

MEMORANDUM

TO: Paul Benoit, City Administrator
Kevin Jackson, Planning Director

FROM: Michelle Marchetta Kenyon, City Attorney
Via: Chad W. Herrington, Assistant City Attorney

DATE: July 29, 2016

RE: Interpretation of Section 9.02 of the City Charter



In response to questions from the public and City of Piedmont ("City") staff regarding Section 9.02 of the City Charter, the City Administrator and Planning Director requested a legal opinion from the City Attorney interpreting certain requirements of Section 9.02 of the City Charter. It is our understanding that this memorandum will be distributed to the public.

Question Presented

Can the City Council modify the permitted or conditional uses within an established zone without submitting the question to a vote at a general or special election?

Short Answer

Yes. The City Charter provides that "no zones shall be reclassified without submitting the question to a vote at a general or special election." Both the Charter and City Code language support the City's long standing interpretation that zone reclassification is the changing of property from one zone to another, not modifying the permitted or conditional uses that are allowed within each zoning classification. Thus, modifying uses within an established zone does not require a vote at a general or special election under the City's Charter.

Analysis

The City's Charter provides that "[t]he Council may classify and reclassify the zones established, but no existing zones shall be reduced or enlarged with respect to size or area, and no zones shall be reclassified without submitting the question to a vote

Paul Benoit, City Administrator
Kevin Jackson, Planning Director
July 29, 2016
Page 2

at a general or special election.” (City Charter, § 9.02 [emphasis added].) While the terms “reclassified” or “reclassify” are not defined by the Charter or City Code, the language of both the Charter and City Code support the City’s interpretation that a zoning reclassification is the changing of property from one zone to another.

Several provisions of the City Code make clear that “reclassification” or “reclassify” refers to changing property from one zone to another. Section 17.36.1 of the City Code provides that “[u]pon the filing of a petition by an individual, the Council may also propose reclassification of property from one zone to another or to redraft the boundaries of any zone.” (Emphasis added.) Section 17.36.3 of the City Code provides that “[w]hen an individual proposes reclassification of property from one zone to another, a written application shall be filed with the Director of Public Works.” (Emphasis added.) Lastly, Section 17.36.5 of the City Code provides that “[t]he Council may also reclassify property to Zone A with the written consent of all property owners, as provided in section 9.02 of the City Charter.” (Emphasis added.) All three of these sections were adopted by the City in 1987, and have been part of the City Code for almost 30 years. These sections make clear that reclassification was intended to apply to changing properties from one zone to another. This interpretation is both supported by language in the Code and by the City’s long standing practice of interpreting the provision in this manner.

Moreover, none of the language in the Charter or City Code suggests that modification of the permitted or conditional uses allowed within each zone constitutes a “reclassification” of the zone requiring a vote at a general or special election. The Code divides the City into five separate zones and establishes the “intent” for each zone, which describes the purpose and character of each zoning classification. (City Code, §§ 17.3 through 17.14.) The Code sets forth permitted uses and conditional uses that are allowed within each zone to effectuate the intent of each zoning classification. (Id.) However, the City Code does not contain any restrictions on the authority of the Council to modify those permitted and conditional uses, and does not contain any language to suggest that a modification of those uses would constitute zone reclassification. (Id.) Further, apart from permitting property owners to voluntarily rezone their property for single-family use, the City Charter is silent on Council authority to modify the permitted and conditional uses allowed within the established zones.

Consistent construction of a statute, ordinance, or charter provision, “especially when it originates with an agency that is charged with putting the statutory machinery into effect, is accorded great weight.” (*Mason v. Retirement Bd. of City and County of San Francisco* (2003) 111 Cal.App.4th 1221, 1228; and *City of Walnut Creek v. County*

Paul Benoit, City Administrator
Kevin Jackson, Planning Director
July 29, 2016
Page 3

of *Contra Costa* (1980) 101 Cal.App.3d 1012, 1021 [citations omitted].) “Such deference is particularly warranted when an agency’s interpretation is of long standing.” (*Id.*) Here, the relevant City Code provisions that discuss what constitutes a “reclassification” of City property were adopted almost 30 years ago in October of 1987. Since then, there have been several modifications of the permitted and conditional uses within the established zones,¹ and the City has consistently interpreted Charter Section 9.02 as not requiring a vote at a general or special election before the City Council takes such action. This long standing and consistent interpretation of Charter Section 9.02 by the City is reasonable in light of the language in the Charter and City Code, and must be accorded great weight.

CONCLUSION

The City has long interpreted zone “reclassification” under Charter Section 9.02 as changing property from one zone to another, not a modification of the permitted and conditional uses allowed within the established zones. This is a reasonable interpretation of the Charter given relevant language in both the Charter and City Code. Therefore, the City Council may modify the permitted or conditional uses within an established zone without submitting the question to a vote at a general or special election.

¹ The permitted and conditional uses for Zones A and C were modified in January of 2006 (Ord. 662 N.S. 1/06), May of 2012 (Ord. 703 N.S., 05/12), and December of 2013 (Ord. 712 N.S., 12/13). The permitted and conditional uses in Zone B, D and E were modified in May of 2012 (Ord. 703 N.S., 05/12), and December of 2013 (Ord. 712 N.S., 12/13).