

via electronic mail to: cityclerk@eurekaca.gov

April 2, 2024

City Council
City of Eureka
531 K Street
Eureka, CA 95501

**Re: April 2, 2024 Council Meeting
Agenda Item I.2 – Mixed Neighborhood Overlay Development**

Members of the City Council:

This firm represents Citizens for a Better Eureka (“CBE”), an unincorporated, volunteer community organization that works to protect and enhance the quality of life in and economic vitality of the City of Eureka. This letter concerns the Council’s April 2, 2024 Public Hearing agenda item I.2 – *Mixed Neighborhood Overlay Development*.

At the outset, CBE wishes to applaud the City’s recognition that the former Jacobs Middle School site (the “Jacobs Site”) is an appropriate alternative location for badly-needed new housing. The proposed overlay zone, in conceptual form as described in the corresponding staff report, could be a useful path toward facilitating development of the Jacobs Site and other sites within the City that are more appropriate locations for housing than the City’s existing downtown parking lots.

The staff report contains two inaccuracies that warrant the following comments:

1. Interplay between the proposed overlay zoning and the Housing For All and Downtown Vitality Initiative (“Initiative”).

The staff report claims that the proposed overlay zone could be applied to sites such as the Jacobs Site “regardless of the results of the upcoming initiative”. This is not a correct statement of the law as it relates to the Jacobs Site.

The Initiative, if adopted by the City’s electorate this November, would apply a new General Plan overlay called the “HFA Overlay” to the Jacobs Site. As set out in the Initiative, the HFA Overlay reads as follows:

Creation of the Housing For All Overlay Designation. In 2024, the people of the City of Eureka approved the City of Eureka Housing For All and Downtown Vitality Initiative (“Initiative”), which, among other things, created a new Housing For All overlay designation (“HFA Overlay”) within the Housing Element of the General Plan. The purpose of the HFA Overlay is to identify and facilitate a suitable location to accommodate a sufficient number of new housing units to satisfy State law requirements and City growth generally through the construction of new residential housing units suitable for City residents of all income levels. The HFA Overlay shall apply to the following property:

- Former Jacobs Middle School Site – 674 Allard Avenue (APNs 009101018 and 009111006)

The HFA Overlay shall authorize the following uses by right:

- 1) high density residential uses, as allowed in the Residential High (R3) zone;
- 2) medium density residential, as allowed in the Residential Medium (R2) zone;
- 3) low density residential, as allowed in the Residential Low (R1) zone;
- 4) public and quasi-public uses compatible with a residential setting;
- 5) all principally permitted neighborhood-serving commercial uses allowed under the Neighborhood Commercial (NC) zone and Neighborhood Market (NMO) overlay zone;

- 6) all principally permitted uses allowed under the Downtown (DT) zone; and
- 7) all principally permitted uses allowed under the Public Facilities (PF) zone.

At least forty percent of the total ground area subject to the HFA Overlay shall be dedicated to high density residential uses, exclusive of any areas dedicated to public facility uses. The City shall amend the zoning regulations applicable to the property specified hereinabove to be consistent with this Policy H-2.24. The HFA Overlay as applied to the property specified herein shall not be amended or removed except by a vote of the people. (Implemented by: Imp H-2; Imp H-3; Imp H-4; Imp H-5; Imp H-6; Imp H-9; Imp H-16; Imp H-23; Imp H-29; Imp H-30; Imp H-31; Imp H-35)

If the Initiative were adopted, the City would be prohibited from adopting any General Plan or zoning code provision in conflict with the Initiative. Consequently, to the extent the proposed overlay zone would conflict with, limit, or interfere with the use rights conferred by the Initiative, the overlay zone would be invalid. (See Elec. Code § 9217; *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372 [“The purpose of section 9217 is to protect the electorate’s constitutional right to initiative by preventing successful initiatives from being undermined through amendment by hostile legislative bodies”].)

2. The proposed overlay zone’s purported exemption from CEQA.

The staff report asserts that the proposed overlay zone, while a “project” for purposes of the California Environmental Quality Act (“CEQA”), would nonetheless be exempt from CEQA review because the overlay zone “has no possibility to significantly affect the environment”.

As the City is no doubt aware, one of CBE’s concerns is that the City fully and completely comply with CEQA. In this regard, the above statement is problematic for two reasons. First, staff’s statement is premature. Staff cannot make a determination regarding the applicability of CEQA to a project (i.e., the proposed overlay zone) that has yet to be defined. Second, the California Supreme Court has found adoption of zoning ordinances, even ordinances that would likely have no environmental impact, to require CEQA analysis in several leading cases (*Muzzy Ranch Co. v. Solan County Airport Land Use Com.* (2007) 41 Cal.4th 372; *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171). Should the City decide to move forward with the proposed overlay zone, CBE will expect the City to comply with CEQA and established caselaw in evaluating whether and to what extent the proposed action requires preparation of an environmental review document.

3. Potential waste of public funds.

Lastly, the staff report states that, if directed to proceed by the City Council, the City would retain a land use consultant at an estimated cost of \$40,000. To the extent that the City intends the proposed overlay to apply to the Jacobs Site, expenditure of these monies at this time would be a waste of public funds, for two reasons. First, if the goal of the overlay is, as suggested in the staff report, to facilitate residential and related uses of the Jacobs Site and other properties (although such other properties are not identified), the Initiative may effectuate that objective, at least with respect to the Jacobs Site, at no cost to the City. Second, if the goal of the overlay is to constrain development of the Jacobs Site under the Initiative, such a constraint would be in violation of California law and thus invalid. Rather than waste public money on the proposed overlay, the smarter approach would be for the City to wait for the outcome of the Initiative vote to determine whether an overlay such as the one proposed might benefit City residents

Sincerely,



Bradley B. Johnson, Esq.
Everview Ltd.

