

**MEMORANDUM**

Community Development Department

**DATE:** April 14, 2023

**TO:** City Council

**FROM:** Lindsay Hagan, Assistant Community Development Director  
Aarti Shrivastava, Assistant City Manager/Community Development Director

**VIA:** Kimbra McCarthy, City Manager

**SUBJECT:** **Gatekeeper Process and Next Steps**

---

**PURPOSE**

At the February 28, 2023 Study Session on the Fiscal Years 2023 to 2025 Council Work Plan, Council discussed considering potential revisions to the Gatekeeper process, including: allowing exemptions for certain types of projects, criteria for evaluation of Gatekeeper requests, and the timing of considering Gatekeeper requests. The purpose of this memo is to provide background on the Gatekeeper process, staff recommendations, and next steps for Council consideration at the April 25, 2023 Work Plan Study Session.

**BACKGROUND**

The Permit Streamlining Act (PSA) is a State law which requires a city to process any development permit application submitted in accordance with City Codes and the General Plan within certain timelines. PSA applications are submitted by property owners and/or developers. The City does not control the timeline of submission or the size or nature of such developments. However, State law mandates cities to accept and process these applications within set time frames, which is a workload priority for City staff involved in development review.

The PSA does not apply to applications that require legislative action by the Council, such as a General Plan, Precise Plan, and/or zoning text or map amendments. California law has provisions regulating the number of times a year a city's General Plan can be amended (maximum four times annually) but is silent on Precise Plan and zoning amendments. Some cities provide oversight controls on proposed General Plan/zoning amendments as a way to coordinate applications and staffing resources in accordance with this law.

The State also requires cities to update certain legislative plans and policies within specified timelines. One such plan is the General Plan's Housing Element, which is required to be amended every eight years. The City Council adopted the 2023-2031 Housing Element on April 11, 2023,

which includes ordinance amendments, rezonings, General Plan amendments, revisions to City policies, programs, and other implementation projects which have to be completed within specific timelines. As a result, the City is required to prioritize and commit staff resources to these required updates so they are completed in a timely manner.

Therefore, State-mandated applications and policy amendments are prioritized first for staff workloads followed by Council Work Plan items. Projects requiring General Plan, Precise Plan, and zoning amendments, including Gatekeeper applications, are given third priority.

### **History of Gatekeepers**

The term “Gatekeeper” refers to the City’s adopted regulations in Chapter 36 (Zoning) of the City Code that gives Council the authority to control the processing of legislative applications based on the availability of staff resources and consistency with City objectives. A Gatekeeper application is one in which an applicant proposes a private development project in combination with a legislative update, including General Plan, Precise Plan, and/or zoning amendment(s). Currently, the Gatekeeper Ordinance allows Council to: authorize a legislative application to proceed to a formal Planning application, decline to authorize the application to proceed, or defer submittal of a formal Planning application to a future date.

In 2001, the City adopted a Gatekeeper Ordinance in direct response to a heavy Advanced Planning workload and limited planning staff, which resulted in postponement of Council-directed policy work. Prior to the Gatekeeper Ordinance, staff processed a Planning application with a proposed legislative amendment within 30 days of receiving it; Council would only review the legislative change and development once the review was completed and a final action was required. To prioritize staff work and allow for preliminary review of proposed changes in City regulations, the City established the Gatekeeper process. This authorization process ensures State-mandated projects are completed within specified timelines, Council Work Plan items are prioritized, and Gatekeeper applications are authorized based on criteria of importance to the community.

To date, there have been two major updates to the Gatekeeper Ordinance discussed below. For a comprehensive history of the Gatekeeper Ordinance, see Attachment 1.

- a. In 2012, amendments were made to **allow all authorized Gatekeeper applications to be reviewed by the Environmental Planning Commission (EPC) for a recommendation to the City Council** on both the development proposal and the legislative modification. Previously, this was done in two separate hearings—the development proposal at an Administrative Zoning (ZA) hearing and the legislative modification at an EPC hearing. Today, the EPC continues to review all Gatekeeper projects.

- b. In 2017 and 2018, Council initiated Study Sessions to discuss **desired changes to the Gatekeeper process and requirements**, which resulted in adopted amendments to the Zoning Ordinance. Major adjustments were made to the Gatekeeper Ordinance to:
1. Add application requirements;
  2. Clarify procedures;
  3. Establish Amendment Authorization Criteria; and
  4. Add exemptions for certain legislative modifications that do not require Council authorization.

### **THE CURRENT GATEKEEPER PROCESS**

Once a Council hearing date is tentatively scheduled, Planning staff makes a “call for applications” to all interested parties through informal and formal communications, such as notification on the City website, typically six months in advance of the hearing date. This allows applicants approximately three months to prepare and submit applications and staff three months to review and analyze applications, prepare a staff report, and schedule a Council hearing.

### **GATEKEEPER APPLICATION REQUIREMENTS**

The following materials are required for a Gatekeeper application:

1. A signed Planning Application Form.
2. A Gatekeeper application fee (which only covers the authorization hearing).
3. A Project Letter that includes:
  - Information on any other studies that have affected the property or area, or the subject of a zoning text amendment, within the last three years;
  - Information about community benefits and other contributions provided by the Gatekeeper proposal exceeding minimum requirements;
  - Information about General Plan and Council goals served by the request;
  - Information about potential fiscal impact of the proposed amendment;
  - Any other information that may be helpful to Council;
  - A set of plans with a site plan, floor plans, elevations, and conceptual rendering; and
  - Consistency with Amendment Authorization Criteria, which are discussed further below.

As part of the Council report for the Gatekeeper authorization hearing, staff provides analysis to evaluate each request, including a summary of each project proposal, legislative actions necessary for each project, adherence to the Authorization Criteria, staff time and resources required to process the application, and current staff workload. At the hearing, Council decides whether to authorize, defer submittal, or deny a Gatekeeper application.

#### **Exemptions from Gatekeeper Authorization**

Currently, the Gatekeeper Ordinance includes exemptions that allow for certain projects to proceed with a Planning application without requiring Council authorization. These include projects on small sites (less than two acres) where legislative changes are consistent with surrounding zoning or affordable housing projects receiving City funding. In general, these

projects tend to be noncontroversial and do not substantially impact staff workload. The specific exemptions are below.

#### **GATEKEEPER AUTHORIZATION EXEMPTIONS**

1. For multi-zoned (or split-zoned) sites less than two acres in size that are owned by a single entity and are rezoned to one of the existing zoning designations on-site;
2. For rezonings on sites under two acres in size abutting an existing residentially zoned property where the project site is converting from industrial to the adjoining residential zoning district; and
3. Projects that require authorization by the Council Notice of Funding Availability (NOFA) Subcommittee.

The **2023-2031 Housing Element includes the following Program related to Gatekeeper exemptions:** Program 1.3.(f)., Identifying additional Gatekeeper exemptions for residential projects based on location, size, affordability and other policy goals. Staff plans to hold a Council Study Session in Q3 2023 to get further direction on exemptions to evaluate and consider in accordance with this Housing Element Program.

#### **Gatekeeper Amendment Authorization Criteria**

The Amendment Authorization Criteria adopted by Council serve as a tool for evaluating how a Gatekeeper proposal, including associated community benefits, may align with Council goals and General Plan objectives. While adopted by reference, the criteria are not in the City Code and may be updated without a Zoning Ordinance amendment to align with Council and community priorities. The current Amendment Authorization Criteria are listed below.

### **GATEKEEPER AMENDMENT AUTHORIZATION CRITERIA**

- Is the project in a General Plan Change Area?
- Does the project provide additional affordable housing above what is required by the City Code?
- Does the project propose Community Benefits?
- Is the project near commercial services?
- Does the project dedicate park land above what is required?
- Does the project enhance environmental sustainability efforts?
- Does the project improve transportation by enhancing mobility and connectivity?

### **Gatekeeper Authorization Timing**

Per the City Code, the timing for presenting Gatekeeper applications to Council for authorization is scheduled by the Community Development Director based on availability of staff resources. Gatekeeper authorization hearings have historically been held in the fall. From 2003 to 2020, hearings were held annually, with the exception of 2017. Due to the lack of staff resources and need to respond to the COVID-19 pandemic, Gatekeeper hearings were deferred in 2020 until fall 2023. Additionally, as part of the City's partnership with the Los Altos School District (LASD) Transfer of Development Rights (LASD TDR) Program, the City committed in the Memorandum of Understanding to bring any development applications proposed with LASD TDR square footage to a Gatekeeper authorization hearing as expeditiously as possible (which last occurred in 2018).

The **2023-2031 Housing Element includes the following Program related to Gatekeeper timing:** Program 1.3.(g)., Hold at least one Gatekeeper meeting per year, which may be limited to residential or residential mixed-use projects only, creating greater opportunities for project-specific rezonings. The Program deadline for accepting the next round of Gatekeeper applications is by June 30, 2024.

## Current Gatekeeper Project Queue

Table 1 summarizes the remaining Gatekeepers in the City’s development review process that have been authorized to date.

**Table 1: Gatekeepers Remaining in 2023**

Gatekeeper	Authorization Date	Current Status
2595 California Street/405 San Antonio Road Office LASD TDR project (Merlone Geier Phase III)	December 3, 2019	Awaiting a Council hearing, anticipated in Q4 2023.
301-381 East Evelyn Avenue Office LASD TDR Project	January 16, 2018; Applicant submitted in August 2020	Under review.
189 North Bernardo Avenue Office LASD TDR Project	January 16, 2018, but deferred to submit no later than January 2023. Applicant submitted in May 2020.	Council hearing tentatively scheduled for May 23, 2023.

## STAFF RECOMMENDATIONS

Based on the 2023-2031 Housing Element Programs, staff’s experience with the Gatekeeper process, and input from developers and the community, staff recommends the City continue to administer a Gatekeeper process. The City has a long history of high development activity, which places high demand on the City’s development review process and City staff. Retaining a Gatekeeper authorization process is paramount to ensuring State-mandated projects, PSA planning applications, and Council Work Plan items are prioritized and completed in a timely manner.

In summary, staff recommends the following approach to the Gatekeeper process as explained in Table 2:

- Retain the current Gatekeeper application requirements;
- Hold a Council Study Session in Q3 2023 to discuss Gatekeeper exemptions in accordance with the Housing Element Program, with staff planning to bring Ordinance amendments to Council for adoption in Q1 2024;
- Maintain the current Authorization Criteria, with ability to accommodate minor revisions from Council at the April 25 Work Plan Study Session; and

- Accept Gatekeeper applications by June 2024 in accordance with the Housing Element Program.

**Table 2: Staff Recommendations on Gatekeeper Process**

<b>Gatekeeper Process Feature</b>	<b>Staff Recommendation</b>	<b>Comments</b>
<b>Application Requirements</b>	Retain current requirements.	<p>The Gatekeeper process was previously modified to establish clear application requirements to assist staff and Council in assessing requests and streamlining review. With implementation of these changes, staff believes the Gatekeeper application requirements and process are effective and do not need further revisions at this time.</p> <p>Changing application requirements would require amending the Ordinance and scheduling a Council Study Session for further direction on the amendments. Also, adding more application requirements would increase the applicant's cost to apply and may reduce the number of Gatekeeper applications.</p>
<b>Gatekeeper Exemptions</b>	Consider exemption modifications consistent with the Housing Element Program.	<p>The current Ordinance provides exemptions to projects that are typically not controversial in nature and do not substantially impact staff workload. The Housing Element Program requires review of Gatekeeper exemptions as they relate to residential projects, which staff plans to discuss at a Q3 2023 Council Study Session.</p> <p>Adding exemptions will result in impacts to staff workload and will slow down the ability to complete Council Work Plan items in a timely manner.</p>



<b>Gatekeeper Process Feature</b>	<b>Staff Recommendation</b>	<b>Comments</b>
<b>Amendment Authorization Criteria</b>	Retain current criteria.	<p>Staff believes the current criteria align closely with Council’s Strategic Priorities, and staff does not recommend revisions.</p> <p>If Council is interested in making minor revisions to the Authorization Criteria, it can be done during the April 25 Work Plan Study Session.</p> <p>Major revisions would need a Council Study Session. This discussion can be combined with the planned Q3 2023 Council Study Session to review Gatekeeper exemptions related to residential projects per the Housing Element Program noted above.</p>
<b>Timing of Authorization Hearings</b>	<p>The Housing Element Program requires accepting Gatekeeper applications by June 2024 and annually thereafter.</p> <p>Staff recommends accepting the first set of applications by June 2024 (consistent with the Housing Element) and holding a Council authorization hearing in Q3 2024.</p>	<p>Other than COVID-19 impacts, the City has regularly held annual Gatekeeper hearings. Per the Housing Element Program and staff’s experience, holding annual hearings generally in the fall (Q3) of each year is appropriate and allows staff the summer to prepare for the authorization hearing.</p> <p>With a Gatekeeper hearing in Q3 2024, staff will have time to begin working on critical Housing Element implementation items and other Council Work Plan priorities before processing Gatekeeper applications.</p>

## **NEXT STEPS**

If Council agrees with staff's recommendations, the next steps will be to:

1. Hold a Council Study Session in Q3 2023 to discuss new Gatekeeper exemptions per the Housing Element Program;
2. Bring back Ordinance amendments for Council consideration and adoption by Q1 2024;
3. Accept Gatekeeper applications by June 2024; and
4. Hold a Council Gatekeeper authorization hearing in Q3 2024.

## **ALTERNATIVES**

1. Proceed with a Gatekeeper authorization hearing in Q3 2023. Under this alternative, only minor revisions to the Authorization Criteria directed by Council at the April 25 Work Plan discussion would be incorporated and applied to Gatekeeper applications.
2. Make significant changes to the Gatekeeper Ordinance beyond the scope of the Housing Element Program. Council can discuss desired amendments as part at the Q3 Council Study Session; however, any Ordinance revisions outside of the scope of the Housing Element Program may require additional time beyond Q1 2024 to evaluate and prepare for Council adoption. The City will still need to accept Gatekeeper applications by June 2024 as specified in the Housing Element Program; thus, any amendments that are not adopted by then will not apply to Gatekeeper applications received in June 2024.

LH-AS/2/CDD

823-04-13-23M

Attachment: 1. History of the Gatekeeper Ordinance

## HISTORY OF THE GATEKEEPER ORDINANCE

The following is a comprehensive history of the City's Gatekeeper Ordinance:

**2001**—Council adopted an interim urgency ordinance establishing a Gatekeeper process where Council authorization is required when a Planning application is received which proposes amendments to a Precise Plan and/or the General Plan (see [August 7, 2001 Council Report](#)). The authorization is required to be provided by Council prior to a formal development application being submitted to the Planning Division that includes the legislative update. The interim ordinance was proposed in direct response to a heavy Advanced Planning workload, and limited planning staff, all resulting in postponement of Council Work Plan items. Prior to the interim ordinance, Staff would process a Planning application with a proposed legislative amendment within 30 days of receiving it; Council would only review the legislative change and development once the review was completed and a final action was required.

In the interim ordinance, the evaluating criteria for Council consideration of these legislative requests included:

- a. The effect the request may have on current pending or anticipated staff assignments;
- b. Whether the request could be coordinated with other legislative requests or amendments;
- c. Council prioritization of the request relative to other staff work items; and
- d. Consideration to whether the request is the same or similar to properties where past studies were completed or in areas that had been extensively studied in the past.

**2003**—Council adopted a permanent Gatekeeper Ordinance, which retained the Council authorization process established from the interim ordinance (see [Council Report Dated June 24, 2003](#)). This permanent ordinance also added:

- a. Specific time periods to hold a Council hearing for Gatekeeper authorizations (within 60 days of request);
- b. Clarifications to Council's evaluating criteria for a request;
- c. Clarified that Gatekeeper authorization is about timing and prioritization based on staff resources, not merit of a development proposal;
- d. Expanded the authorization requirements from General Plan and Precise Plan Amendments to include zoning text amendments and any rezoning not consistent with the General Plan; and

- e. Added fiscal impact information as a requirement of a Gatekeeper request.

**2012**—Council approved an amendment to the Zoning Ordinance expanding the review authority of the Environmental Planning Commission (EPC) to include their review of the entire Gatekeeper proposal—the proposed legislative modification and the development proposal. Prior to 2012, the EPC reviewed the proposed legislative modification and the Zoning Administrator reviewed the development proposal at public hearings—both providing a recommendation to Council on the respective parts (see [Council Report Dated February 28, 2012](#)). This amendment streamlined the review process by reducing the number of public hearings (by one hearing) and allowed the same review body to address both the legislative modification and the development in combination. Review by the EPC continues today for Gatekeeper proposals.

**2017**—A Council-initiated Study Session was held to discuss potential changes to the Gatekeeper process (see [Council Report Dated March 7, 2017](#)). In the prior year, the City received a record number of Gatekeeper requests (13 in total) where many of the Gatekeepers proposed included conversion of industrial land to residential use and proposals in locations outside of General Plan Change Areas. Council ultimately authorized two applications that year. Comments and concerns raised by Councilmembers at the time included:

- A desire for modifications to the Gatekeeper process and requirements – including increase application requirements, increase affordable housing requirements in Gatekeeper requests, replace any demolished units, establish clearer ideas of desired community benefits, and determine how to prioritize what areas should be studied further in the future;
- Consideration of options for additional Change Areas in the General Plan – including studying the Terra Bella area for residential uses, California Avenue, Pioneer Way, and the industrial areas south of Highway 101 near Rengstorff Avenue;
- Maintaining City’s existing industrial uses;
- Focusing on creating more ownership housing; and
- Concerns with concentrating development in existing Change Areas.

**2018**—Based on Council direction from the 2017 Study Session, zoning text amendments were adopted updating the Gatekeeper process to include:

- a. An application fee and noticing requirements;
- b. Require more application materials (i.e., information on community benefits, General Plan and Council goals served, plan sets);

- c. Added an exemption from Council authorization for multi-zoned parcels less than two acres in size that are owned by a single entity and rezoned to one of the existing zoning designations on-site;
- d. Established a one-year expiration date for authorized Gatekeepers to submit a formal Planning application; and
- e. Requires Council approval for substantial changes to authorized Gatekeepers, following expiration of a Gatekeeper authorization, or upon sale of the project to a new owner if sale occurs prior to submission of a formal Planning application (see [Council Report Dated March 27, 2018](#)).

As part of this update, staff prepared Amendment Authorization Criteria as a tool for evaluating how a Gatekeeper proposal may align with Council goals, General Plan objectives, or community benefits.

A second set of zoning text amendments were approved in November 2018 with additional changes to the Gatekeeper Ordinance. From the prior 2018 hearing, Council directed staff to:

- a. Add an exemption from Council authorization for rezonings related to project sites under two acres in size, abutting an existing residential zoned property where the project site is converting from industrial to the adjoining residential zoning district; and
- b. Expanded noticing for all projects (not just Gatekeepers) to be mailed 14 days prior to a public hearing to a 750' radius, in lieu of the prior 500' radius, that includes tenants and property owners.

**2019**—Council provided direction to staff at a public hearing on the timing of the next Gatekeeper authorization hearing. Staff provided information about balancing the existing staff workload and Council Work Plan projects with 250 planning applications in process at the time. The Council ultimately authorized seven Gatekeeper projects related to the 2018 Los Altos School District Transfer of Development Rights program (see [Council Report Dated June 18, 2019](#)). Five of the seven applications were in the East Whisman Precise Plan area, one application was in the San Antonio Precise Plan area, and one was in the 111 Ferry-Morse Way Precise Plan. Council decided to delay all other Gatekeeper requests to Q3 2020.

**2020**—Due to staff resource limitations and the need to focus on City priorities, Council decided to defer the Gatekeeper requests public hearing to fall 2021. An exception was made for a Gatekeeper application for the 1020-1040 Terra Bella Avenue Public Storage and Alta Affordable Housing project, which included a request for City affordable housing funds and was authorized to proceed to a formal Planning application in August 2020.

**2021 and 2022**—During the Fiscal Years 2021 to 2023 Work Plan discussions in 2021 and 2022, Council decided to defer Gatekeeper requests until Fall 2023 due to continued concerns about staff workload, vacancies and the need to work on current projects and Council priorities.