Upon motion by Commissioner Steinle, seconded by Chair Ahi, the Commission approved the minutes from the January 21, 2021 Regular Meeting with a minor change to page 2 to change Robert to Roberta and the February 4, 2021 Regular Meeting as written.

The motion was approved (6-0) by the following vote:

AYES: Ahi, Doran, Marek, Mensinger, Roche and Steinle

NOES: None

ABSENT: Bodner

PUBLIC HEARING

2. City of Los Altos – Title 14, Zoning Amendment – Public Land Protection Ordinance

Proposed ordinance adding a Public Land Protection (PLP) overlay district to Title 14, Zoning, of the Los Altos Municipal Code that will provide for the protection of City owned property by requiring voter approval of the sale or transfer of title of any City-owned land to which the PLP overlay designation is applied and voter approval to remove the PLP designation once it has been applied. The proposed Ordinance relates to organizational or administrative activities of

governments that will not result in direct or indirect physical changes in the environment, and therefore is exempt from California Environmental Quality Act (“CEQA”) CEQA Guidelines Section 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment” as the Ordinance has no potential to result in a direct, or reasonably foreseeable, indirect impact on the environment.

Project Manager: Community Development Director Biggs

THIS ITEM WAS CONTINUED FROM THE FEBRUARY 4, 2021 MEETING.

Community Development Director Biggs gave the staff report presentation.

Commissioner Questions

Commissioner Mensinger asked if an advisory vote of the citizens instead of a binding vote was considered?

Answer: Community Development Director Biggs stated that it was not something that was considered to try and put some protections in place that the City Council could implement on public properties. There was a request by one Council member to require a super majority vote of the Council be voted on before this overlay district be applied, but given the feedback from the City Attorney, that is not something that can be done because this is an amendment to our Zoning Code. The application of this overlay district would be an amendment to our Zoning Map and the same rules would apply for amending other sections of the Zoning Code or Zoning Map.

Commissioner Mensinger then asked if there is a legal issue with being a binding or nonbinding vote?

Answer: Community Development Director Biggs said not that he is aware of and the Attorney’s office did not raise it as an issue.

Commissioner Mensinger asked if this would exclude leases and a potential 99-year lease on a property could keep being renewed?

Answer: Community Development Director Biggs said that is correct it does exclude leases.

Commissioner Mensinger said that it appears the Council wants to negate Measure C which was a citizen vote, to say we do not want to have to vote on this and now saying we are going to ignore that citizen vote and require a citizen vote to do something else now with the Civic Center.

Answer: Community Development Director Biggs stated that this came out of a request to the Council to redesignate portions of the Civic Center site, mainly the ball field and soccer field. In reviewing that, it became clear it would have been necessary to change the land use designation of these areas of the Civic Center so that they could be subject to the ordinance that the Council passed back at the time Measure C was being considered. But in order to apply a land use designation different from that currently applied to the Civic Center, a Subdivision Map, surveys to identify where all the buildings in the Civic Center are located, where they are in relationship to the new property lines created by the subdivision, and looking at easement and where utility lines come in would be needed. It became an expensive proposition to take through the process and would have

created non-conformities in the property because we would have had property lines closer to some of the existing buildings than are permitted in the zoning district of the Civic Center site..

Commissioner Steinle asked if this ordinance is broader than just the Civic Center property and would apply to all City owned land?

Answer: Community Development Director Biggs said yes, it would apply to all the City owned properties.

Commissioner Steinle asked if there was overlap between this and the existing ordinance that was passed in 2018 which respectively did the same thing for Open Space and Parks?

Answer: Community Development Director Biggs said yes, the previous version from 2018 protected those City owned land that had Other Open Space or Parks General Plan Land Use designations.

Commissioner Steinle asked why not just amend the previous ordinance instead of coming up with a new one?

Answer: Community Development Director Biggs said this gets back to the original path that got them in front of the ordinance this evening which was the desire to protect both the ball fields at the Civic Center Complex. But that had its own complications and this seemed to be the best course of action that staff could think of in terms of some zoning regulations the Council could use if it wanted to protect land that the City owns.

Commissioner Steinle stated that this gives the Council the power to do things, it does not create the protection itself specifically for any property at this point correct? And why not just an ordinance that says all City lands fall into this?

Answer: Community Development Director Biggs said yes, it does not create the protection at this point. Going back to the ordinance that was adopted some time ago and this one is an effort to try and protect park and open space land and the City owns lands that have land use designations other than open space. It gives a little more discretion in specifying which parcels or pieces of land should be subject to this proposed set of rules rather than saying they all should be subject to them.

Commissioner Roche asked given the discussion in the near future what is the impact this ordinance will have on 999 Fremont Avenue?

Answer: Community Development Director Biggs stated that was a good question since it is a piece of property that the City now owns and if this ordinance gets adopted, it does not automatically apply to all the properties, it only applies when the Council applies the PLP Overlay to properties. If the Council does not apply the overlay to 999 Fremont Avenue, it would not be subject to these restrictions.

Commissioner Marek asked how this differs from Measure C, or is this an end run around Measure C because we are cutting it into smaller pieces?

Answer: Community Development Director Biggs said not at all. It actually gives the Council broader discretion than Measure C because they can apply it to any City owned piece of property whether it have a Parks or Open Space designation or not. This could potentially be used across a broader spectrum of City owned land and if the Council chose to apply this overlay district to those properties, each one would need to come through a public hearing to apply the overlay district.

Vice-Chair Bodner asked if this is essentially allowing a Council majority of three individuals to permanently alter the ability of future Councils to make decisions on properties without getting and investing a huge amount in getting a vote to change that moving forward?

Answer: Community Development Director Biggs said it would take a majority of the Council to apply this PLP Overlay District to a piece of City owned land. It does not necessarily say it will restrict the ability of future Councils, it will provide another step in the process if they would like to do something like transfer title of the land for whatever reason. There is nothing on the books right now or any plans to sell any City properties. This is a piece of legislation to help protect public lands and give the voters an opportunity to weigh in on decisions to change title or sell a property.

Commissioner Marek asked what the additional step he mentioned in the process was?

Answer: Community Development Director Biggs said the additional step is that once this ordinance is adopted, we would then come back with a request to apply this overlay district to the Civic Center site, the entire complex, as a Zoning Map Amendment.

Commissioner Marek asked that if this Council applies the overlay district to that, then future Councils are unable to undo it?

Answer: Community Development Director Biggs said yes, that is correct.

Vice-Chair Bodner brought up a scenario in which you apply the overlay over all properties just described and we decide we want to use the library for an additional function by reconfiguring the space. In order to accomplish that, would a future Council have to go to a vote to invest the money and time and effort to get a vote of the entire population of Los Altos to make that kind of decision?

Answer: Community Development Director Biggs said no, only if the Council for some reason felt they needed to sell or transfer title of that land to another person or entity. The underlying standard zoning regulations still apply and would go through a similar process like that for the EOC, where that particular building took a use permit and exception to our setback requirements and design review. Same process and it would not trigger a vote of the people.

Vice-Chair Bodner then asked what is the problem we are trying to solve? If a future Council wanted to sell or transfer title to another entity, is it really possible for them to accomplish that without? Has

it ever happened that a three majority somehow sold or transferred title of a property that was not supported by our City Attorney or staff?

Answer: Community Development Director Biggs said he has not seen that take place in his tenure, but there is concern that it could take place in the future; and to get the public to weigh in on that potentiality is why this ordinance is being moved through the process.

City Attorney Houston added that this is just an ordinance and a future Council can repeal this ordinance. So, in the future, it is not binding. Had we taken this to the vote as an initiative and the people approved it like Measure C, the voters could impose this type of restriction to not being able to sell or lease land without a vote. If the voters had put this in, then that would have to have a vote of the people to remove that legislation because that would have been a voter initiated or Council initiated initiative. This is just an ordinance and it is future direction, but a future Council can always repeal this ordinance and have it not be binding. She wanted to make it clear that this is not the same as if the voters put this in and only the voters can remove it. So, it is not as binding on the future. In regards to future sales, there are sale of land statutes where you would have to make findings of public benefit and we would also be subject to the Surplus Lands Act where before we sold a property we would have to go through a notice process. The Surplus Land Act recently got amended in 2020, so there are other safeguards to selling off publicly owned land. It is all tied into HCD and they want inventory of land for future housing. So, before you can sell off publicly owned land you now need to give different notice provisions and have to notify HCD. She wants this Planning Commission to know and understand this is not as binding as if the voters put it in place. This ordinance can always be repealed by the Council at any time with a three-majority vote or put it back into place.

Commissioner Mensinger asked if that is the case when there is an overlay district that the citizens have voted on? Does the Council have to abide by that or can they retroactively say no, we are changing the ordinance?

Answer: City Attorney Houston said that yes, you would have to get another citizen vote to change it because it an initiative.

Commissioner Mensinger said she was confused that if a Council can remove this at any time, why are we doing this now?

Answer: City Attorney Houston said it was Council's direction. Community Development Director Biggs said it was an element of their 2020 Council priorities and as he mentioned earlier, it was to provide opportunities to provide greater protection for parks and open space land.

Commissioner Steinle asked if something has been designated as being in this PLP Overlay and subsequently the Council decided to remove the ordinance, it would not change the status of the overlay because that would have to be changed by a vote of the citizens?

Answer: City Attorney Houston said that is what this ordinance says, but if the City Council did not want to put it to a vote of the people, they could just rescind it. It does not have the binding effect as an initiative would. The City Council can always repeal an overlay so it would not exist anymore.

Vice-Chair Bodner said that the ordinance states to remove the overlay you need voter approval.

Answer: City Attorney Houston stated that is the intent of this ordinance, but from what she understands the Council can always still repeal it.

Commissioner Steinle asked if the repeal can only have a future effect, or would it undo everything that was done under the ordinance? If we designate the Civic Center as a PLP District and subsequently the Council repeals this ordinance, is the Civic Center no longer protected by the ordinance?

Answer: City Attorney Houston said that is how the ordinance is drafted, but the Council can always go back and repeal the ordinance and that would be applied to future City owned parcels.

Commissioner Steinle asked if something is already designated for this overlay district would it remove that designation completely from those lands that have been put under it, or would it require a vote of the citizens to undo that particular protection for those particular lands?

Answer: Community Development Director Biggs suggested adding some kind of legacy clause to this ordinance that says in the event this particular chapter is repealed, this PLP Overlay District will remain for those parcels to which it has been applied to.

Commissioner Steinle stated that the reason this is in front of them is because at the time Measure C was coming up and the protection of Open Space and Park lands, there was a promise specifically, with respect to the soccer field, that they would be protected. Since that did not happen, this is Council trying to live up to a previous promise made back in 2018 by the now two previous City Councils. That is why we are dealing with this now. The alternative was to do something specifically about the soccer field, but it got really complicated and expensive and this was the less expensive and onerous way of dealing with that problem.

Chair Ahi opened the meeting for public comment.

Public Comment

Resident Curtis Cole, former Planning Commissioner, stated he is a proponent of keeping City lands and does not like the sale of City owned lands. Behind those two statements lies a hidden complexity of City Planning, Finance and Community Development and a wise exception to those two. For example, citizens and voters do not have the time to learn the details, implications, and subtleties that they elect City Council members to appoint to appoint Commissioners such as themselves that are willing to take the time to make those considered decisions. Voters are more often moved by emotion than a rational analysis. So, why are we doing this? Are we guarding against future irresponsible City Council members or to prevent development in the downtown and a public-private partnership? It looks like a piece to undo the decision on Measure C which is in opposition to

respecting the wishes of the voters, which said do not do Measure C. Please remove the irreversible prohibition against changing PLP zoning on some areas. Respect the wisdom of future elected Council members and the Commissions they appoint and understand we do not know what the future will bring and imagine all the possible exceptional cases and opportunities that might arise that we would otherwise lose. If this was applied to 999 Fremont, it would seriously complicate any land swap opportunities that might help to fix that complicated intersection over there. Please recommend a different path as the zoning ordinance has it currently stated. There is no reasonable risk that the City is going to sell the Civic Center properties or the soccer field at Hillview. This is unnecessary dangerous.

Resident Roberta Phillips said she knows that this is a solution that the City Attorney and Jon Biggs came up with after a lot of thought. The reason why people want to protect parks is that they have additional protection that other lands do not have. For example, you cannot use certain pesticides in or around parks, and we cannot put cell towers in our parks, so there are good reasons to protect our parks especially when we have less park land than any other City per capita on the Peninsula. Land is very scarce, and this is the best possible solution to protect the park lands as promised. She urged the Planning Commission to approve the ordinance, said it was common sense, and it has been two years.

Chair Ahi closed the public comment period.

Commission Discussion

Commissioner Steinle advised an edit to change the 14.66 referenced in some parts of the ordinance to 14.64. He wants to send this to current City Council because they need the Council's advice on it. This was not done by the current City Council first, and second it was done without consideration of some of the things Roberta raised. The initial problem was that the soccer field was not designated as a park in the General Plan and thus lacks the protections of parks. That is what is motivating this. What this seems to focus on is whether you can alienate these lands and sell them or transfer title in another way. If we wanted to designate them officially, there would be a lot of work that would need to be done. This is an attempt to allow those protections which are currently available for Open Space and Parks as designated in the General Plan to the areas of the Civic Center that are not designated in the General Plan as Parks or Open Space.

Vice-Chair Bodner stated that everything the Commission discusses gets moved to the City Council. It either goes with the Commission's support or without their support. She has a different position on all this and she cannot support the ordinance. She has not heard a compelling reason why this is something that they would want to implement. In terms of protecting our parks, that was the same rationale that was given for Measure C and a majority of Citizens voted to reject that. Our parks have never been in danger of being sold and the fact is that the ordinance is not limited to parks, it potentially applies to all public land. We already voted on the issue and this feels like an attempt to subvert that. If not, then it's not even effective and does not accomplish what we want. Of course this will go to City Council, but noted again she is not supportive of it.

Commissioner Doran said she did not have a lot to add except that she agreed with Commissioner Bodner for several reasons. But Mr. Cole made a very compelling point especially relative to future

development and a way the City can implement public-private partnerships on some of the underutilized assets that we have. She is not generally supportive because she thinks this will undo something that has already been done.

Vice-Chair Bodner added that it sounds like there are already guardrails in place to protect our parks and the City should feel good about them because we have never actually sold any of our parks and those protections are working.

Commissioner Doran continued that there are too many unanswered questions and confusion regarding one Council approving it and another Council undoing it. Her understanding is that if this action passes and an overlay is applied, a future Council could actually undo that overlay.

Commissioner Mensinger agreed that this is an overreaching way to approach the problem. She thinks all of us want to protect our parks land, soccer fields and everything else, but his ordinance goes way beyond that. She is not sure that it is solving the problem that we all seem to think may or may not be out there in the future. Agreed with Commissioner Steinle that this is not a current City Council priority/initiative and this was the most compelling reason to her not to support this. That is the whole point of electing a City Council on a two-year cycle and that is how we decide as a community what direction we want to take. As Vice-Chair Bodner said, you are basically saying that a three-majority vote can hand string any reasonable decision from going forward in 20-30 years. She said that is not good public policy and if we want to protect our park land then maybe there is a better way to do it. She understands that it is an expensive process to go through, but having a citizen vote to decide public policy is also expensive. Since Measure C failed to pass with a 52 percent to 48 percent vote, that was compelling evidence that the citizens had spoken at that time and this is not the approach we want to take. We want our City Council to make these decisions and she is not in favor of supporting this.

Commissioner Roche stated that he thinks this should be sent back to the City Council and have them take a look at it to see if they are even still interested in doing this. He has real questions on the overlay and needs clarification on if voter approval is needed for removal of an overlay once applied. This seems to be trying to circumvent the intent of Measure C and he is not in favor of the ordinance as written.

Commissioner Marek agreed with Vice-Chair Bodner. He said it is not clear what this ordinance is intended to do and it is hard to understand why the City Council would do this two years after the vote on Measure C. It does seem like it is trying to get around that vote.

Chair Ahi agreed with other Commissioners. He said this initially came about because they wanted to protect the Civic Center, but the way this is presented he could see it being used in another way unfortunately. 999 Fremont Avenue was something he thought of when reading this ordinance because the designation could be applied to it and then we would have development issues with that particular parcel. This is confusing but thinks the initial idea of wanting to protect the Civic Center was good but does not know if this is the way to do it. He suggested asking Council to take another look at it and maybe they will have second thoughts about what their feelings are now. He stated that

it seemed the proposed ordinance did not have the full support of the Commission and asked what staff suggested.

Community Development Director Biggs said the Commission had a couple paths available to them: 1) Make a recommendation to the Council that his ordinance not be adopted as drafted, or 2) Refer the ordinance back to staff to explore including some kind of legacy language to clarify that the PLP designations remain in place on a piece of property to which is has been applied if this particular chapter has to get rescinded, or 3) You may ask staff to go back and look at it and to only apply it to City owned land with a Public and Institutional or Park land use designations so it would provide some additional parameters and limits on what this language could be applied to. We could make modifications and bring them back to the Commission and see if that is enough to allow you to support it.

Chair Ahi then asked the Commissioners if the PLP Overlay was only applied to the Civic Center and not any other City owned property, is that something that something the Commission thinks makes sense, or do they not like the idea at all?

Commissioner Steinle said that we already have an ordinance that was passed by the City Council in 2018 that extends these protections to certain public lands. All this does is extend those protections to all City-owned lands. Regarding 999 Fremont he said that it would require a finding by the City Council in favor of this PLP designation and there would be a hearing. It would not make sense to extend these protections to all City-owned land. He supported sending this back to staff to work out some of these issues and some clarification and then seeing the ordinance again after that.

Commissioner Mensinger said that she takes a different view and does not think it is good public policy to have something like this and she would not support it.

Vice-Chair Bodner agreed with Commissioner Mensinger and said that if something does not make sense to the City broadly, why apply it narrowly. This should not be sent forward and the Civic Center is not in jeopardy of being sold.

Commissioner Marek added that he agrees it is not good public policy and added if there was already a citizen vote on something similar, he does not see how this is not a run around that popular vote. He does not support any iteration of it.

Chair Ahi and Commission Doran asked for more detailed and elaborated minutes than the usual summary minutes since the Commission is not recommending this ordinance to the City Council.

Action: Upon motion by Vice-Chair Bodner, seconded by Commissioner Doran, the Commission moved not to recommend the ordinance as drafted to the City Council.

The motion was approved (6-0) by the following vote:

AYES: Ahi, Bodner, Doran Marek, Mensinger and Roche

NOES: Steinle

Commissioner Doran recused herself for agenda item No. 3 because she owns property within 500 feet of the subject property.

3. **CUP19-0004 – Hiep Nguyen – 1074 Riverside Drive**

A request for a conditional use permit to create a flag lot at 1074 Riverside Drive. In conjunction with a lot line adjustment request (administrative review), the proposal would create a 10,756 square-foot interior lot and a 16,982 square-foot flag lot. *Project Planner: Golden*

Senior Planner Golden gave the staff report and PowerPoint presentation recommending approval of application CUP19-0004 to allow for the creation of a new flag lot in accordance with the findings in Section 14.80.060 and subject to the Conditions of Approval in the staff report.

Commissioner Questions

Chair Ahi asked since the applicant got the letter of map amendment for the flood zone, is there a new base flood elevation for the AE flood zones or the area in terms of what the finished floor elevations would be at the back of the lot?

Answer: Senior Planner Golden stated that it is a little bit more complex because there is a higher standard when you build within an AE zone since it does not have a regulated floodway. With regards to the base flood elevation in an AE zone, we typically look for that plus an additional foot for a finished floor. Regardless of that, we would have to look at other things before we even considered allowing a building in this flood zone.

Commissioner Steinle asked whether Santa Clara Valley Water District would have to sign off on something like this because they own the creek?

Answer: Senior Planner Golden said no, it is a regulated floodway, and the property owners are responsible for maintenance. We would ask the Santa Clara Valley Water District for peer review to help us out because we do not have the expertise to analyze flood studies in these situations. We have adopted the Santa Clara Valley Water Protection Collaborative and that was one approach cities in the Santa Clara Valley took a few years back.

The project applicant Hiep Nguyen spoke in favor of the project stating that they would stay out of the flood zone, will provide two housing units, and asked the Commission for their approval of his application.

Chair Ahi then opened the meeting for public comment.

Public Comment

Resident Terri Couture, 903 Parma Way, said she has been here in Los Altos for 30 years. The creek has flooded twice. She stated concerns about trees disappearing along the creek banks from development even though they are protected, and the slope down to the creek that has been altered without permits in the past. She asked that the Commission protect the neighborhood, creeks, and wildlife.

Chair Ahi then closed the public comment period.

Commission Discussion

Commissioner Roche stated he had no concerns, the flag lot creation is ideal, and is in support of the application.

Vice-Chair Bodner said she was supportive.

Commissioner Mensinger gave her support.

Commissioner Marek said he was in support.

Commissioner Steinle stated he as in support.

Chair Ahi gave his support with the base flood elevations identified. He said it makes perfect sense to have two homes built on 30,000 square feet of lot.

Action: Upon motion by Commissioner Roche, seconded by Commissioner Steinle, the Commission voted to recommend approved of Application CUP19-0004 to create a flag lot and for staff to administratively approve the Lot Line Adjustment to accommodate the proposed lot arrangement.

The motion was approved (6-0) by the following vote:

AYES: Ahi, Bodner, Marek, Mensinger, Roche and Steinle

NOES: None

RECUSED: Doran

COMMISSIONERS' REPORTS AND COMMENTS

Commissioner Steinle asked about City Council meeting assignments for 2021. Community Development Director Biggs said we would have that document for them at the next scheduled meeting.

Chair Ahi said that he would represent for the Objective Standard on the February 23rd City Council meeting. Community Development Director Biggs said that the meeting on the 23rd is a City Council Study Session that will start at 6:00 PM.

POTENTIAL FUTURE AGENDA ITEMS

Community Development Director Biggs provided an overview of upcoming projects and meetings including 140 Lyell Street consideration at the February 23, 2021 City Council regular meeting agenda.

Community Development Director Biggs reminded the Commissioners about the 2021 Virtual Planning Commissioners Academy in March.

ADJOURNMENT

Chair Ahi adjourned the meeting at 8:35 P.M.

Jon Biggs
Community Development Director