



**DATE:** May 12, 2020

**CATEGORY:** Consent

**DEPT.:** City Attorney

**TITLE:** **Adopt a Resolution Rescinding Resolution No. 18176**

### **RECOMMENDATION**

Adopt a Resolution Rescinding Resolution No. 18176 Upholding the Zoning Administrator's Approval of a Planned Community Permit, a Provisional Use Permit, a Development Review Permit, and a Heritage Tree Removal Permit to Construct a New Hotel, and Remove Three Heritage Trees at 870 Leong Drive, to be read in title only, further reading waived (Attachment 1 to the Council report).

### **BACKGROUND**

In 2017, an application was received from Temple Hospitality, LLC, for a Planned Community Permit and a Development Review Permit to construct a new 39,619 square foot, 74-room hotel project, a Provisional Use Permit for a parking reduction for a hotel use with 70 parking spaces in lieu of 75 parking spaces, and a Heritage Tree Removal Permit to remove three Heritage trees on a 1.15-acre project site located at 870 Leong Drive (Application No. 002-11-PCZA). The Zoning Administrator held a public hearing on September 13, 2017 and conditionally approved the project.

An appeal of the Zoning Administrator's decision was brought the City Council by the owner of a neighboring hotel. The appeal was received by the City Clerk on September 22, 2017. The appeal to the City Council of the Zoning Administrator's decision conditionally approving the project was heard and denied by the City Council on November 7, 2017 by adopting Resolution No. 18176.

The neighboring hotel owner challenged the Council's decision by filing a petition for writ of mandate in Superior Court. The writ petition challenged in part the finding by the City Council that the proposed project is consistent with the existing Neighborhood Commercial General Plan Land Use Designation and the P(32) Evandale Precise Plan Zoning Designation. In the case of *County Inn, LLC v. City of Mountain View* (Santa Clara County Superior Court, Case No. 18CV322114), the neighboring hotel owner

challenged the City's action in three areas: (1) vehicular access and traffic flow on the Property; (2) the number of parking spaces; and (3) the height of the proposed hotel.

On December 3, 2019, Judge Helen Williams ruled on the petition for writ of mandate. While she denied the writ on vehicular access and traffic flow and on the number of parking spaces, she found that the City exceeded its authority under its existing zoning ordinance by approving a three-story hotel structure. The court disagreed with the City's interpretation of the Zoning Code's provisions in conjunction with the Evandale Precise Plan in allowing a three-story hotel structure. The court interpreted the language of the Zoning Code and the Precise Plan to only allow a two-story structure in this case. On December 6, 2019, the Court issued the peremptory writ of administrative mandate.

The City is required to file a report with the Court within 180 days of December 3, 2019, setting forth the actions the City has taken to comply with the Court's ruling.

### **ANALYSIS**

Because the Court ruled that the Council exceeded its authority in denying the appeal from the neighboring hotel owner, the Council must demonstrate to the Court that it has complied with the Court's ruling. The proposed resolution satisfies the Court's order by rescinding the Council's previous resolution denying the appeal.

Because the Council's approval of the project was rejected by the Court, the project is returned to the Planning Division, which recently granted a one-year permit extension to the applicant. In granting the extension, the Planning Division has required the applicant submit a modified project application that complies with the Court's decision in Santa Clara County Superior Court, Case No. 18CV322114.

The City Attorney's Office expects to transmit a report to the Court no later than May 29, 2020 establishing the City's compliance with the Court's decision.

**FISCAL IMPACT** – None.

### **ALTERNATIVES**

None. The proposed action is required to comply with a court decision.

**PUBLIC NOTICING** – Agenda Posting.

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011-05-12-20CR  
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Attachment: 1. Resolution