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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION AMENDING THE OAKLAND GENERAL PLAN BY: (1) REMOVING THE LIMITATION THAT GENERAL PLAN AMENDMENTS MAY ONLY OCCUR DURING THREE DISTINCT CYCLES PER YEAR; AND (2) ADOPTING LANGUAGE TO CLARIFY THAT THE GENERAL PLAN CONTAINS COMPETING POLICIES, WHICH MUST BE BALANCED WHEN INDIVIDUAL PROJECTS ARE CONSIDERED BY THE CITY

WHEREAS, per California Government Code Section 65358(b), each of the seven mandatory elements of a general plan—land use, circulation, housing, conservation, open space, noise and safety—may be amended up to four times during any calendar year, for up to 28 amendments, combined; and

WHEREAS, Policy a3 of the *Land Use and Transportation Element (LUTE)* of the Oakland General Plan states that the City “will limit General Plan amendments to occur during three distinct cycles per year...”; and

WHEREAS, Policy a3 of the *LUTE* is significantly more restrictive than State law since it limits the City to amending all elements of its General Plan three times per year; and

WHEREAS, the City seeks to make Policy a3 consistent with State law and to restore the City’s flexibility to amend its General Plan as necessary; and

WHEREAS, while the City has historically not required more than three general plan amendment per calendar year, the City did use all of its amendments last year; and more importantly, based upon the number of development applications recently submitted, it is anticipated that the number of general plan amendments in calendar year 2005 could exceed the current limitation of three; and

WHEREAS, while policies in the General Plan must, by State law, be *consistent* with each other, General Plans contain numerous goals, policies and objectives that may also *compete* with each other if they address different goals, policies or objectives; and

WHEREAS, the City has interpreted its General Plan to acknowledge that there are competing policy goals and that a particular development projects may meet some goals, policies and objectives but not others, and that it is up to the decision makers to evaluate the development project and decide, on the whole, whether the project is consistent with the General Plan; and

WHEREAS, the balancing process between competing policies present in a development projects is consistent with California law; and

WHEREAS, competing policies do not necessarily result in a significant environmental impact under the California Environmental Quality Act (unless a physical change would occur); and

WHEREAS, the City has determined that the proposed amendments to the General Plan are not subject to environmental review under the California Environmental Quality Act since there is no possibility of a significant environmental effect [general rule; CEQA Guidelines §15061(b)(3)]; and

WHEREAS, the City Planning Commission at its meeting of June 1, 2005, considered the proposed amendments to the General Plan, and recommended to the City Council approval of the proposed amendments; and

WHEREAS, the Community and Economic Development Committee of the City Council at its meeting of June 14, 2005, also considered the proposed amendments to the General Plan, and also recommended to the City Council approval of the proposed amendments; now, therefore, be it

RESOLVED: that the City Council amends the Oakland General Plan by revising Policy a3 of the *Land Use and Transportation Element* as follows, by removing the limitation that General Plan amendments may only occur during three distinct cycles per year:

~~“To avoid erosion of the Plan by piecemeal amendments, the City of Oakland will allow limit General Plan amendments to occur during three distinct cycles per year to be coordinated with the Plan’s annual review as authorized by state law, which currently limits amendments to no more often than four time per calendar year per mandatory element and also exempts certain affordable housing projects from this restriction.”~~

FURTHER RESOLVED: that the City Council amends the Oakland General Plan by inserting the following language to the introductory section of Chapter 4 of the *LUTE* (“Implementation Program”)—which would apply to all the elements of the General Plan—in order to clarify that the General Plan contains policies that might compete with each other and that such does not necessarily result in a significant environmental impact under CEQA:

“The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). As stated in Section 15358(b) of the CEQA Guidelines, “[e]ffects analyzed under CEQA must be related to a physical change.” Section 15125(d) of the Guidelines states that EIRs shall discuss any inconsistencies between the proposed project and applicable General Plans in the “Setting” section of the document (not under impacts). Further, Appendix G of the Guidelines (Environmental Checklist Form) makes explicit the focus on environmental policies and plans, asking if the project would “conflict with any applicable land use plan, policy, or

regulation...adopted for the purpose of avoiding or mitigating an environmental effect". Even a response in the affirmative, however, does not necessarily indicate that the project would have a significant effect, unless a physical change would occur. To the extent that physical impacts may result from such conflicts, such physical impacts would be analyzed in the appropriate environmental document for the project."

FURTHER RESOLVED: that the City finds that, (a) the above amendments advance implementation of the General Plan by making City policy consistent with State law and restoring the City's flexibility to amend its General Plan as necessary, and by acknowledging that the General Plan, even though it is internally consistent, contains competing policy goals; (b) the amendments are consistent with General Plan policies; (c) there are no inconsistencies between the amendments and existing General Plan policies; and (d) the amendments are not contrary to the achievement of citywide goals.

FURTHER RESOLVED: that the above amendments are not subject to environmental review under the California Environmental Quality Act since there is no possibility of a significant environmental effect [general rule; CEQA Guidelines §15061(b)(3)], and that the City Administrator is directed to file a notice of exemption for the amendments.

FURTHER RESOLVED: that the record before this Council relating to this resolution includes, without limitation, the following: (1) all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials and final notices regarding the above General Plan amendments; (2) all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the proposed General Plan amendments, and all written evidence received by relevant City Staff before and during the public hearings on the above amendments; and (4) all matters of common knowledge and all official enactments and acts of the City, such as the general plan, Oakland Municipal Code (including, without limitation, the Oakland real estate regulations and Oakland Fire Code), Oakland Planning Code, other applicant City policies and regulations, and all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: that the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are: (a) Community and Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, California.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST

LATONDA SIMMONS
Interim Agency Secretary/City Clerk and
Clerk of the Council of the City of Oakland, California