

RESOLUTION NO. R22-33

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, ADOPTING A PROPOSED INITIATIVE MEASURE AMENDING THE CITY OF PALOS VERDES ESTATES MUNICIPAL CODE REQUIRING APPLICANT CERTIFICATION OF COMPLIANCE WITH CC&RS PRIOR TO BUILDING PERMIT ISSUANCE AND REQUIRING VOTER APPROVAL FOR REZONING IN OPEN SPACE ZONING DISTRICT, AND FINDING SUCH ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). .

WHEREAS, pursuant to authority provided by law, a petition has been filed with the City Council of the City of Palos Verdes Estates ("City"), signed by at least ten (10%) percent of the number of registered voters of the City, to submit to the qualified electors a proposed initiative measure amending the City of Palos Verdes Estates Municipal Code to require applicants for residential and commercial developments certify that the proposed development complies with any applicable covenants, conditions, and restrictions ("CC&Rs") prior to building permit issuance and requiring voter approval for rezoning of land within the City's Open Space Zoning District ("Measure"); and

WHEREAS, the City Clerk's office, in coordination with the Los Angeles County Registrar-Recorder/County Clerk, examined the records of voter registration and ascertained that pursuant to California Elections Code Section 9215 the petition is signed by the requisite number of voters, and has so certified; and

WHEREAS, Elections Code Section 9215 authorizes the City Council to adopt the Measure, without alteration, in lieu of placing the Measure on the ballot; and

WHEREAS, the City Council desires to forego an election and, in turn, adopt the Measure, without alteration.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Palos Verdes Estates, California, as follows:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

Section 2. Adoption of Measure in Lieu of Election. Pursuant to California Elections Code Section 9215, and any other applicable requirements of the laws of the State of California, the City Council hereby adopts the Measure, without alteration, in lieu of calling an election within the City of Palos Verdes Estates on the Measure. The full text

of the Measure is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

Section 3. CEQA. The City Council hereby finds and determines that adopting the Measure in lieu of placing it on an election is exempt from the California Environmental Quality Act ("CEQA"). CEQA only applies to the "discretionary" actions of the City that may have a direct or indirect effect on the environment. However, the California Supreme Court has held that adopting a land use Measure that has qualified through citizens' petition in lieu of placing it on an election is not a "discretionary" action of the City and is therefore exempt from CEQA. (*Tuolumne Jobs & Small Business Alliance v. Superior Court (City of Sonora)* (2014) 59 Cal. 4th 1029.)

Section 4. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

Section 5. Effective Date of Resolution/Voter Approval Required to Repeal/Amend. This Resolution shall take effect immediately upon its adoption. Pursuant to Elections Code Section 9217, this Resolution shall have the same force and effect as a voter-approved measure and may not be repealed or amended without majority approval of City of Palos Verdes Estates voters.

ADOPTED by the City Council of the City of Palos Verdes Estates, California, at a Regular Meeting thereof held this 26th day of July, 2022, by the following roll call vote to wit:

AYES: Lozzi, Roos, Kemp, Murdock

NOES: McGowan

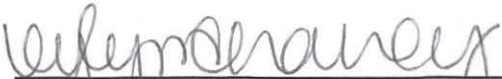
ABSENT:

APPROVED



VICTORIA A. LOZZI, MAYOR

ATTEST



KYLINN CHANEY, CITY CLERK

APPROVED AS TO FORM



TREVOR RUSIN, INTERIM CITY
ATTORNEY

Exhibit "A"

Initiative Measure

[attached behind this cover page]

EXHIBIT "A"

ORDINANCE NO. O22-755

AN ORDINANCE OF THE PEOPLE OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, AMENDING SECTION 15.08.160 AND ADDING SECTION 17.28.040 OF THE PALOS VERDES ESTATES MUNICIPAL CODE REQUIRING CERTIFICATION OF COMPLIANCE WITH APPLICABLE DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&RS) FOR DEVELOPMENT PROJECTS AND REQUIRING VOTER APPROVAL FOR REZONING OF LAND IN OPEN SPACE ZONING DISTRICT.

THE PEOPLE OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, DO ORDAIN AS FOLLOWS:

SECTION 1. Name. This initiative measure shall be known and may be cited ask the "Palos Verdes Estates Land Preservation Act (hereinafter sometimes referred to as the "Act").

SECTION 2. Purpose and Intent. The People of Palos Verdes Estates declare that their purpose and intent in adopting the Palos Verdes Estates Land Preservation Act is to:

A. Support preservation and protection of the land and building in the city of Palos Verdes Estates (hereinafter sometimes referred to as the "City"), in compliance with the covenants, conditions and restrictions and deed restrictions that govern development in the City.

B. Reaffirm the provisions of section 15.08.160 of the Palos Verdes Estates Municipal Code, added to the municipal code by the City Council's approval on June 12, 2018 of Ordinance 18-7:33, and ensure that the repeal of section 15.08.160 or any amendment thereto is subject to a vote of the People of Palos Verdes Estates.

C. Safeguard all land in the City that is zoned OS (open space), including all City-owned public parkland, and ensure that the voters of the City have a right to reject any action by the City Council to rezone land protected by the OS (open space) zone, including any City Council action that would deprive the City's residents and visitors of the enjoyment of the public benefits provided by the OS (open space) zone.

D. Reaffirm the purpose and intent of the City's OS (open space) zone "to preserve, promote and enhance valuable natural and open space resources in the city" and "to assure that uses of the open space lands and facilities are compatible with other permitted uses in the community." (Palos Verdes Estates Mun. Code, § 18.16.010.)

E. Reaffirm the basic General Plan consideration that "Development of properties within the City is governed by deed restrictions on every parcel" (General Plan, p. 4); and the declarations in the General Plan Conservation Element that "The most valuable resource in the City is the natural beauty of hillsides, canyons and seashore" (id., p. 16) and that "The preservation of over 678 acres of parkland and seashore in essentially native state has always been of vital interest to the residents." (Id.)

SECTION 3. Amendment of Palos Verdes Estates Municipal Code Section 15.08.160 *Certification of compliance with applicable declarations of covenants, conditions and restrictions (CC&Rs)*", part of Chapter 8 ("Administration") of Title 15 ("Buildings and Construction"). Palos Verdes Estates Municipal Code section 15.08.160 is amended to read as follows (new added text is shown by underline; deleted text is shown by ~~strikeout~~):

"15.08.160 Certification of compliance with applicable declarations of covenants, conditions, and restrictions (CC&Rs).

A. Prior to the issuance of a building permit for any residential or commercial development, the applicant shall be required to certify, on a form approved by the building official, that the proposed development complies with any declaration of covenants, conditions, and restrictions (CC&Rs) applicable to the property. Except as provided in subsection B of this section, when the approval of a homeowners' association is required for such development under the CC&Rs, the applicant shall also provide to the building official a document signed by an authorized representative of the association stating that such approval has been obtained and identifying the plans in sufficient detail to enable the building official to verify that the plans approved by the association are substantially the same as the plans being reviewed by the city. If the exterior architectural treatment, size, location, or elevations of the plans being reviewed by the city are substantially revised after the date that the applicant submits the required certification and homeowners' association approval, the building official shall require that such certification and, if required, such approval be resubmitted on the basis of revised plans. The building official may, but shall have no duty to, require the building permit applicant to submit supporting information, and investigate the surrounding facts and circumstances to determine if the applicant's certification is correct and the authorization is valid.

B. Notwithstanding the provisions of subsection A of this section, no building permit shall be denied on the basis of the applicant's failure to meet any of the requirements in subsection A of this section in any of the following circumstances:

1. The city would be legally prohibited by applicable federal or state law from adopting or enforcing its own ordinances, rules or regulations to prohibit the construction or use proposed.

2. The city shall not condition approval of a solar energy system (as defined in Section 801.5 (a) of the California Civil Code) permit application on the approval of the homeowners' association.

3. The applicant certifies that the proposed development does not violate any express provisions in applicable CC&Rs, but the applicant is unable to obtain the approval or signature of approval of an authorized representative of the association because (a) the association is not active at the time approval is being sought, or (b) the association fails or refuses to meet, take final action upon, or report in writing regarding such action within one hundred eighty days after the application for approval is submitted.

C. It is not the intent of the ~~e-City council-voters~~ by the their own adoption and ratification of the e Ordinance No. 18-733, adopted by the City Council on June 12, 2018 and codified in this section, to create a mandatory duty to any person to protect against the risk of any particular kind of injury."

SECTION 4. Amendment of Palos Verdes Estates Municipal Code Chapter 17 ("Amendments"), part of Title 17 ("Zoning Procedures"). Chapter 17.28 of title 17 of the Palos Verdes Estates Municipal Code is amended by adding a new section 17.28.040 ("Voter approval"), to read as follows (new added text is shown by underline):

"17.28.040 Voter approval.

No action taken by the city council pursuant to section 17.28.030 approving any rezoning of any land included within the boundaries of the open space (OS) zone, established pursuant to section 17.12.010, shall be valid unless and until such rezoning has been subsequently approved and ratified by a vote of the People of the City of Palos Verdes Estates. Accordingly, no rezoning of any such land approved by the city council shall take effect unless and until it has been approved by a simple majority of the voters of the city voting "YES" on a ballot measure proposing the zone change at a general or special municipal election. An advisory election does not satisfy the voter approval requirement."

SECTION 5. Implementation.

The Palos Verdes Estates General Plan and the regulations of the Palos Verdes Estates Municipal Code concerning buildings and construction, zoning procedures and zoning in effect within the City's incorporated territory on the date of filing of the Notice of Intent to Circulate the Initiative Measure containing the Palos Verdes Estates Land Preservation Act (the "Filing Date"), and the regulations of chapters 15.08 of title 15 and 17.28 of title 17 of the Palos Verdes Estates Municipal Code as amended by the Act, are an integrated, consistent, and compatible statement of City policies and regulations. Any provision of the Palos Verdes Estates General Plan that is adopted between the Filing Date and the effective date of the Act shall, to the extent that such interim-enacted provision may conflict or diminish, render invalid, defeat, or impair any provision of this Act, be repealed or amended as may be necessary and as soon as possible, in the manner and time required by state law, to ensure consistency of the provisions adopted by the Act and the Palos Verdes Estates General Plan.

SECTION 6. Repeal or Amendment.

Any repeal or amendment of the Palos Verdes Estates Land Preservation Act or of any of the Act's provisions shall be subject to a vote of the People of Palos Verdes Estates. No such repeal or amendment shall take effect unless and until it has been approved by a simple majority of the voters of the City at a general or special municipal election.

Section 7. Judicial Enforcement.

A. Any aggrieved person shall have the right to maintain an action for equitable relief to restrain any violation of the Palos Verdes Estates Land Preservation Act, or to enforce the public duties imposed upon the City by the Act. This provision shall be in addition to any other rights to judicial review, actions or remedies available by law.

B. On a prima facie showing of a violation of this Act, preliminary equitable relief shall be issued to restrain any further violation of this Act. No bond shall be required for an action under this Act.

C. If this Act is approved by a majority of the voters of the City and is thereafter challenged in court, the City shall diligently defend the Act. The proponents of the Act shall have the right to intervene in any legal action attacking any provision of the Act. If the City fails to defend the Act or fails to appeal an adverse judgment, any one of the Act's proponents shall be entitled to defend the Act's validity on behalf of the People of Palos Verdes Estates.

Section 8. Effective Date.

This Act shall take effect on the earliest date allowed by law. The popular vote on this Act shall be declared by the City Council at its first public meeting following the canvass of the vote. Consistent with Elections Code section 9217, if a majority of the voters of the City vote in favor of this Act, it shall be considered adopted upon the date that the vote is declared by the City Council.

Section 9. Competing Measures.

If another measure on the same subject matter as the measure containing the Palos Verdes Estates Land Preservation Act appears on the same ballot, and a majority of the voters of the City vote in favor of both measures but the measure containing this Act receives more votes than the other measure, this Act shall become valid, binding and adopted in its entirety, and the other measure shall be null and void in its entirety. If a majority of the voters vote in favor of both measures but the measure containing this Act receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this Act shall control, and all other provisions of this Act shall become valid, binding and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

Section 10. Construction and Severability.

A. The Palos Verdes Estates Land Preservation Act shall be liberally construed to achieve its purposes and objectives.

B. This Act shall be interpreted in such manner as to be consistent with all federal, state and local laws, rules and regulations. If any section, subsection, subdivision, clause, sentence, phrase or portion of this Act is found unconstitutional or otherwise invalid by a court of competent jurisdiction, the remaining sections, subsections, subdivisions, clauses, sentences, phrases and portions shall remain in full force and effect, and to this end the provisions of this Act are severable. The voters of the City declare that if any section, subsection, subdivision, clause, sentence, phrase or portion of this Act is found unconstitutional or otherwise invalid by a court of competent jurisdiction, they would have passed all sections, subsections, subdivisions, clauses, sentences, phrases and portions of this Act without the section, subsection, subdivision, clause, sentence, phrase or portion found unconstitutional or invalid.

C. If any section, subsection, subdivision, clause, sentence, phrase or portion of this Act is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, the voters of the City further declare their intent that the City Council take all steps as may necessary to cure any inadequacy or deficiency found by the court, in such manner as to accomplish the intent, purposes and objectives of this Act to the maximum legally feasible extent.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Kylynn Chaney, City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R22-33** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 26th day of July, 2022, by the following vote:

AYES:	COUNCILMEMBERS:	Lozzi, Roos, Murdock, Kems
NOES:	COUNCILMEMBERS:	McGowan
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBER:	None


Kylynn Chaney, City Clerk