



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** June 7, 2022

**TO:** Mayor and Councilmembers

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Interim Urgency Ordinance Limiting New Hotel Development Pending Completion Of The 2023 Housing Element

**RECOMMENDATION:** That Council:

- A. Receive a staff report regarding an interim urgency ordinance to temporarily limit development or expansion of hotels; and
- B. Adopt by reading in full, and by a four-fifths vote, an Interim Urgency Ordinance of the Council of the City of Santa Barbara Limiting the Development or Use of New Hotel Rooms Pending Adoption of the 2023 Housing Element; or
- C. Direct staff to return on June 28, 2022 with an interim urgency ordinance to temporarily prohibit development, use, or expansion of hotels pending adoption of the 2023 Housing Element.

### **EXECUTIVE SUMMARY:**

On May 17, 2022, the City Council approved goals for the City's 6th Cycle 2023 Housing Element. These goals include commitments to prioritizing housing development that is affordable to the City's workforce and discouraging conversion of housing to other uses. Council also directed the City Attorney and the City Administrator to schedule, in early June, further consideration of interim urgency zoning that would prevent new hotel development pending completion of the 2023 Housing Element.

Community Development staff recommend allowing some pending hotel development projects to proceed while the 2023 Housing Element is being drafted. A draft interim urgency ordinance is proposed to reflect that recommendation. In order to facilitate an informed Council deliberation, this report outlines other options to govern the point in the development review process at which the temporary hotel prohibition could apply. In addition, this report and interim urgency ordinance give Council the opportunity to enact

an interim ordinance immediately on June 7, or to direct staff to return at a later date, such as June 28.

## **DISCUSSION:**

Planning Division staff are currently drafting an update to the City's Housing Element and Council approved eight overarching goals on May 17, 2022 to guide housing policy from 2023 through 2031. The development of new hotel rooms can frustrate the approved Housing Element Goals in several ways, including the following:

- Causing conversion of land zoned and available for residential housing use to commercial hotel use, including lawful and unlawful short term vacation rentals;
- Causing the value of land zoned and available for residential housing to increase, thereby making housing development infeasible to developers, or unaffordable to low-income, very low income, or extremely low income households who work in the hospitality industry;
- Creating additional demand for housing affordable to hospitality industry service workers through the creation of hospitality industry service worker jobs.

These facts could support a Council finding that any new hotel development pending completion of the 2023 Housing Element creates an urgent threat to the health, safety and general welfare of residents of the City and the surrounding region. As part of the Housing Element update, staff anticipate exploring zoning changes and/or programs that prohibit hotels in certain areas or at least incentivize housing development over hotel development in areas that allow both uses. Depending on other workload priorities and staff resources, it could take up to three years to implement necessary zoning changes identified in the 2023 Housing Element. An urgency ordinance to limit some pending hotel development until the 2023 Housing Element is adopted and related programs are implemented would allow staff to adequately study the issue, receive public input, and make an informed and strategic recommendation to Council.

## Background

The Housing Element declares state law that "the availability of housing is a matter of vital statewide importance and the attainment of decent housing and a suitable living environment for all Californians is a priority of the highest order." (Gov. Code, §65580) The Housing Element is a required component of the City's General Plan, which provides a "constitution" for the management and growth of the City, and guides future policy decisions. The Housing Element provides goals, policies, programs and implementation measures that support housing growth and retention across all income levels.

As part of the state-mandated 2023 6th Cycle Housing Element, the City is in the process of updating the Housing Element previously adopted in 2015. Establishing overarching, agreed-upon goals for housing is one of the first steps in updating the Housing Element.

The goals must reflect the City's commitment to affirmatively expand fair housing, as well as to the maintenance, preservation, improvement, and development of housing.

On April 28, 2022, at a joint special meeting of the City Council and the Planning Commission, staff presented draft Housing Element Goals for Council and Planning Commission consideration. Goal No. 4 was designed to "Promote Housing Stability" by implementing tenant protection measures, promoting full-time occupancy of existing housing, and discouraging conversion of housing to other uses. During the April 28<sup>th</sup> meeting, several Planning Commissioners and Councilmembers expressed concern over existing residential properties, or properties zoned for residential use, being converted to or redeveloped as hotels. This led to an inquiry about whether a temporary moratorium could be enacted to prohibit new hotel development pending completion of the Housing Element update.

The April 28 meeting was continued by Council to May 17, 2022 for action to approve the draft Housing Element Goals. A motion to approve the goals, as refined and amended by Council, was adopted unanimously. Again, Council expressed concern over the development of hotels in conflict with housing goals while the Housing Element was being updated and asked staff to return to Council for consideration of an interim urgency ordinance to prohibit the development of new hotel rooms. New hotel development could frustrate implementation of the approved housing Element Goals, as outlined above. An interim urgency ordinance would allow staff and decision-makers to consider and appropriately address these impacts as part of the Housing Element update.

#### Proposed Interim Urgency Ordinance

As far as can be determined through review of the City's files and permit tracking system, there are 21 hotel development projects involving 767 hotel rooms that could potentially be subject to an interim urgency ordinance (Attachment 1 – Pending and Recently Approved Hotel Projects). One hotel project currently has an issued building permit and may develop 111 hotel rooms; six hotel projects have received some type of discretionary approval (either land use or design review approval) resulting in a potential development of 190 rooms; one hotel project application has been deemed complete pursuant to the Permit Streamlining Act and is proposing 6 new rooms; and 13 projects have either submitted an application or a pre-application, which if constructed would result in 460 hotel rooms. A detailed breakdown of the proposed room count, zone, and project milestones is provided in Attachment 1. A map of the zones that allow for hotel use is provided as Attachment 2, and distinguishes between areas that allow residential and hotel use, and areas that allow hotel but not residential use.

Established case law provides that a protected property interest does not vest in an application or discretionary approval until a building permit has been obtained in good faith and substantial work has been performed in reliance on the permit. Staff does not recommend using this milestone as the threshold for application of the urgency ordinance, as a significant amount of developer time and resources are invested into a project to get

to the permit issuance stage. This would also send an inconsistent message at a time when City staff are making strides to improve clarity and predictability in the land development process.

As drafted, the proposed ordinance would prohibit many pending applications for new or expanded hotel development from proceeding unless the project application has been deemed complete. Any proposed hotel development application that was deemed complete by the City pursuant to the Permit Streamlining Act (Government Code sec. 65920 et seq.) as of May 17, 2022 would be allowed to proceed through the development process. This in no way conveys or implies any obligation by the City to approve any future discretionary approvals that may be required or requested. In the event that a hotel development application does not require discretionary review (i.e., requires only a ministerial action), a Zoning Clearance must have been granted as of May 17, 2022 in order to proceed through the development process.

This temporary prohibition would be applicable in all zones that allow hotels, with the exception of the Coastal Zone.<sup>1</sup> A hotel development moratorium in the Coastal Zone is not recommended because it is contrary to the City's approved Local Coastal Program and Coastal Act, which prioritizes visitor-serving accommodations and recreational uses. Furthermore, staff believe it is unlikely that the California Coastal Commission would support zoning changes or programs that would materially restrict hotel development in the Coastal Zone where hotels are currently an allowable use, so we do not anticipate significant hotel-related development policy or ordinance changes in the Coastal Overlay Zone (S-D-3) as a direct result of the Housing Element update.

As drafted, the interim urgency ordinance would prohibit seven projects involving 126 proposed hotel rooms from proceeding while the 2023 Housing Element is being developed. Council could, if it chooses, establish a more or less restrictive threshold for hotel projects. Three alternatives are discussed below.

#### Alternatives to the Proposed Interim Urgency Ordinance

1. **Projects with Submitted Applications.** Under this option, any proposed hotel development application (formal Planning Applications and any Pre-Applications that are required by the Municipal Code) submitted to the City as of May 17, 2022 would be allowed to proceed through the development process. This is the least restrictive option and would allow the greatest number of hotel projects (17 projects involving 718 hotel rooms) to proceed through the development process after adoption of the interim urgency ordinance, assuming that all pending and future projects in the Coastal Zone are allowed to proceed under this option. This in no way conveys or implies any obligation by the City to approve any future discretionary approvals that may be required or requested.

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<sup>1</sup> Hotel is defined to have the same meaning as provided in Santa Barbara Municipal Code sections 28.04.020 and 30.295.040 P., and includes short-term vacation rentals.

**2. Projects that Have Received Land Use or Design Review Approval.**

Under this option, any proposed hotel development application that received land use approval from the Staff Hearing Officer or Planning Commission, or Project Design Approval (PDA) from the Architectural Board of Review (ABR) or Historic Landmarks Commission (HLC) as of May 17, 2022 would be allowed to proceed through the development process. This alternative would be slightly more restrictive than staff's recommendation and subject one additional project, proposing 6 new hotel units, to the interim urgency ordinance. This in no way conveys or implies any obligation by the City to approve any discretionary approvals that may be required or requested after land use or Project Design Approval.

Projects that have received a land use approval and/or PDA from a design review body generally have fairly complete design drawings and are working toward refining the aesthetic details of the project.

**3. Projects with Issued Building Permit(s).** Under this option, any proposed hotel development application that has been issued a building permit as of May 17, 2022 would be allowed to begin and continue construction during the interim urgency ordinance period. This option would allow one project, involving 111 hotel rooms, to proceed through the construction process. This project is located in the Coastal Zone and, under staff's recommendation, would be allowed to proceed in any of the alternatives.

This is a slightly less restrictive threshold than the legal standard that provides that a protected property interest does not vest in an application or discretionary approval until a building permit has been obtained in good faith and *substantial work has been performed in reliance on the permit*, because it would allow hotel projects with issued permits to continue in the process regardless of whether work had been performed under the permit.

Interim Ordinance Process and Extension

Government Code section 65858 and City Charter section 511 allow the City Council to adopt an interim urgency ordinance to protect the public peace, health, safety, and welfare by prohibiting any uses that may be in conflict with a contemplated General Plan, specific plan, or zoning proposal. An urgency measure requires a four-fifths vote of Council under state law, and 5 affirmative votes under the City Charter.

**Action on June 7<sup>th</sup>**

If adopted on June 7<sup>th</sup>, the proposed interim urgency ordinance would become effective immediately and would expire in 45 days (i.e., July 22, 2022), unless extended by the City Council. Due to Council's two week summer break in July, Staff recommends returning to Council on June 28, 2022 to extend the urgency ordinance by 10 months and 15 days. Because no public notice would be provided in advance of adoption of an interim ordinance on June 7<sup>th</sup>, the ordinance may initially only be extended for 10 months and 15

days. If additional time is required after that to implement new housing policies set forth in the adopted 2023 Housing Element with respect to hotel development, the interim urgency ordinance may be extended twice in one-year increments.

**Action on June 28<sup>th</sup>**

If Council decides to postpone adoption of an interim urgency ordinance on June 7, and requests that staff return with an ordinance for adoption on June 28, 2022, staff will publish notice of the public hearing at least ten days prior to the meeting. The interim urgency ordinance would still expire in 45 days unless extended by a four-fifths vote, and, because the initial adoption was publically noticed, the ordinance may be extended 22 months and 15 days.

Regardless of the length of time the urgency period is extended, no later than ten days before its expiration, state law requires that a written report be prepared, describing the measures taken to alleviate the conditions that led to the adoption of the ordinance, and presented to the City Council.

**BUDGET/FINANCIAL INFORMATION:**

Adoption of an urgency ordinance to temporarily prohibit development or expansion of hotels pending adoption of the 2023 Housing Element may decrease or delay the collection of new Transient Occupancy Tax revenue and result in an overall chilling effect on land development projects in general.

**ENVIRONMENTAL REVIEW:**

This Ordinance is not subject to environmental review pursuant to the State Guidelines for Implementation of the California Environmental Quality Act sections 15060(c)(2) and 15060(c)(3) pertaining to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical changes to the environment directly or indirectly because it prevents changes to the environment pending the completion of the contemplated research and studies.

- ATTACHMENTS:**
1. Pending and Recently Approved Hotel Projects
  2. Zoning Designations Related to Potential Hotel Sites

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Council Agenda Report  
Interim Urgency Ordinance Limiting New Hotel Development Pending Completion Of The 2023  
Housing Element  
June 7, 2022  
Page 7

**APPROVED BY:** City Administrator's Office