



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: March 3, 2009

TO: Ordinance Committee

FROM: Planning Division, Community Development Department

SUBJECT: Alternative Building Heights Charter Amendment

RECOMMENDATION:

That the Ordinance Committee review and make a recommendation to Council on draft charter language amending City Charter Section 1506 with regard to changing the City Charter's 60-foot building height allowance for certain commercial zones.

EXECUTIVE SUMMARY:

The prospect of placing an alternative building height charter amendment on the November ballot was most recently discussed at the joint meeting of the City Council and Planning Commission on February 5, 2009. After hearing input from the Architectural Board of Review, Historic Landmarks Commission, Planning Commission, and members of the public, it was decided to continue the discussion at the Ordinance Committee.

The purpose of meeting with the Ordinance Committee is to:

- Review the approach of a possible supplemental charter measure that voters could approve, should the Save El Pueblo Viejo (SEPV) measure pass;
- Discuss the provisions that could be included in the measure and companion ordinance to be adopted by the City Council;
- Consider amendment to the building height definition; and
- Make a recommendation to Council.

Previous discussions with the Ordinance Committee included a new 5' variable setback for buildings in the C-2 and C-M zones. Based on recent direction from design boards Planning Commission and Council, the new setback standard will be processed separately as an independent ordinance amendment and not as part of the subject building heights charter amendment.

DISCUSSION:

I. Charter Section 1506 Language

Below is the charter language on building heights as it exists today and as recommended by the citizen initiative known as Save El Pueblo Viejo (SEPV). With Ordinance Committee direction, staff could continue work on an alternative Charter Amendment as well. However, a suggestion was made by Commissioner Lodge at the Joint City Council/Planning Commission meeting to consider having a supplement to the SEPV language that an exception to the 40/45 foot height be allowed for Community Priority Projects, affordable housing or rental projects. Although there was not much discussion of this concept because it came up late in the meeting, staff believes it has merit and should be further considered as described below.

A. Existing Building Heights Charter Language (Charter Section 1506)

Charter of the City of Santa Barbara - Section 1506 – Building Heights. Limitations

It is hereby declared the policy of the City that high buildings are inimical to the basic residential and historical character of the City. Building heights are limited to 30 feet in areas zoned for single-family and two-family residences; are limited to 45 feet in areas zoned for residences for three (3) or more families, for hotel, motel and office use; are limited to 60 feet in areas zoned for industrial, manufacturing and other commercial uses; and 30 feet for all other zones. The Council may, by ordinance, set limits of heights less than these maximums. The Council may, by ordinance, set up reasonable methods of measuring the heights set forth in this section. (Approved by election held November 7, 1972)

B. Save El Pueblo Viejo Charter Language Amendment

Amend Section 1506 as follows: “It is hereby declared the policy of the City that high buildings are inimical to the basic residential and historical character of the City. Therefore, building heights are limited to 30 feet in areas zoned for single-family and two-family residences; and building heights in areas zoned for residences for three (3) or more families and all other building heights shall be limited to 45 feet except in the El Pueblo Viejo Landmark District where building heights shall be limited to 40 feet. The Council may, by ordinance, set limits of heights less than these maximums. The Council may, by ordinance, set up reasonable methods of measuring the heights set forth in this section.”

C. Supplemental Charter Measure Should SEPV Height Measure Pass

Should the SEPV Charter Measure pass, staff believes that there is support by some Planning Commission and Council Members and the public allowing Community Priority Projects to exceed the 40 and 45 foot height under circumstances discussed below. At this time, city staff would like the Ordinance Committee to discuss recommendation of the drafted supplemental charter measure that could follow the SEPV Charter Amendment on the ballot.

The City Council's Proposed Charter Section 1506 "Supplemental Amendment" could read as follows:

The City Council may, by ordinance, establish a special use permit process to supplement the November 2009 voter approved amendment to this Charter section 1506 in order to allow a building of up to sixty (60) feet (or height TDB) in height within those areas of the City zoned for commercial, retail, and industrial uses so long as the building is intended to provide for a Community Priority project (as defined by the City Council ordinance) or to provide for a building project containing residential units with at least thirty percent (30%), fifty percent (50%) or %TBD of the units permanently restricted for ownership or occupancy by families qualifying as Middle Income households or lesser incomes under the City's established Affordable Housing Policies and Procedures or provides permanent rental housing that could not be converted to condominiums. This Charter Amendment shall only take effect if an amendment to City Charter Section 1506 further limiting the heights of buildings within the City is approved by the voters of the City at the General Municipal Election of November 3, 2009.

II. Community Priority Projects

A decision needs to be made as to whether the existing definition is supported for the exceptions to height or whether it needs to be more limited. There is also a need to consider new criteria for projects proposing to exceed the established height limit because they provide a community benefit.

A. Existing Definition of Community Priority Projects

Community Priority Projects are defined in Charter Section 1508 and the Municipal Code as those which are found by the City Council as necessary to meet present or projected needs directly related to public health, safety or general welfare.

A "general welfare project" is also defined in the Municipal Code as a project which has a broad public benefit (for example museums, childcare facilities, or community centers) and which is not principally operated for profit.

Staff supports using this definition of Community Priority Projects. It has been used for close to twenty years under the provisions of the commercial growth control Measure E Charter Amendment. With the public scrutiny and approval required by the City Council, staff feels it would be an appropriate definition to use for building height as well.

B. Additional Provisions to Define a Community Priority Project

A Community Priority Project for purposes of exceeding building height could also include the following components:

1. Percentage Affordable to Middle Income or Less

Discussions on this provision have included applying to projects of 10 or more units; applying a 30% affordability criteria; and considering allowing projects that meet the upper middle income ranges to be included in Community Priority Projects. Planning Commissioners have also expressed the importance of not exacerbating the “jobs/housing imbalance” created by the market-priced units.

The City, in PlanSB, has initiated an economic study to address issues of job creation as a result of market housing development and effects on affordable housing ranges. While there is support for projects where 30% of the units are affordable to middle-income or lower-income households (households earning 160% or less of the Area Median Income), some believe that is not enough to help in the jobs housing imbalance concern or for purposes of exceeding a new building height limit. And, while others may support 50% or more of the units being affordable because this type of project may be more of a community benefit in order to exceed the building height, it may not be feasible from an economic standpoint. At this point, it is more of a policy decision of what specific percentage of affordability is put in the charter. Voters would be clear on what they are voting for if a percentage is included in the charter. However, the percentage cannot be easily amended as economic conditions change.

In addition, staff recommends the affordability apply to any project requesting an exception to building height (not only projects of 10 or more). The concern has been that we want to discourage the smaller projects to have very large penthouse type units with only a couple affordable units.

2. Dedicated Rental Units

There is no consensus on whether projects that provide rental housing should be affordable to be considered as an exception to allow a building height in excess of 40/45 feet. Some Planning Commissioners felt that to be a community benefit, the project must have affordable rental units. In terms of specifying an amount of the project floor area that must be rental (e.g., in a mixed-use project), the only idea discussed was a possible standard that 50% of the building contain rental units. We are requesting direction from the Ordinance Committee on this issue for inclusion in the companion ordinance.

C. Current Process for Community Priority Projects

Currently, Council Resolution 99-036 establishes the administrative procedures for processing a Community Priority Project. With the application, the applicant must include a Needs Assessment providing staff and the Council with information necessary to make the finding that the proposed project meets a “present or projected need directly related to public health, safety or general welfare.” The City Council then makes a

preliminary and non-binding identification of community priority status for the project which allows the project to continue through the planning process. Whether the project requires Planning Commission approval or not, the Planning Commission is the body required to make a recommendation to the Council for a Final Designation as a Community Priority Project. Staff expects that a similar Council Resolution specific to allowing projects to exceed the established building height will be required to implement this potential charter amendment.

D. Draft Provisions of Future Ordinance for Projects Exceeding 40/45 Feet in Height

The following are implementation details to be included in an ordinance that would carry out the supplemental charter amendment.

1. The City Council could grant a special use permit (SUP) for a building containing a “Community Priority” Affordable Housing, and/or rental housing.
2. The companion City Council ordinance would define “Community Priority” for the purposes of Charter Section 1506 as follows:

“A Community Priority project is one which has a broad public benefit (for example: museums, child care facilities, or community centers) and which is not operated for private profit.” [i.e., *the existing definition at SBMC Section 28.87.300(B) (6)*]
3. The companion ordinance would not create any new definitions of “Affordable Housing” and would only reference the existing City Affordable Housing Policies and Procedures.
4. The companion ordinance would establish a process similar to the existing Measure E “Community Priority” designation process, i.e., it would involve a preliminary and final designation by the City Council.
5. The companion ordinance would provide for a similar process for designating rental projects or an “affordable” project which may exceed the 40-foot height limitation – that is, the Council would issue a determination that a project was affordable and that it qualified for an exemption to the Charter Section 1506 height limitation of 40 or 45 feet.
6. A concept design review from either ABR or HLC (depending on the location) would be required to provide the City Council with a recommendation on the preliminary determination.
7. The companion ordinance would provide that an exemption to the Charter height limitation could not be obtained for specially zoned areas – Upper State Street zoned SD-2, and for the Coastal Zone,

SD-3, where a 45-foot height limit is the current zoned maximum height, i.e., the same zoned height restrictions as those which currently exist will be expressly continued in the Council's companion ordinance.

8. A draft of the companion ordinance would accompany the voter materials and will have been adopted by the Council prior to the election but will expressly state that it will not take effect unless and until the voters approve the SEPV Charter Section 1506 amendments. As an ordinance adopted by Council, it could be subsequently amended only with a super majority (five affirmative votes) of the City Council.

E. Additional Findings/Criteria for Community Priority Projects

The Ordinance Committee had requested that the Planning Commission suggest possible criteria that the Council could use in deeming the project a Community Priority Project for purpose of exception to the building height (this would be in addition to II. A. and II. B above and any findings required of the project application):

1. Substantial Open Space

That the project provides substantial open space on the site. The ABR and HLC agreed that any project to be considered for an exception to building height should also provide more open space on the site. The boards felt that the location and amount should remain flexible depending on the use and configuration of the site (this is separate and distinct from the variable 5-foot front yard setback that will be processed as a separate ordinance amendment for all projects in the C-2 and C-M zones.)

2. Quality Architecture and Design

ABR members felt that strong architectural design is as important a community benefit as the affordable and rental housing being considered. All of these projects with non-residential, multiple units, or mixed use would require either ABR or HLC review, so architectural/design review of the architecture as well as landscaping will require design approval. A finding of exemplary architectural quality could be built into the concept review by ABR/HLC for those buildings greater than the established height limit. Staff requests Ordinance Committee input on this.

III. Building Heights Definition (SBMC Section 28.04.120)

The current definition of building heights is as follows:

The maximum vertical height of a building or structure at all points measured from natural or finished grade, whichever is lower. Architectural elements that do not add floor area to a building, such as chimneys, vents, antennae, and towers,

are not considered a part of the height of a building, but all portions of the roof are included.

The definition includes all roof areas up to the ridge line, and there are exemptions for architectural elements such as towers. The ground level from which the height is measured is currently the lower of either the existing grade or new finished grade. This definition was discussed extensively in the Neighborhood Preservation Ordinance Update and it works very well for residential developments, both infill and in the hillside areas. However, it does not work well for commercial and mixed use properties in the commercial areas where there are sloping sights, and flood control standards as well as preference for sloped roofs.

Staff recommends changing the definition to recognize grade changes due to the topography of the downtown and flood control standards and to allow 3-story buildings with sloped roofs within 40 feet. The measuring point could reference the Base Flood Elevation (BFE) for projects located within a Flood Plain. However, this is an ordinance change that is not required prior to Council action on a Charter Amendment. With timing concerns for placing a Charter Amendment on the ballot, staff would recommend that modifications to the building height definition occur after Council action on a Charter provision.

IV. Ordinance Committee Input and Recommendations:

The following are key issues and questions that City staff is looking for direction from the Ordinance Committee before returning to the City Council on March 24, 2009.

- A. Should an increase to the proposed 40/45 SEPV recommended height limit be allowed for Community Priority projects as discussed above?
- B. Does the Committee support the approach of a supplemental charter amendment to the SEPV Charter Amendment instead of an alternative charter amendment?
- C. If so, does the Committee agree with staff recommendation to use the existing definition of Community Priority Projects for those that exceed the height limit?
- D. Does the Committee agree that there should be a 30% percent threshold for affordability in order to be considered a community priority project and that it be applied to all projects that exceed the base height?
- E. Should there be a minimum building area requirement occupied by rental units in order to exceed the base height? Should rental units have affordability restrictions or can they be market rental to exceed the height?
- F. Does the Committee recommend that open space and quality architecture findings be made as part of the Community Priority process?

- G. Does the Committee agree that the definition of building height be amended for the commercial zones to allow for sloped sites, flood control standards and sloped roofs?

NEXT STEPS:

1. Council Action to Initiate Environmental Review – Once the draft language of the Charter Amendment and Ordinance have been reviewed by the Ordinance Committee, the matter would be brought before the full Council for initiation. This needs to occur by March 24, 2009 in order to allow adequate time for the items outlined below and meet the deadline for placing a measure on the November 2009 ballot.
2. Environmental Review - Staff would complete environmental review under CEQA and work with the City Attorney's office on the draft companion ordinance.
3. Planning Commission Review - The Planning Commission would have public comment on the environmental document and make a recommendation to Council on the key components of the charter amendment and draft companion ordinance.
4. Council Hearing - Adoption of Environmental Review (assuming the project is a Negative or Mitigated Negative Declaration), approval of final language for charter amendment, and introduction of companion ordinance.
5. Council – Adoption of ordinance that would implement charter amendment provisions should the charter amendment pass.
6. Final charter language due to City Clerk by June 16, 2009
7. Election, November 10, 2009

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